

**PROJECT AGREEMENT
(REDACTED VERSION)**

MACDONALD BLOCK RECONSTRUCTION PROJECT

CONFIDENTIAL

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Schedule 7	-	Security Clearance Check Requirements
Schedule 8		[Intentionally Deleted]
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11A	-	Design Quality Plan and Construction Quality Plan
Schedule 11B	-	Service Quality Plan Outline
Schedule 12	-	Works Scheduling Requirements
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
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Schedule 32	-	Financial Model Extracts
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Schedule 38	-	Reports
Schedule 39	-	Community Benefits
Schedule 40	-	[Intentionally Deleted]
Schedule 41	-	Community Benefits Working Group Terms of Reference

THIS PROJECT AGREEMENT is entered into as of the 7th day of August, 2019

BETWEEN:

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

(“**Contracting Authority**”)

AND:

FENGATE PCL PROGRESS PARTNERS MBR LP, [REDACTED]

(“**Project Co**”)

WHEREAS:

- A. Contracting Authority wishes to procure the redevelopment of the Province’s existing administrative facilities at the Lands in Toronto, Ontario commonly referred to as the “Macdonald Block”.
- B. Contracting Authority commenced the procurement process for the Project by issuance of a request for qualifications for the Project on August 17, 2017.
- C. Project Co will provide the Project Operations, which Project Operations include the design, construction, financing and maintenance of the Facility (the “**Project**”).
- D. Contracting Authority provides the Macdonald Block Activities at the Existing Facilities and will provide such services or similar services at the Facility. Contracting Authority and Project Co wish to enter into this project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- E. The overriding priorities of Contracting Authority in entering into and implementing this Project Agreement are the health and safety of all Macdonald Block Occupants, other Province Persons and Macdonald Block Service Users at the Existing Facilities and the Facility, and enabling Contracting Authority and other Macdonald Block Occupants and Province Persons to carry out first-rate Macdonald Block Activities in a secure, dignified and efficient manner.
- F. The Project will proceed as an alternative financing and procurement project and complies with the principles set out in MOI’s Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector (the “**IPFP Framework**”).
- G. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - 1. The public interest is paramount.
 - 2. Value for money must be demonstrable.

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

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

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

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Custody Agreement
Schedule 4	- Lenders’ Direct Agreement
Schedule 5	- Direct Agreements
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Security Clearance Check Requirements
Schedule 8	- [Intentionally Deleted]
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11A	- Design Quality Plan and Construction Quality Plan
Schedule 11B	- Service Quality Plan Outline
Schedule 12	- Works Scheduling Requirements
Schedule 13	- Project Co Proposal Extracts
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Schedule 15	- Output Specifications
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Schedule 17	- [Intentionally Deleted]
Schedule 18	- Communications
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Schedule 20	- Payment Mechanism
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Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Expiry Transition Procedure
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Contractor Site Specific Safety Manual Requirements
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Financial Model Extracts
Schedule 33	-	Existing Facilities Repairs and Independent Assessor
Schedule 34	-	Works Report Requirements
Schedule 35	-	Site
Schedule 36	-	Energy Matters
Schedule 37	-	[Intentionally Deleted]
Schedule 38	-	Reports
Schedule 39	-	Community Benefits
Schedule 40	-	[Intentionally Deleted]
Schedule 41	-	Community Benefits Working Group Terms of Reference

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

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:

- (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) the body of this Project Agreement;
 - (iv) Schedule 1 Definitions and Interpretation;
 - (v) Schedule 27 Dispute Resolution Procedure;
 - (vi) Schedule 19 Construction Period Payments;
 - (vii) Schedule 20 Payment Mechanism;
 - (viii) Schedule 8 – **[Intentionally Deleted]**
 - (ix) Schedule 15 Output Specifications;
 - (x) Schedule 25 Insurance and Performance Security Requirements;
 - (xi) Schedule 22 Variation Procedure;
 - (xii) Schedule 10 Review Procedure;
 - (xiii) Schedule 14 Outline Commissioning Program;
 - (xiv) Schedule 11A Design Quality Plan and Construction Quality Plan;
 - (xv) Schedule 28 Refinancing;
 - (xvi) Schedule 23 Compensation on Termination;
 - (xvii) Schedule 26 Record Provisions;
 - (xviii) Schedule 24 Expiry Transition Procedure;
 - (xix) the other Schedules in the order in which they are listed in Section 1.1(b); and
 - (xx) Schedule 13 Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.

- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or Contracting Authority, upon discovery of same, shall immediately give notice to the Contracting Authority Representative. The Contracting Authority Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) Contracting Authority and Project Co shall comply with the determination of the Contracting Authority Representative pursuant to this Section 1.2 unless Contracting Authority or Project Co disputes the decision of the Contracting Authority Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

1.3 Conflict of Documents

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

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1 to 11, 13, 15 to 23, 27, 28, 32, 34 to 36 and 48 to 59, and Schedules 1 to 3, 7, 9 to 11, 13, 16 to 19, 22, 25 to 27 and 29 will come into effect on the date of this Project Agreement. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

2.2 Standby Letter of Credit

- (a) **[Intentionally Deleted]**
- (b) Unless a Standby Letter of Credit is drawn by Contracting Authority in accordance with the provisions of this Project Agreement, Contracting Authority shall release and deliver the Standby Letter(s) of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter(s) of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.
- (d) If Project Co delivers multiple Standby Letter(s) of Credit from multiple Letter of Credit Providers in accordance with Section 9.1(2) of the Request for Proposals, Project Co acknowledges and agrees that:
 - (i) Contracting Authority may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified rateable amount;
 - (ii) Contracting Authority may draw on any Standby Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Providers' contribution to security;

- (iii) Contracting Authority may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Project Co Party; and
- (iv) the provision of multiple Standby Letters of Credit shall not in any way prejudice or adversely affect the rights of Contracting Authority to draw on the Standby Letter(s) of Credit in accordance with this Project Agreement, including in a circumstance where the default giving rise to Contracting Authority's right to draw on the Standby Letter(s) of Credit is not the result of any act or omission of the Letter of Credit Provider(s) whose Standby Letter of Credit is drawn upon.

2.3 Financial Close

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

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, Contracting Authority may in its sole discretion either:
 - (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
 - (ii) direct Project Co to assign to Contracting Authority and Contracting Authority will assume:
 - (A) this Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
 - (B) those contracts between Project Co and any Project Co Party which Contracting Authority elects to be assigned.
- (c) If Contracting Authority exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Section 2.4(b)(ii)(A) and Section 2.4(b)(ii)(B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee plus any applicable HST on the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals plus **[REDACTED]** of such fee. Contracting Authority's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to Contracting Authority, that such fee represents full and final satisfaction of any obligation or liability of Contracting Authority to Project Co and any Project Co Parties in connection with this Project Agreement and the Request for Proposals.

3. SCOPE OF AGREEMENT

3.1 Scope of Agreement

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

4. BUSINESS OPPORTUNITIES

4.1 Business Opportunities

- (a) Project Co acknowledges that Contracting Authority reserves the right to all commercial and other opportunities (including, for greater certainty, all retail and parking operations) in and at the Facility and the Existing Facilities and at the Site (“**Business Opportunities**”). Contracting Authority may, as set out in this Project Agreement, grant rights in the Business Opportunities to Project Co.
- (b) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for Contracting Authority’s consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both Parties. Contracting Authority may accept any such proposal in its sole discretion and subject to such terms and conditions as Contracting Authority may require.
- (c) Notwithstanding that Project Co has proposed a Business Opportunity to Contracting Authority for its consideration, Project Co acknowledges that Contracting Authority reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party, and may initiate a separate procurement process for the development of any Business Opportunity.

5. REPRESENTATIONS AND WARRANTIES

5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Contracting Authority that as of Commercial Close:
 - (i) Project Co [REDACTED] has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (ii) [REDACTED];
 - (iii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction and maintenance of projects similar to the Project in scale, scope and complexity and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
 - (iv) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
 - (v) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;

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

- (xiv) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xv) Project Co is not a Non-Resident;
- (xvi) no Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co [REDACTED] or in relation to the operation, management and ownership of the Project;
- (xvii) the COR-Certified Construction Project Co Party is in possession of its COR Certification in good standing as required under this Project Agreement and has the ability to maintain such COR Certification in good standing at all times during the performance of the Works in accordance with its terms, provisions and conditions; or
- (xviii) the COR-Qualified Construction Project Co Party:
 - (A) is in possession of its OHSAS 18001 Accreditation which remains in good standing and has the ability to maintain such OHSAS 18001 Accreditation in good standing at all times during the performance of the Works until such COR-Qualified Construction Project Co Party receives its COR Certification as required under this Project Agreement, and
 - (B) has made an application to the IHSA for its COR Certification as required under this Project Agreement; and
- (xix) to the knowledge of Project Co, no Restricted Person has directly or indirectly an Economic Interest in Project Co [REDACTED] or the Project.

5.2 Contracting Authority Representations and Warranties

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

instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;

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

to enable Contracting Authority to grant or to cause to be granted to Project Co the licence rights contemplated in Section 14.1;

- (ix) the Province is the registered owner of, and has good title in fee simple to, the Site (subject only to the Title Encumbrances); and
- (x) the contemplated uses of the Facility are permitted by the existing official plan, zoning and other land use restrictions.

6. BACKGROUND INFORMATION

6.1 No Liability

- (a) Except as expressly provided in Sections 6.4, 16.2, 16.3 and 16.4 neither Contracting Authority nor any Province Person shall be liable to Project Co or any Project Co Party for, and neither Project Co nor any Project Co Party shall seek to recover from Contracting Authority or any Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

6.2 No Warranty

- (a) Except as expressly provided in Sections 6.4, 16.2, 16.3 and 16.4:
 - (i) neither Contracting Authority nor any Province Person gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither Contracting Authority nor any Province Person warrants that the Background Information represents all of the information in its possession or control (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
 - (ii) neither Contracting Authority nor any Province Person shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
 - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
 - (B) to review or update the Background Information; or
 - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

6.3 No Claims

- (a) Project Co acknowledges and confirms that:

- (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
- (ii) except as expressly provided in Sections 6.4, 16.2, 16.3 and 16.4, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against Contracting Authority or any Province Person (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
 - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
 - (B) that the Background Information was incorrect or insufficient,nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such grounds.

6.4 Technical Reports

- (a) Contracting Authority agrees that, if at the date of this Project Agreement, except as disclosed in any Background Information or as otherwise disclosed by Contracting Authority or any Province Person or known by Project Co or any Project Co Party, any of the information in the Technical Reports is, to the actual knowledge of Contracting Authority, incorrect or there is relevant information in the possession or control of Contracting Authority that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) For the purposes of Section 6.4(a), “to the actual knowledge of Contracting Authority” means to the actual knowledge of the president and chief executive officer of IO or its project manager – Project Delivery for the Project.

7. PROJECT DOCUMENTS

7.1 Project Documents

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

- (c) Upon the written request of Contracting Authority or the Contracting Authority Representative, Project Co will deliver or cause to be delivered to Contracting Authority or the Contracting Authority Representative a copy of any notices or consents delivered or received by Project Co under any of the Project Documents.

7.2 Ancillary Documents

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

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

7.3 Changes to Lending Agreements and Refinancing

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

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

7.4 Compliance with Lending Agreements

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

8. CONTRACTING AUTHORITY RESPONSIBILITIES

8.1 General

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

8.2 Contracting Authority Permits, Licences, Approvals and Agreements

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

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

9. PROJECT CO RESPONSIBILITIES

9.1 Other Business

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

9.2 General

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

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

9.3 Project Co Parties

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

9.4 Permits, Licences, Approvals and Agreements

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

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

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

9.5 Safety During the Works Phase

- (a) From Financial Close until the Fit-Out Works Final Completion Date, Project Co shall:
 - (i) comply with the Contractor Site Specific Safety Manual;

- (ii) keep the Site, the Works and the Facility in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site and in the Facility and in the immediate vicinity of the Site;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site and the Facility of any persons or creatures not entitled to be there;
 - (iv) comply, and cause each Project Co Party to comply, with Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
 - (v) with respect to the Works, cause a COR-Certified Construction Project Co Party or, prior to receipt of COR Certification, a COR-Qualified Construction Project Co Party, to perform, all of the obligations of the “constructor”, and indemnify Contracting Authority and each Province Person against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
 - (vi) provide Contracting Authority with a certificate of good standing from WSIB or any successor thereto once every 90 days; and
 - (vii) cause the Construction Contractor to deliver at least one copy of the Contractor Site Specific Safety Manual to the Site no later than the first Business Day following Financial Close (or such other date as may be agreed by the Parties) and maintain the Contractor Site Specific Safety Manual (as it may be amended by the Construction Contractor from time to time) at the Site until the Fit-Out Works Final Completion Date.
- (b) At any time that the Works are being carried out in or around any Existing Facilities, Project Co shall at all times:
- (i) ensure that the Works comply with all safety requirements set out in the Project Agreement, including those set out in Section 9.5(a) above; and
 - (ii) keep the Facility and the Existing Facilities in a safe and orderly state, as appropriate and in accordance with Good Industry Practice to avoid any danger to the employees, visitors and any other persons attending the Existing Facilities that could arise as result of, in connection with or in respect of the Works.

9.6 Additional Works

- (a) Contracting Authority reserves the right to carry out Additional Works. Contracting Authority may assign to Project Co responsibility for:
- (i) directing the methods and means of construction of the Additional Works;
 - (ii) coordinating and scheduling the Additional Works; and/or
 - (iii) providing safety training in respect of the Additional Works.
- (b) In connection with the Additional Works, Contracting Authority shall:

- (i) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 9.6(a), cause Additional Contractors to comply with the instructions of Project Co relating to the methods and means of construction of the Additional Works, coordination and scheduling of the Additional Works and safety training in respect of the Additional Works;
 - (ii) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site;
 - (iii) enter into separate contracts with Additional Contractors containing terms and provisions which: (A) are consistent with the terms and provisions of this Project Agreement (including Schedule 27 – Dispute Resolution Procedure); (B) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 9.6(a), require Additional Contractors to comply with all directions of Project Co in respect of any matter regarding the methods and means of construction of the Additional Works, coordination and scheduling of the Additional Works and safety training in respect of the Additional Works; and (C) require Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site;
 - (iv) ensure that insurance coverage is provided in respect of the Additional Works as would be required by a prudent owner similarly situated and that such insurance is coordinated with the insurance coverage of Project Co as it affects the Works and the Project Co Services to provide seamless insurance coverage to Project Co and Contracting Authority (including, if appropriate, naming Contracting Authority and Project Co as additional insureds and/or loss payees) and in any event, such insurance shall provide for commercial general liability insurance of not less than \$[REDACTED]; and
 - (v) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Additional Works, Project Co shall:
- (i) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 9.6(a), and subject to the performance by Contracting Authority of its obligations under Sections 9.6(b)(i) and (iii), direct the methods and means of construction of the Additional Works, coordinate and schedule the Additional Works with the Works and/or the Project Co Services to be performed under this Project Agreement, as applicable, and provide safety training in respect of the Additional Works;
 - (ii) subject to the performance by Contracting Authority of its obligations under Sections 9.6(b)(ii) and (iii), assume or cause a Project Co Party to assume overall responsibility for compliance by the Additional Contractors and Additional Works with all aspects of Applicable Law relating to health and safety at the Site, including all the responsibilities of the ‘constructor’ under the *Occupational Health and Safety Act* (Ontario) in accordance with such Act and Section 9.5(a)(v) prior to Substantial Completion and, at the request of Contracting Authority exercised in a manner consistent with the said Act, at any time that Project Co or any Project Co Party is acting as a ‘constructor’ on the Site following Substantial Completion;

- (iii) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works;
 - (iv) participate with Contracting Authority and Additional Contractors in reviewing their construction schedules when directed to do so by Contracting Authority; and
 - (v) where all or part of the performance of the Works or Project Co Services is affected by, or depends upon, the completion and/or proper execution of the Additional Works, promptly, and prior to proceeding with the affected Works and/or the applicable Project Co Services, report to Contracting Authority in writing any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against Contracting Authority by reason of such readily apparent deficiencies.
- (d) If, in respect of Additional Works carried out prior to Substantial Completion:
- (i) any Additional Contractors cause any damage to the Works;
 - (ii) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 9.6(a), Project Co incurs any additional costs or there is any delay in the Works as a result of any Additional Contractors not complying with the instructions of Project Co regarding methods and means of construction, coordination, and scheduling or safety; or
 - (iii) Project Co incurs any additional costs or there is any delay in the Works as a result of any such Additional Works,
- then, provided such delay in the Works or additional costs is not as a result of Project Co's failure to perform its obligations under Sections 9.6(c) or any act or omission of Project Co or a Project Co Party, any such delay in the Works or additional costs in respect of the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.
- (e) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure, provided the Additional Contractors are subject to binding reciprocal obligations in the contracts between Contracting Authority and the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any Additional Contractor whose contract with Contracting Authority contains a binding reciprocal agreement to arbitrate.
- (f) In connection with the Additional Works, Project Co may propose a Variation as follows:
- (i) Project Co shall have a period of 10 Business Days following Notice from Contracting Authority of Contracting Authority's intention to carry out such Additional Works including a reasonable description of such Additional Works to propose a Variation if such Additional Works are (A) reasonably expected to void a warranty in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice, or (B) reasonably expected to have a material negative effect on Project Co's ability to perform any of the Project Operations, including a material delay in the Works or material additional costs in respect of the Works;

- (ii) if Project Co has proposed a Variation in accordance with Section 9.6(f)(i), Contracting Authority shall, within 10 Business Days of such proposal, either issue a Variation Enquiry or give Notice to Project Co that it does not agree that a Variation is required;
- (iii) either Party may refer the question of whether a Variation is required pursuant to Section 9.6(f)(i) for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (iv) where Contracting Authority has, under Section 9.6(f)(ii), given Notice to Project Co that it does not agree that a Variation is required, Contracting Authority shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless Contracting Authority determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void (as contemplated in Section 9.6(f)(i)) or will not result in any material negative effect (including material additional costs) on Project Co’s ability to perform any of the Project Operations and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
 - (B) the Parties shall, without prejudice to their respective obligations under this Project Agreement, use commercially reasonable efforts to mitigate any adverse effects of such Additional Works, including, with respect to any void or voidable warranty and any increase in costs arising therefrom.
- (g) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors, on and to the Works performed by Project Co will not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent Project Co is entitled to a Delay Event in accordance with Section 9.6(d) or as expressly described in any Variation Confirmation.

9.7 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, Contracting Authority shall not be responsible for the presence on or around the Site or the Lands, or any other interference affecting the Site or the Lands, the Facility or the Project Operations, of any persons participating in civil disobedience, demonstration or protest action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Site or the Lands (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Site or the Lands shall not be a breach of the obligation of Contracting Authority to grant licence rights of use and access to Project Co on and over the Lands pursuant to Section 14.
- (b) The management of any Protesters or Trespassers shall be the responsibility of Project Co prior to Substantial Completion and of Contracting Authority following Substantial Completion (in each case to the extent same is not otherwise the responsibility of the Police Service). If at any time prior to Substantial Completion any part of the Site or the Lands is occupied, or access to the Site or the Lands is prevented or interfered with, by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to manage such Protesters or Trespassers and

promptly notify the Contracting Authority Representative of such occurrence and of the action which Project Co proposes to take in respect thereof. Project Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Site or the Lands, provided that if Project Co does so elect to exercise any such legal remedy, Project Co shall give the Contracting Authority Representative not less than 24 hours' Notice prior to commencing any legal proceeding for that purpose (except in a case of emergency, danger to persons or material destruction or material damage to property where, in such circumstances, such Notice may be given to Contracting Authority less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the Contracting Authority Representative as to the status of any such legal proceeding in reasonable detail and at reasonable intervals, and provided further that:

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

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

9.8 Minimize Disturbance and Works in Existing Facilities

- (a) Project Co recognizes and understands that the Existing Facilities, as government facilities, are subject to a highly regulated legal and operating environment. Project Co acknowledges that in addition to the use of Good Industry Practice, this Project Agreement includes requirements as to the manner in which the Works are to be performed in order to minimize disturbance to the Existing Facilities that are at any time following the date of this Project Agreement being used or occupied by the Province, Contracting Authority, any Province Person or any other third party, including with respect to noise, dust control, access to the Site and the particular requirements in respect of those portions of the Works which are to be carried out within such Existing Facilities and in respect of those portions of the Works where connections are being made to such Existing Facilities. In

addition, Project Co acknowledges that, to the extent possible, it has familiarized itself with the facilities and/or building operations of the Existing Facilities that are being used or occupied by the Province, Contracting Authority, any Province Person or any other third party and will perform the Works taking into account the requirements of Contracting Authority to maintain normal facility and/or building operations of such Existing Facilities. Project Co further acknowledges that the cost to it of performing the Works as set out in the Financial Model includes all premium time and overtime that may be required to perform the Works in accordance with this Project Agreement and Good Industry Practice. Project Co shall develop and implement protocols in furtherance of the foregoing in accordance with the Output Specifications.

- (b) Project Co recognizes that the Works include the renovation of existing buildings and structures or the addition of structural elements to existing buildings and that the carrying on of the Macdonald Block Activities in accordance with the Phasing Requirements during construction is a priority for Contracting Authority, and acknowledges that it has reviewed the Project Agreement, the Project Documents and the Background Information. Project Co shall use all methods required to comply with the requirements set out in this Project Agreement during the performance of the Works. Project Co shall fully cooperate with Contracting Authority in complying with said requirements during the performance of the Works. No costs incurred by Project Co as a result of complying with said requirements shall entitle Project Co to request or form the basis for a claim for a Variation, additional compensation or damages.
- (c) Project Co acknowledges that the Project Agreement includes the Phasing Requirements and other specifications which include requirements respecting Contracting Authority's use of the Existing Facilities and procedures related thereto. Project Co acknowledges having read and understood the said requirements and agrees to comply with the procedures set out therein. Project Co shall be responsible for any costs and expenses resulting from its failure to comply with these procedures.

9.9 COR Certification

- (a) Project Co shall, at its own cost and risk, at all times during the performance of the Works cause a COR-Qualified Construction Project Co Party or COR-Certified Construction Project Co Party, as the case may be, to:
 - (i) to the extent a COR-Qualified Construction Project Co Party has not obtained COR Certification prior to the date of this Project Agreement,
 - (A) use best efforts to obtain its COR Certification no later than 18 months following the date of this Project Agreement. In the event that Contracting Authority is satisfied, in its sole discretion, that the COR-Qualified Construction Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 9.9 and the COR-Qualified Construction Project Co Party has not obtained COR Certification by the end of such 18 month period, then Contracting Authority shall establish a time period during which the COR-Qualified Construction Project Co Party shall obtain its COR Certification, which time period shall not be less than 30 days, and
 - (B) maintain in good standing and, as applicable, renew its OHSAS 18001 Accreditation until such time as the COR-Qualified Construction Project Co Party has obtained its COR Certification;

- (ii) once the COR-Qualified Construction Project Co Party is certified (hereafter referred to as a “**COR-Certified Construction Project Co Party**”), maintain in good standing, and, as applicable, renew its COR Certification; and
 - (iii) comply with all requirements of its OHSAS 18001 Accreditation (if a COR-Qualified Construction Project Co Party) or COR Certification (if a COR-Certified Construction Project Co Party), in accordance with its terms.
- (b) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Works:
- (i) a COR-Qualified Construction Project Co Party fails to obtain its COR Certification in accordance with this Project Agreement and Contracting Authority determines that the failure to obtain the COR Certification is as a result of such COR-Qualified Construction Project Co Party not using best efforts to obtain such certification and Contracting Authority delivers a Notice to Project Co indicating that a COR-Qualified Construction Project Co Party has failed to obtain its COR Certification in accordance with this Project Agreement;
 - (ii) a COR-Qualified Construction Project Co Party fails to maintain its OHSAS 18001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement;
 - (iii) a COR-Certified Construction Project Co Party fails to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement;
- (each, a “**H&S Certification Default Event**”);
- (iv) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the opinion that a COR-Qualified Construction Project Co Party will fail to maintain its OHSAS 18001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
 - (v) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the opinion that a COR-Certified Construction Project Co Party will fail to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement,

Project Co shall:

- (vi) immediately upon the occurrence of a H&S Certification Default Event, notify Contracting Authority that a H&S Certification Default Event has occurred, and:
 - (A) produce and deliver to Contracting Authority Representative a report identifying the reasons for the failure to obtain or maintain in good standing the COR Certification or OHSAS 18001 Accreditation, as the case may be;
 - (B) produce and deliver to the Contracting Authority Representative a plan showing the steps that are to be taken to have the COR Certification or OHSAS 18001 Accreditation, as the case may be, obtained or reinstated in good standing within a

- period of not more than 30 days (the “**H&S Certification Reinstatement Plan**”), which H&S Certification Reinstatement Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Reinstatement Plan, Project Co shall take, and shall cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended H&S Certification Reinstatement Plan not more than 5 Business Days from the date on which such request is made by Contracting Authority;
- (C) no later than 5 Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection in accordance with Section 13.1(i); and
 - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 13.1(l), if required, or
- (vii) within 5 Business Days of receipt of the Notice from Contracting Authority under 9.9(b)(iv) or (v)
- (A) produce and deliver to the Contracting Authority Representative a report identifying the manner in which the COR Certification or OHSAS 18001 Accreditation, as the case may be, shall be maintained in good standing or obtained, as applicable;
 - (B) produce and deliver to the Contracting Authority Representative a plan showing the steps that are to be taken to ensure that the COR Certification or OHSAS 18001 Accreditation, as the case may be, will be maintained in good standing without interruption (the “**H&S Certification Maintenance Plan**”), which H&S Certification Maintenance Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Maintenance Plan, Project Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and H&S Certification Maintenance Plan not more than 5 Business Days from the date on which such request is made by Contracting Authority;
 - (C) arrange to have conducted a complete H&S Construction Inspection in accordance with Section 13.1(i), and
 - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 13.1(l), if required.

9.10 Demolition Requirements

- (a) Without limiting Project Co’s obligation to perform the Works at all times in accordance with Applicable Law, in respect of any Demolition, Project Co shall, and shall cause each Project Co Party that is performing any part of the Demolition to, at such person’s own cost and risk and at all times during the performance of the Works:

- (i) conduct all work in connection with any Demolition at all times in compliance with section 3 of the Performance Standards Regulation and the Building Code;
 - (ii) ensure that all persons having responsibility for the supervision of any such Demolition are qualified as either a professional engineer, limited license holder or provisional license holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a “**Demolition Supervisor**”);
 - (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and
 - (iv) in respect of any Complex Structure Demolition to be conducted by Project Co or any Project Co Party:
 - (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include, without limitation, a detailed risk assessment and risk mitigation plan assessing all apparent or inferable risks that might be associated with the Demolition, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the “**Demolition Specifications**”);
 - (B) at all times when a Complex Structure Demolition is being performed, that the Demolition Specifications, Demolition work plans and Load-Path Diagram, be present and available at the Site at which such Complex Structure Demolition is being performed; and
 - (C) ensure at all times when a Complex Structure Demolition is being performed that a Demolition Supervisor will be on the Site at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition.
- (collectively, the “**Demolition Requirements**”).
- (b) If at any time while any Demolition is being performed pursuant to this Project Agreement, Project Co or any Project Co Party that is performing any part of any Demolition receives notice from Contracting Authority or any Governmental Authority that the Demolition is being conducted in a manner that is either not in compliance with the Demolition Requirements or not otherwise in accordance with this Project Agreement (such event referred to as a “**Demolition Default Event**”),

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

- (i) immediately upon the occurrence of a Demolition Default Event, notify Contracting Authority that a Demolition Default Event has occurred, unless Contracting Authority was the person that provided notice of the Demolition Default Event;
- (ii) cease all work in respect of such Demolition; and

- (iii) within 5 Business Days of receipt of a notice of a Demolition Default Event produce and deliver to the Contracting Authority Representative:
 - (A) a report identifying the reasons for the occurrence of the Demolition Default Event; and
 - (B) a Demolition Plan showing the steps that are to be taken to rectify the Demolition Default Event within a period of not more than 30 days from the occurrence of the Demolition Default Event, which Demolition Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to such Demolition Plan, Project Co and the applicable Project Co Parties shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and revised Demolition Plan not more than 5 Business Days from the date on which such request is made by Contracting Authority.
- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
 - (i) Contracting Authority is satisfied that Project Co or the applicable Project Co Party has taken all necessary steps to remediate such Demolition Default Event in accordance with Demolition Plan; and
 - (ii) Contracting Authority has received a report, in form and substance satisfactory to Contracting Authority, prepared by a professional engineer that the Demolition Default Event has been remediated and the Site has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan.

9.11 Protection of Works and Property

- (a) Project Co shall protect the Works and the property of Contracting Authority and the Province Persons at the Site, including the Existing Facilities, from damage which may arise as a result of Project Co's operations under this Project Agreement, and shall be responsible for such damage, except for any damage which is caused or contributed to by an act or omission of Contracting Authority or a Province Person.
- (b) Should Project Co, in the performance of this Project Agreement, damage the Works or the property of Contracting Authority or a Province Person at the Lands, including the Existing Facilities, Project Co shall be responsible to Make Good such damage at Project Co's expense.
- (c) Should damage occur to the Works or the property of Contracting Authority or a Province Person at the Lands, including the Existing Facilities, for which Project Co is not responsible, as provided in Section 9.11(a), Project Co shall Make Good such damage to the Works and, if Contracting Authority so directs, to the property of Contracting Authority or such Province Person and, subject to and in accordance with Schedule 22 – Variation Procedure, such work to Make Good such damage to the Works and, if Contracting Authority so directs, to the property of Contracting Authority or such Province Person by Project Co shall result in a Variation.

- (d) Project Co shall not undertake to repair and/or replace any damage whatsoever to the Whitney Block or other adjoining property without first consulting Contracting Authority and receiving written instructions as to the course of action to be followed.
- (e) Notwithstanding Section 9.11(d), where there is danger to life or property which arises out of or in connection with the performance of the Works, either Party may, but Project Co shall, take such emergency action as is necessary to remove the danger.

9.12 880 Bay/60 Grosvenor Project

- (a) During the Project Term, if Contracting Authority or the Province enters into a transaction with one or more third parties (the “**Developer**”) with respect to the development and use of the 880 Bay/60 Grosvenor Lands (the “**880 Bay/60 Grosvenor Project**”):
 - (i) Project Co shall, in good faith and acting reasonably, perform the Project Operations so as to coordinate with the construction, operation and maintenance activities of the Developer relating to the 880 Bay/60 Grosvenor Project (including with respect to any interfaces between the Facility and the 880 Bay/60 Grosvenor Project and to allow Project Co and the Project Co Parties and the Developer and its contractors and subcontractors to ensure that they are at all times in compliance with the *Occupational Health and Safety Act* (Ontario));
 - (ii) Project Co shall use commercially reasonable efforts to minimize any interference with the construction, operation and maintenance activities of the Developer relating to the 880 Bay/60 Grosvenor Project;
 - (iii) at the request of Contracting Authority and without limiting any other obligation of Project Co under this Project Agreement, Project Co shall, in good faith and acting reasonably, exert commercially reasonable efforts to negotiate and enter into a cooperation agreement with the Developer and Contracting Authority to govern matters in respect of, without limitation, the matters set out in Sections 9.12(a)(i), 9.12(a)(ii) and 9.12(a)(v), and the cooperation, communication and exchange of documents and information between Project Co and Developer in respect of the Project and the 880 Bay/60 Grosvenor Project. In such an event, if and to the extent that any of the terms and conditions of such agreement would result in (A) a material change to the Project Operations and would not otherwise be required of Project Co under the Project Agreement or (B) a material adverse change to the risk profile of the Project Operations, then, such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation;
 - (iv) if and to the extent that:
 - (A) the Developer at any time uses or develops part of Site as part of the 880 Bay/60 Grosvenor Project and such use or development of the Site materially adversely interferes with Project Co’s licence rights under this Project Agreement or materially adversely interferes with Project Co’s ability to perform the Project Operations, then, for greater certainty, such use or development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation pursuant to Section 14.2; and

- (B) Contracting Authority requires that Project Co perform or cause the performance of any material works or services in support of the performance of the works or services of the Developer as a result of any interfaces between the Facility and 880 Bay/60 Grosvenor Project (including, without limitation, design review, commissioning and other works and services) and such works or services would not otherwise be required of Project Co under the Project Agreement, then, such works or services of Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation; and
- (v) Contracting Authority shall use commercially reasonable efforts to cause the Developer to (A) use commercially reasonable efforts to minimize any interference with the Project Operations, and (B), in good faith and acting reasonably, exert commercially reasonable efforts to negotiate and enter into the cooperation agreement described in Section 9.12(a)(iii) with Project Co and Contracting Authority.

10. REPRESENTATIVES

10.1 The Contracting Authority Representative

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

10.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of Contracting Authority.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written notice to Contracting Authority, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek Contracting Authority's consent in accordance with Section 10.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written notice, Contracting Authority and the Contracting Authority Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and Contracting Authority and the Contracting Authority Representative shall not be required to determine whether authority has in fact been given.
- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 10.2(d), unless otherwise notified in writing, Contracting Authority and the Contracting Authority Representative shall be entitled to treat any act of the Project Co Representative which is authorized by this Project Agreement as being authorized by Project Co, and Contracting Authority and the Contracting Authority Representative shall not be required to determine whether authority has in fact been given.

10.3 Communications to Representatives

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

10.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Part A of Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that the persons identified in Part A of Schedule 9 – Key Individuals remain involved in the Works in the capacity set out in Part A of Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of Contracting Authority acting reasonably, such involvement would have a material adverse effect on the Works.
- (b) Subject to the following sentence of this Section 10.4(b), the individuals who are critical to the performance of the Project Co Services are identified in Part B of Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that persons identified or to be

identified in Part B of Schedule 9 – Key Individuals remain involved in the Project Co Services in the capacity set out in Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Project Co Services, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of Contracting Authority, acting reasonably, such involvement would have a material adverse effect on the Project Co Services.

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

11. WORKS COMMITTEE

11.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
 - (i) the following six representatives appointed by Contracting Authority:
 - (A) the Contracting Authority Representative; and
 - (B) five other representatives appointed by Contracting Authority from time to time; and
 - (ii) the following four representatives appointed by Project Co:
 - (A) the Project Co Representative;
 - (B) two representatives of the Construction Contractor; and
 - (C) such other representative appointed by Project Co from time to time.
- (b) The Independent Certifier shall be required to attend meetings as a non-voting member of the Works Committee. The Design Compliance Consultant shall be entitled to, but not required to, attend meetings as a non-voting member of the Works Committee. Members of the Works

Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.

- (c) The Contracting Authority Representative shall be the chairperson of the Works Committee.

11.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works. The Works Committee shall interface with the Facilities Management Committee and the FF&E Steering Committee as and when required.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
- (i) any design, construction and commissioning issues;
 - (ii) the Project Schedules;
 - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
 - (iv) any quality assurance and safety issues;
 - (v) the Works Reports;
 - (vi) any special matters referred to the Works Committee by Contracting Authority or Project Co;
 - (vii) any Proceeding at Risk Matters referred to the Works Committee in accordance with Section 11.6;
 - (viii) any community and media relations issues in accordance with Schedule 18 – Communications;
 - (ix) monitoring the Final Commissioning Program and each Fit-Out Works Phase Commissioning Program; and
 - (x) any other issues pertaining to the Works.
- (c) Subject to Section 11.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;

- (ii) any change to a major milestone date set out in the Works Schedule, the Scheduled Substantial Completion Date, the Scheduled Final Completion Date, any Scheduled Fit-Out Works Phase Completion Date or the Scheduled Fit-Out Works Final Completion Date;
- (iii) any Variation;
- (iv) any change that may materially adversely affect Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date, Final Completion by the Scheduled Final Completion Date, any Fit-Out Works Phase Completion by the applicable Scheduled Fit-Out Works Phase Completion Date or Fit-Out Works Final Completion by the Scheduled Fit-Out Works Final Completion Date; or
- (v) any matter with respect to which Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement.

11.3 Term of Works Committee

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

11.4 Replacement of Committee Members

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

11.5 Procedures and Practices

- (a) The members of the Works Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
 - (iii) exclude from any meeting of the Works Committee such persons (other than members of the Works Committee) as the members of the Works Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Fit-Out Works Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.

- (c) Any one of the Project Co Representative and the Contracting Authority Representative on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than five Business Days' notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site, the Existing Facilities or another location in Toronto, Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) Three representatives of Contracting Authority (one of whom shall be the Contracting Authority Representative) and two representatives of Project Co (one of whom shall be the Project Co Representative), shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Contracting Authority. Contracting Authority shall circulate copies of such minutes within five Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies Contracting Authority within five Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co and Contracting Authority shall be deemed to have approved such minutes. Contracting Authority shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by Project Co during regular business hours.

11.6 Proceeding at Risk

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

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

- (b) Following the issuance of a Proceeding at Risk Notice, the Contracting Authority Representative and the Project Co Representative, together with the other members of the Works Committee, shall each promptly and diligently make a reasonable bona fide effort to resolve the Proceeding at Risk Matter. The Independent Certifier shall be required to attend all meetings and deliberations of the Works Committee at which the Proceeding at Risk Matter is considered.
- (c) Within 10 Business Days after receipt by Project Co of a Proceeding at Risk Notice, Project Co shall deliver a response to Contracting Authority and each member of the Works Committee and the Independent Certifier, which shall include:
 - (i) the Design Data and any other information requested by Contracting Authority in the Proceeding at Risk Notice;
 - (ii) Project Co's opinion confirming agreement with, or disputing the opinion of, Contracting Authority regarding the Proceeding at Risk Matter;
 - (iii) any additional Design Data and other information in support of Project Co's opinion regarding the Proceeding at Risk Matter;
 - (iv) Project Co's proposal to rectify the Proceeding at Risk Matter; and
 - (v) any reasonable request for additional information from Contracting Authority in respect of the Proceeding at Risk Matter.
- (d) Within 5 Business Days after receipt by Contracting Authority of the response from Project Co pursuant to Section 11.6(c), Contracting Authority shall notify Project Co if Contracting Authority requires any additional information from Project Co. Project Co shall provide such additional information to Contracting Authority, each member of the Works Committee and the Independent Certifier within 5 Business Days after receipt of such notice.
- (e) Within 15 Business Days after receipt by Contracting Authority of all deliverables contemplated by Section 11.6(c) and, if applicable, Section 11.6(d), and in any event, no later than 35 Business Days after receipt by Project Co of the Proceeding at Risk Notice, the Works Committee shall meet in person (the "**PAR Meeting**") to attempt to resolve the Proceeding at Risk Matter.
- (f) Within 5 Business Days after the PAR Meeting and, in any event, no later than 40 Business Days after receipt by Project Co of the Proceeding at Risk Notice, the Works Committee shall attempt to reach a final decision with respect to the Proceeding at Risk Matter. If the Works Committee is unable to reach a final decision, the Parties shall immediately refer the Proceeding at Risk Matter to the Independent Certifier, who shall within 5 Business Days, or such longer time as reasonably agreed to by the Parties, provide its written opinion and supporting analysis as to whether Project Co is Proceeding at Risk, including an opinion as to whether Project Co is performing the Works in a manner that will result in Project Co becoming unable to satisfy the requirements for Substantial Completion.
- (g) If the Independent Certifier determines pursuant to Section 11.6(f) that Project Co is Proceeding at Risk, Contracting Authority may, in its sole discretion, give notice to the Lenders' Agent pursuant to Section 13 of the Lenders' Direct Agreement that Project Co is Proceeding at Risk, together with a copy of the Independent Certifier's written opinion.

- (h) Following the Independent Certifier's decision pursuant to Section 11.6(f), either Party may refer the Proceeding at Risk Matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (i) The Proceeding at Risk Notice, review, and comments made during the process set out in this Section 11.6 are for general conformity to the obligations and requirements of this Project Agreement, and any such notice, review and comment shall not relieve Project Co of the risk and responsibility for the Works and for meeting all of its obligations under and satisfying all requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority.

12. FACILITIES MANAGEMENT COMMITTEE

12.1 Establishment

- (a) The Parties shall, not later than the earlier of (i) 18 months prior to the Scheduled Substantial Completion Date, or, (ii) such earlier date as requested by Contracting Authority, acting reasonably, establish a committee (the “**Facilities Management Committee**”) consisting of:
 - (i) 5 representatives appointed by Contracting Authority from time to time; and
 - (ii) 2 senior representatives of Project Co, one of whom shall be the Project Co Representative, and the other shall be appointed by Project Co from time to time.
- (b) Members of the Facilities Management Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Facilities Management Committee.
- (c) 1 of the representatives of Contracting Authority shall be the chairperson of the Facilities Management Committee.

12.2 Function and Role

- (a) The Facilities Management Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Operations, both prior to and during the Operational Term. The Facilities Management Committee shall interface with the Works Committee as and when required, and shall form the Utilities Management Subcommittee in accordance with Schedule 36 – Energy Matters to receive and review all matters related to the Utilities Management Services.
- (b) The Facilities Management Committee shall be responsible for receiving and reviewing all matters related to the Project Operations (excluding the Works), both prior to and during the Operational Term, including:
 - (i) the integration of the Facility into the Existing Facilities and the transition into the Facility;
 - (ii) any joint review of the Project Co Services and the Output Specifications;
 - (iii) the recommendations of the Utilities Management Subcommittee;

- (iv) any changes to Service Quality Plans;
 - (v) any performance issues;
 - (vi) the development and modification of performance standards for the Contracting Authority FM Services, which performance standards shall be based on Good Industry Practice;
 - (vii) any interface issues between the Project Co Services, the Macdonald Block Activities and the Contracting Authority FM Services;
 - (viii) any special matter referred to the Facilities Management Committee by Contracting Authority or Project Co;
 - (ix) any community and media relations issues in accordance with Schedule 18 – Communications; and
 - (x) any other issues pertaining to the Project Operations (excluding the Works).
- (c) Subject to Section 12.2(d), any unanimous decision of the Facilities Management Committee shall be final and binding on the Parties. If the Facilities Management Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Facilities Management Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any Variation;
 - (iii) any change that may materially adversely affect Project Co’s ability to perform the Project Co Services or Contracting Authority’s ability to perform the Macdonald Block Activities or the Contracting Authority FM Services; or
 - (iv) any matter with respect to which Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement.

12.3 Replacement of Committee Members

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

12.4 Procedures and Practices

- (a) The members of the Facilities Management Committee may:

- (i) adopt such procedures and practices for the conduct of the activities of the Facilities Management Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Facilities Management Committee such other persons as the members of the Facilities Management Committee may agree;
 - (iii) exclude from any meeting of the Facilities Management Committee such persons as the members of the Facilities Management Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Facilities Management Committee.
- (b) Once established, the Facilities Management Committee shall meet at least once each month during the Operational Term, unless otherwise agreed by the members of the Facilities Management Committee or the Parties.
- (c) Any member of the Facilities Management Committee may convene a special meeting of the Facilities Management Committee at any time. Special meetings of the Facilities Management Committee may be convened on not less than 5 Business Days' notice to all members of the Facilities Management Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Facilities Management Committee, the Facilities Management Committee shall meet at the Facility or another location in Toronto, Ontario. Meetings of the Facilities Management Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Facilities Management Committee must attend in person at least once each calendar quarter.
- (e) For the period from the establishment of the Facilities Management Committee until the Substantial Completion Date, 3 representatives of Contracting Authority and 1 representative of Project Co shall constitute a quorum at any meeting of the Facilities Management Committee. For the period from the day after the Substantial Completion Date until the Termination Date, 2 representatives of Contracting Authority and 1 representative of Project Co shall constitute a quorum at any meeting of the Facilities Management Committee. A quorum of members may exercise all the powers of the Facilities Management Committee. The members shall not transact business at a meeting of the Facilities Management Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Facilities Management Committee, including those made by telephone or other form of communication, shall be recorded by Contracting Authority. Contracting Authority shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies Contracting Authority within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, and Contracting Authority shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Facilities Management Committee and shall make such minutes available for inspection by Contracting Authority during regular business hours.

13. QUALITY ASSURANCE

13.1 Quality Plans and Systems

- (a) Project Co shall cause all of the Project Operations to be the subject of quality management systems, which shall include the following:
- (i) a Design Quality Plan and a Construction Quality Plan, which may be incorporated into one document; and
 - (ii) a Service Quality Plan for each Project Co Service,
- (collectively, the “**Quality Plans**”).
- (b) All Quality Plans shall be consistent with the requirements of the Output Specifications, the Final Commissioning Program and each Fit-Out Works Phase Commissioning Program.
- (c) The Design Quality Plan is attached as part of Schedule 11A – Design Quality Plan and Construction Quality Plan.
- (d) The Construction Quality Plan shall, at a minimum, comply with the requirements of the outline of the Construction Quality Plan attached as part of Schedule 11A – Design Quality Plan and Construction Quality Plan. Project Co shall submit its proposed Construction Quality Plan to Contracting Authority within 60 days following Financial Close.
- (e) The Service Quality Plan for each Project Co Service shall, at a minimum, comply with the requirements of the outline of the Service Quality Plan attached as Schedule 11B – Service Quality Plan Outline. Project Co shall submit its proposed Service Quality Plan for each Project Co Service to Contracting Authority not less than 6 months prior to the Scheduled Substantial Completion Date and shall, at the request of Contracting Authority, update the Service Quality Plan in respect of each Phase of the Fit-Out Works before each Scheduled Fit-Out Works Phase Completion Date.
- (f) All Quality Plans shall be subject to review by Contracting Authority pursuant to Schedule 10 – Review Procedure, and Project Co shall not be entitled to implement or cause the implementation of any Quality Plan unless and until Project Co is entitled to proceed with such implementation pursuant to Schedule 10 – Review Procedure.
- (g) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Project Operations in compliance with the Quality Plans, including by causing:
- (i) the Construction Contractor to implement the Design Quality Plan and the Construction Quality Plan; and
 - (ii) the Service Provider to implement the Service Quality Plans.
- (h) Where any aspect of the Project Operations is performed by more than one Project Co Party, then this Section 13, in so far as relevant or appropriate to the activities to be performed by such Project Co Party, shall apply in respect of each of them and references in this Section 13 to such Project Co Party, including the Construction Contractor or the Service Provider, shall be construed accordingly.

- (i) Subject to Section 13.1(j), Project Co shall cause the Construction Contractor, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems on an annual basis until Fit-Out Works Final Completion or as otherwise required in accordance with Sections 9.9(b)(vi)(C) or 9.9(b)(vii)(C) (each, an “**H&S Construction Inspection**”), which H&S Construction Inspections shall:
 - (i) be conducted by a Certified H&S Inspector; and
 - (ii) during the performance of the Works, include, at a minimum,
 - (A) a review of general compliance with all applicable Occupational Health and Safety Act (Ontario) requirements, compliance with all safety manuals applicable to sites at which the Works are being conducted, including, but not limited to, the Contractor Site Specific Safety Manual; and
 - (B) a review of the Construction Contractor’s job hazard analysis documentation on any site which could endanger or put at risk the safety of any person working at the Site.
- (j) The first H&S Construction Inspection shall occur no later than the 90th day following Financial Close or, if that day is not a Business Day, on the Business Day immediately succeeding such day.
- (k) Project Co shall cause the results of each H&S Construction Inspection (such results referred to as the “**H&S Construction Inspection Report**”) to be delivered to Contracting Authority and to the Works Committee not more than 5 Business Days from the date on which the H&S Construction Inspection is completed. Any H&S Construction Inspection Report arising from an H&S Construction Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Inspection Report was issued.
- (l) To the extent an H&S Construction Inspection Report discloses any non-compliance by the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, with the terms of the COR Certification or OHSAS 18001 Accreditation, as the case may be, Contracting Authority shall have the right to require Project Co to cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, at its sole cost and expense:
 - (i) to take any corrective and remedial action required by the H&S Construction Inspection Report to correct any such non-compliance and Project Co shall cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to comply with all instructions given by the Certified H&S Inspector in respect of actions required to be taken to correct any such non-compliance, and
 - (ii) to arrange to have conducted by a Certified H&S Inspector such follow-up H&S Construction Inspections of those facilities and health management systems associated with the non-compliances identified in the relevant H&S Construction Inspection Report (each, an “**H&S Construction Re-Inspection**”) within 3 Business Days from the date on which any such request is made by Contracting Authority, until any and all corrective and remedial actions required by the Certified H&S Inspector with respect to the correction of

each identified non-compliance is completed to the satisfaction of the Certified H&S Inspector, and

- (iii) to cause the results of each H&S Construction Re-Inspection (such results referred to as the “**H&S Construction Re-Inspection Report**”) to be delivered to Contracting Authority and the Works Committee not more than 3 Business Days from the date on which a H&S Construction Re-Inspection is completed. An H&S Construction Re-Inspection Report arising from an H&S Construction Re-Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Re-Inspection Report was issued.

13.2 Changes to Plans

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

13.3 Quality Manuals and Procedures

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

13.4 Quality Monitoring

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

14. LICENCE

14.1 Licence to Site

- (a) Effective from **[REDACTED]** until the Termination Date and subject to this Section 14, Contracting Authority hereby grants or has caused to be granted, and shall continuously until the Termination Date grant or cause to be granted, to Project Co and all Project Co Parties such non-exclusive licence rights of use and access to, on and over the Site and the Facility subject to and in accordance with Sections 1.3.1 and 1.3.2 of Part 1 of Schedule 15 – Output Specifications and the

- Phasing Requirements (which Sections 1.3.1 and 1.3.2 of Part 1 of Schedule 15 – Output Specifications and Phasing Requirements, for clarity, are only applicable during the performance of the Works) as are required by Project Co and such Project Co Parties and sufficient to allow them to perform the Project Operations, except any such rights of use and access (including to lands other than the Lands) set out as a Project Co responsibility to obtain under Appendix 1 – Permits, Licences Approvals and Agreements to Schedule 1 – Definitions and Interpretation, which, for clarity, in each case, Project Co shall be required to obtain following the date of this Project Agreement from each applicable Governmental Authority in accordance with Applicable Law and any other requirements imposed by such Governmental Authority.
- (b) In consideration for the licence granted pursuant to Section 14.1(a), Project Co shall provide the Project Operations subject to and in accordance with this Project Agreement.
 - (c) Without derogating from any of Contracting Authority’s rights hereunder, in particular, its rights of access to the Site and the Facility prior to the Substantial Completion Date for the purposes of the Contracting Authority Commissioning and prior to each Fit-Out Works Phase Completion for the purposes of the applicable Fit-Out Works Phase Contracting Authority Commissioning, Contracting Authority acknowledges that, in respect of the Project Operations, Project Co and the Project Co Parties require, and Contracting Authority shall provide access to the Site and the Facility subject to and in accordance with Sections 1.3.1 and 1.3.2 of Part 1 of Schedule 15 – Output Specifications and the Phasing Requirements without material interference by Contracting Authority or any Province Person from the date of Financial Close until the Termination Date.
 - (d) Except as may be provided in the Permits, Licences, Approvals and Agreements, none of the rights granted pursuant to this Section 14.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of Contracting Authority which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Project Operations.
 - (e) Notwithstanding anything to the contrary in this Project Agreement, Project Co’s and the Project Co Parties’ rights of use and access to, on and over the portion of the Site and the Facility at the Whitney Block (A) exist during and are only for the purposes of the Works, (B) are expressly set out in Sections 1.3.1 and 1.3.2 of Part 1 of Schedule 15 – Output Specifications and the Phasing Requirements, and (C) may be subject to such additional reasonable conditions as are imposed by Contracting Authority from time to time. Project Co and the Project Co Parties have no other right to use or access the Whitney Block whatsoever during the Project Term without the prior written consent of Contracting Authority, which may be provided or withheld in Contracting Authority’s sole discretion.
 - (f) Project Co agrees to (i) provide hoarding around the licensed area outside of the Whitney Block in accordance with the Project Agreement and the Project Documents; (ii) cordon off areas within the Whitney Block where Project Co is performing the Works required under the Project Agreement and the Project Documents and as approved by the Contracting Authority Representative, and (iii) use such access to the Whitney Block, including loading docks, freight elevators and access routes as provided in the Output Specifications and as otherwise reasonably directed by the Contracting Authority Representative.
 - (g) The licence rights provided in this Section 14.1 shall automatically terminate on the Termination Date.

14.2 Non-exclusive Licence/Development of Site

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

14.3 Limited Access Areas

- (a) For purposes related to the provision of Macdonald Block Activities or related to security and confidentiality,
 - (i) effective upon Substantial Completion of the Facility, Contracting Authority may limit or restrict Project Co's and each Project Co Party's access to designated portions of the Site and/or the Facility not or no longer required by Project Co or a Project Co Party for the performance of the Fit-Out Works, unless a person seeking access obtains the prior written consent of Contracting Authority, which consent may be subject to such reasonable conditions as are imposed by Contracting Authority; and
 - (ii) effective upon each Fit-Out Works Phase Completion, Contracting Authority may limit or restrict Project Co's and each Project Co Party's access to designated portions of the Site and/or the Facility related to the relevant Phase of the Fit-Out Works, unless a person seeking access obtains the prior written consent of Contracting Authority, which consent may be subject to such reasonable conditions as are imposed by Contracting Authority.

14.4 Naming and Signage

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

14.5 No Interest in Land

- (a) Project Co agrees that, in accordance with the principles of the IPFP Framework, it acquires no estate, right, title or ownership interest in the Site, the Facility or the Existing Facilities or any other interest in the Lands pursuant to this Project Agreement or otherwise. Notwithstanding any provision of this Project Agreement or in any of the Project Documents to the contrary, all fee simple interest in and freehold title to the Lands, the Existing Facilities and the Facility (including, all of the parts of the Lands, the Existing Facilities and the Facility) shall at all times remain unencumbered by any interest of Project Co, any Project Co Party or the Lenders. Project Co, the Project Co Parties and the Lenders shall have access to the Site, the Facility and Existing Facilities under and subject to the licence granted under this Section 14 and the Lenders' Direct Agreement, respectively.

14.6 Non-Disturbance Agreement

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

15. TITLE ENCUMBRANCES**15.1 Title Encumbrances**

- (a) Project Co shall perform all obligations under the Title Encumbrances for or on behalf of Contracting Authority, other than:
- (i) obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of Contracting Authority;
 - (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless such obligations are provided in the Project Agreement as obligations of Project Co or the Parties agree that such obligations are obligations of Project Co;
 - (iii) obligations under any Title Encumbrance which the applicable Governmental Authority may formally relieve or waive, with the consent of Contracting Authority, with respect to any Development Approval; and
 - (iv) obligations under the Title Encumbrances that Appendix 1 – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation provide for Contracting Authority performing.

- (b) All Project Operations performed by or on behalf of Project Co, whether before, during or after the completion of the Works, shall be performed in a manner which does not breach the Title Encumbrances or any of the Development Approvals.
- (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 15.2, no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Lands or any part of it, except in accordance with the terms of this Project Agreement.

15.2 No Site Encumbrances

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

15.3 Construction Act (Ontario)

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

- (d) Project Co shall cause a Payment Certifier to be appointed under the Construction Contract and shall cause such Payment Certifier to certify the substantial performance of the Construction Contract in accordance with the Construction Act.
- (e) Project Co shall promptly provide Contracting Authority with a copy of any materials which are provided to the Lenders to evidence compliance with the Construction Act.

16. SITE CONDITION

16.1 Acceptance of Site Condition

- (a) Subject to Sections 6.4, 16.2, 16.3 and 16.4, Project Co acknowledges and agrees that it has investigated the Site and its surroundings in accordance with Good Industry Practice taking into account all matters relating to the Site (including the buildings, structures and works, on, over and under the Site existing on the date hereof and the Background Information) prior to executing this Project Agreement and agrees to accept the Site and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 16.2, 16.3 and 16.4, Project Co shall not be entitled to make any claim of any nature whatsoever against Contracting Authority or any Province Person on any grounds relating to the Site, including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not Contracting Authority or a Province Person, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Site provided by such person to Project Co.
- (b) Subject to Sections 6.4, 16.2, 16.3 and 16.4, Project Co acknowledges and agrees that it has and shall be deemed to have:
 - (i) performed all necessary Site due diligence and investigations and investigated and examined the Site and its surroundings and any existing works on, over or under the Site in accordance with Good Industry Practice, taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof;
 - (ii) in accordance with Good Industry Practice, taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof, satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works;
 - (iii) satisfied itself as to the presence of any Contamination on, in or under the Site, or migrating to or from the Site in accordance with Good Industry Practice, taking into account all matters relating to the Site, including the buildings, structures and works, on over and under the Site existing on the date hereof;
 - (iv) satisfied itself as to the adequacy of the Site, rights of access to, from and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;

- (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Site; and
 - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

16.2 Contamination

- (a) Contracting Authority shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination:
- (i) that was described in, or was properly inferable, readily apparent or readily discoverable from the Environmental Reports and Designated Substance Reports or the Geotechnical Reports;
 - (ii) that could have been properly inferable, readily apparent or readily discoverable on the basis of investigations, inspections or other due diligence in accordance with Good Industry Practice, including as referred to in Section 16.1, taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof; or
 - (iii) that is caused by Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination for which Contracting Authority is responsible pursuant to Section 16.2(a), Project Co shall immediately inform the Contracting Authority Representative and shall comply with Applicable Law in respect thereof at Contracting Authority's cost pursuant to Section 16.2(d).
- (c) In the event that Contracting Authority wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.2(b), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost pursuant to Section 16.2(d).
- (d) If Sections 16.2(b) and 16.2(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination for which Contracting Authority is responsible pursuant to Section 16.2(a) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
- (i) in the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event; and
 - (ii) in the Project Co Services shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

16.3 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artefacts 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 or the Facility at any time or otherwise during the course of performing the Works are or shall be the sole and absolute property of Contracting Authority.
- (b) Upon the discovery of any item referred to in Section 16.3(a) during the course of the Works, Project Co shall:
 - (i) immediately inform the Contracting Authority Representative of such discovery;
 - (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such 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, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the Funeral, Burial and Cremation Services Act, 2002 and the Heritage Guidelines and Protocols.
- (c) In the event that Contracting Authority wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.3(b), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost pursuant to Section 16.3(d).
- (d) If Sections 16.3(b) and 16.3(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of such discovery and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

16.4 Existing Facilities Defects

- (a) Subject to Section 16.4(h), with respect to the Existing Facilities, Contracting Authority shall be responsible for all Defects, except for any such Defects that:
 - (i) are found on or within any elements or components of the Existing Facilities described in Schedule 15 – Output Specifications that Project Co is obligated to replace, repair, rehabilitate, refurbish, remove or otherwise deal with pursuant to Part 3 of Schedule 15 – Output Specifications during and as part of the Works, including, for greater certainty, any such Defects that are subject to the Prescribed Repairs and the Additional Repairs;
 - (ii) were expressly described in the Defects Background Information. For greater certainty, if there is any conflict between (A) the Defects Background Information with respect to any Defect that is expressly described in such Defects Background Information, and (B) the requirements of Schedule 15 – Output Specifications with respect to such Defect, then the

provisions of Schedule 15 – Output Specifications shall prevail to the extent of such conflict;

- (iii) with respect to the following parts of the Existing Facilities, could have been readily apparent or readily discoverable on the basis of investigations, visual inspections or other physical examination due diligence in accordance with Good Industry Practice:
 - (A) subject to Section 16.4(a)(iii)(E), all publically accessible areas of the Existing Facilities;
 - (B) the heritage suite on the third floor of Ferguson Tower;
 - (C) the partially demolished fifth floor of Mowat Tower;
 - (D) the partially demolished third floor of Hearst Tower; and
 - (E) the exterior of the Existing Facilities but only with respect to investigations, visual inspections and other physical examination due diligence conducted from grade for up to a height of four meters above grade,

taking into account all matters relating to such parts of the Existing Facilities and all of the restrictions and other limitations imposed by Contracting Authority prior to the Technical Submission Deadline (I) on access by Project Co and the Project Co Parties to such parts of the Existing Facilities, and (II) on Project Co's and the Project Co Parties' ability to conduct investigations, visual inspections and other physical examination due diligence at such parts of the Existing Facilities. Contracting Authority acknowledges that it did not permit Project Co or the Project Co Parties to perform destructive (1) investigations, (2) inspections and (3) other due diligence at the Existing Facilities prior to the Technical Submission Deadline;

- (iv) were within the actual knowledge of Project Co or a Project Co Party as of Technical Submission Deadline; or
- (v) are caused by or contributed to by a failure by Project Co or any Project Co Party to perform the Project Operations in accordance with the Project Agreement.

For greater certainty, with respect to any Defects described in Section 16.4(a)(i) to Section 16.4(a)(v) (inclusive), such Defects shall be the responsibility of Project Co.

- (b) For the purposes of Section 16.4(a)(iv), 'actual knowledge' shall mean knowledge that, prior to the Technical Submission Deadline, is actually held by the person who was identified as the project manager (or analogous position) for the Project in Project Co's proposal in response to the Request for Proposals or by any member of the Design Team.
- (c) Upon the discovery of a Defect, Project Co shall immediately inform the Contracting Authority Representative and, if and to the extent that the Parties disagree as to whether or not the Defect is the responsibility of Contracting Authority or the responsibility of Project Co pursuant to Section 16.4(a):

- (i) in the event that a Defect is discovered on or before Fit-Out Works Final Completion and is related to the performance of the Works prior to Fit-Out Works Final Completion, the matter shall be referred to the Independent Certifier for a determination as soon as possible but, in any event, such determination shall be made within 10 Business Days; and
 - (ii) in the event that a Defect is discovered after Substantial Completion and is not related to the performance of the Works prior to Fit-Out Works Final Completion, the matter shall be resolved in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) In the event that the Parties agree or it is determined pursuant to Section 16.4(c) that Contracting Authority is responsible for a Defect then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take in respect of such Defect and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost pursuant to Section 16.4(f).
- (e) In the event that the Parties agree or it is determined pursuant to Section 16.4(c) that Project Co is responsible for a Defect then Project Co shall promptly and diligently proceed to remedy or rectify such Defect at its own cost and without any extension of time or additional payment under this Project Agreement.
- (f) If Section 16.4(d) requires Project Co to perform any alteration, addition, construction, demolition, extension or variation in the Project Operations as a result of a Defect for which Contracting Authority is responsible and which would not otherwise be required under this Project Agreement, then any such alteration, addition, construction, demolition, extension or variation:
- (i) in the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event; and
 - (ii) which occurs following Substantial Completion shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (g) For greater certainty, a Party may dispute any determination of the Independent Certifier under Section 16.4(c) and such Dispute may be resolved in accordance with the provisions of Schedule 27 – Dispute Resolution Procedure.
- (h) The Parties agree that this Section 16.4 shall be inapplicable and of no force and effect in respect of any Defect which is subject to a Prescribed Repair or an Additional Repair.

17. CITY OF TORONTO AND THIRD PARTY FINANCIAL OBLIGATIONS

17.1 City of Toronto and Third Party Financial Obligations

- (a) Subject to Section 17.2, Project Co shall be responsible for all Financial Obligations under or in respect of all Permits, Licences, Approvals and Agreements including to the City of Toronto, any Utility Company, any Governmental Authority or any other third party in respect of the Works, including:
 - (i) any development charges relating to the Works, the Facility or the Site;

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

17.2 Contracting Authority Financial Obligations

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

18. DESIGN AND CONSTRUCTION OBLIGATIONS

18.1 Overall Responsibility

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

- (ii) the Works, the Facility and all parts thereof will, at all times, be able to meet the structural, mechanical, electrical and other performance standards set out in the Output Specifications.

18.2 Complete and Operational Facility

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

18.3 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the Facility and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 18.3.
- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (c) In order to develop the detailed design of the Facility and to achieve Design Acceptability, Project Co shall consult with the user groups, stakeholders and the Contracting Authority Design Team in an interactive process. The development of the detailed design to achieve Design Acceptability based on user group and stakeholder input shall in no way be considered a Variation.
- (d) The Parties agree that Appendix A to Schedule 10 – Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale required by the Contracting Authority Design Team) for each of the following:
 - (i) 50%, 75% and 100% design development documentation, being design development drawings, reports, schedules and specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawings (the “**Design Development Submittals**”);
 - (ii) 50%, 75% and 100% working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement (the “**Construction Document Submittals**”);
 - (iii) Permits, Licences, Approvals and Agreements drawings (phased, if applicable); and
 - (iv) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (e) Project Co shall submit to the Contracting Authority Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Section 18.3(d).

- (f) Project Co shall participate in weekly design meetings with the Contracting Authority Design Team and frequent consultations with user groups, including on an interim and ad hoc basis, and as needed, in order to fully achieve Design Acceptability.
- (g) The Design Data and other items listed in Section 18.3(d) must contain, at a minimum, the following additional information:
 - (i) identification of the stage of design or construction to which the documentation relates;
 - (ii) all design or construction drawings and specifications necessary to enable the Contracting Authority Design Team to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 – Review Procedure;
 - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
 - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (h) All design review meetings held by Project Co with the Contracting Authority Design Team shall be held in Toronto, Ontario unless Contracting Authority otherwise agrees in writing. User group design workshops shall be held in Toronto, Ontario unless Contracting Authority otherwise agrees in writing.
- (i) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Facility prior to being entitled to proceed in accordance with Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (j) Subject to Section 18.6, neither Contracting Authority nor any Province Person (including, for certainty, the Design Compliance Consultant) will have any liability:
 - (i) if a document submitted by Project Co and reviewed by Contracting Authority or the Contracting Authority Representative results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to some defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (k) Project Co and Contracting Authority will cooperate with each other in the design review process. Notwithstanding such cooperation by Contracting Authority, such review shall not, except as provided in Section 18.6, constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (l) Project Co shall allow the Contracting Authority Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Contracting

Authority Design Team as soon as practicable following receipt of a written request from the Contracting Authority Representative.

- (m) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and the Contracting Authority Design Team may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

18.4 Start-Up Meeting

- (a) Within 10 Business Days of Financial Close, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with Contracting Authority to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
 - (i) Project Co’s plan to develop a successful long-term partnership with Contracting Authority for the purpose of supporting Contracting Authority in achieving its vision, mission and core values;
 - (ii) Project Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
 - (iii) Project Co’s process to ensure optimum design quality;
 - (iv) Project Co’s approach to a fully integrated interior design process that includes every element of interior finishes, furniture, fixtures, equipment, FF&E occupant signage and wayfinding;
 - (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Design Team to allow sufficient time for review of each Works Submittal by the Contracting Authority Design Team, including allowing sufficient time for the Contracting Authority Design Team to consult with users, as required, and taking into account both the resources available to the Contracting Authority Design Team to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule;
 - (vi) Project Co’s plan to successfully integrate feedback from user groups and the Contracting Authority Design Team;
 - (vii) Project Co’s approach to timing, construction, adjustment and user feedback on required mock-ups; and
 - (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation, and that takes into account the document security protocol described in Section 49.5(f).

18.5 Design Review Meetings and Workshops

- (a) In order to obtain user input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, the Parties will hold design review meetings (the “**Design Review Meetings**”) with the Contracting Authority Design Team and hold user group design workshops (the “**Design Workshops**”) beginning immediately after Commercial Close upon the following terms:
- (i) the Project Co Representative shall arrange the Design Review Meetings and Design Workshops in consultation with the Contracting Authority Representative;
 - (ii) all Design Review Meetings shall be held in Toronto, Ontario and all Design Workshops shall be held in Toronto, Ontario, unless Contracting Authority agrees otherwise in writing;
 - (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and the Design Workshops and shall incorporate such schedule into the Works Schedule;
 - (iv) Project Co shall circulate to the Contracting Authority Design Team an agenda for each of the Design Review Meetings and each of the Design Workshops no later than 10 Business Days prior to the relevant Design Review Meeting and/or Design Workshop;
 - (v) in advance of a Design Review Meeting, Project Co may submit to the Contracting Authority Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform Contracting Authority on the development of the Facility design and provide an opportunity for dialog on compliance with the requirements of the Project Agreement. If a Proposal Part corresponds to the interim submissions, then Project Co shall ensure that the interim submissions are substantially the same content and level of detail as the corresponding Proposal Part. For greater certainty,
 - (A) interim submissions shall be informal and shall not be reviewed in accordance with Schedule 10 of the Project Agreement; and
 - (B) the requirement for Project Co to submit interim submissions that are substantially the same content and level of detail as the corresponding Proposal Part, shall not,
 - (I) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review any Design Development Submittals in accordance with Schedule 10 of the Project Agreement; or
 - (II) constitute acceptance by the Contracting Authority of the corresponding Proposal Part or any Design Development Submittal in accordance with Schedule 10 of the Project Agreement;
 - (vi) the Design Review Meetings and Design Workshops shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
 - (vii) Project Co shall maintain minutes of the Design Review Meetings and Design Workshops, including possible design solutions and changes in design, and, within 2 Business Days

after each Design Review Meeting and Design Workshop, Project Co shall provide to the Contracting Authority Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting and Design Workshop;

- (viii) Contracting Authority and Project Co agree that the subject matter of the Design Review Meetings and Design Workshops shall not be regarded as Submittals to which Schedule 10 – Review Procedure applies, and that Contracting Authority shall not be bound by the input provided in connection with the Design Review Meetings and Design Workshops;
 - (ix) Project Co shall submit to Contracting Authority the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 - Review Procedure and Schedule 12 – Works Scheduling Requirements; and
 - (x) the Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be as prescribed in Schedule 10 - Review Procedure.
- (b) Prior to the 50% and 75% Design Development Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by Contracting Authority) with respect to the following matters and any other Design Review Meetings and Design Workshops required by Project Co or Contracting Authority, each acting reasonably:
- (i) all items listed in Sections 1 and 2 of Appendix A of Schedule 10 – Review Procedure;
 - (ii) the construction management plan, including the abatement plan, artwork plan and traffic management plan;
 - (iii) space planning and room layouts;
 - (iv) exterior elevations including repair work, materials, finishes and colours;
 - (v) interior materials, finishes and colours;
 - (vi) millwork;
 - (vii) heritage attributes;
 - (viii) accessibility features;
 - (ix) structural design including plans and sections;
 - (x) mechanical and electrical systems including plant layouts and functionality;
 - (xi) civil engineering design including grading and site servicing;
 - (xii) site landscape design;
 - (xiii) information/communication technology;

- (xiv) security systems;
 - (xv) audio visual systems;
 - (xvi) police radio communications systems
 - (xvii) sustainable design LEED features, including a dedicated LEED workshop;
 - (xviii) telecommunications systems; and
 - (xix) future adaptability and flexibility features.
- (c) Prior to the 100% Design Development Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by Contracting Authority) with respect to the following matters and any other Design Review Meetings and Design Workshops required by Project Co or Contracting Authority, each acting reasonably:
- (i) all items listed in Section 18.5(b) and all items listed in Section 3 of Appendix A of Schedule 10 – Review Procedure, as required;
 - (ii) physical mock-ups for Contracting Authority and user review;
 - (iii) FF&E and Facility FF&E;
 - (iv) interior elevations;
 - (v) door/hardware functionality; and
 - (vi) signage and wayfinding.
- (d) Prior to the 50%, 75% and 100% Construction Documents Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by Contracting Authority) with respect to the following matters and any other Design Review Meetings and/or Design Workshops required by Project Co or Contracting Authority, each acting reasonably:
- (i) all items listed in Section 4 of Appendix A of Schedule 10 – Review Procedure, as required;
 - (ii) millwork details;
 - (iii) office area layout details;
 - (iv) FF&E and Facility FF&E coordination details; and
 - (v) signage and wayfinding.
- (e) The purpose of the Design Review Meetings and Design Workshops is to facilitate the incorporation of Contracting Authority input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

18.6 Design Acceptability

- (a) Contracting Authority confirms that, as at the date of this Project Agreement, it has reviewed the Site and landscape design, blocking and stacking diagrams and updated space/area analysis and that, subject to any qualifications or comments noted thereon, such submittals satisfy the Output Specifications in respect of Design Acceptability, so far as can reasonably be determined given the level of detail in the submittals.
- (b) With each of the Design Development Submittals, Project Co shall submit to Contracting Authority, for its review pursuant to Schedule 10 - Review Procedure, a draft report (each a “**Design Acceptability Report**”) to specifically identify, with reference to the Output Specifications, such matters of Design Acceptability that Project Co wishes the Contracting Authority Design Team to review and consider as part of the Design Development Submittals. Each Design Acceptability Report shall demonstrate how the Output Specifications are satisfied in respect of Design Acceptability.
- (c) With the Construction Document Submittals, Project Co shall submit to Contracting Authority, for review by Contracting Authority, pursuant to Schedule 10 - Review Procedure, a final Design Acceptability Report, and Contracting Authority shall confirm that, subject to any qualifications or comments noted thereon, such Construction Document Submittals satisfy the Output Specifications in respect of Design Acceptability, so far as can reasonably be determined given the level of detail in the Construction Document Submittals.
- (d) Each Design Acceptability Report must be prepared in accordance with the technical submission requirements to be provided by Contracting Authority to Project Co after identification of the preferred proponent and must address the way in which the Design Data meets the requirements of Design Acceptability.
- (e) Design Acceptability is a salient factor of importance to Contracting Authority to all stages of development of the Facility and shall be taken into account in the review of all Submittals submitted in accordance with the Review Procedure.

18.7 Performance of Design Obligations

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

18.8 General Construction Obligations

- (a) Project Co is responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Facility, and other performance of the Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
 - (i) construct the Works diligently, expeditiously and in a thorough and workman-like manner and consistent with the Design Quality Plan and Construction Quality Plan;
 - (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Lands by Project Co or any person for whom Project Co is responsible at law;
 - (iii) protect the Works from all of the elements, casualty and damage;
 - (iv) in respect of plant, equipment and materials incorporated in the Works, use plant, equipment and materials that:
 - (A) are of a kind that are consistent with the Output Specifications;
 - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice with respect to health and safety so as not to be hazardous or dangerous; and
 - (C) where they differ from the Output Specifications, have been substituted with Contracting Authority's prior written consent in accordance with Section 18.9.
- (c) Without limiting Project Co's obligations pursuant to Section 9.5 or Project Co's indemnity pursuant to Section 53.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing those portions of the Site and the Facility occupied by Project Co from time to time for performance of the Works in accordance with the Phasing Requirements to prevent access onto such portions of the Site and/or the Facility of any persons not entitled to be there, as determined by Project Co acting reasonably, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.

18.9 Substitutions

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

18.10 Change in Standards

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

18.11 Works Submittals

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by Contracting Authority prior to Substantial Completion or after Substantial Completion in respect of the completion of the Fit-Out Works, Minor Deficiencies and Fit-Out Works Phase Minor Deficiencies and the rectification of any Works, the Facility or any part thereof as required pursuant to Section 18.1(b) of the Project Agreement, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by Contracting Authority pursuant to Schedule 10 - Review Procedure. The first document to be submitted by Project Co for review by Contracting Authority pursuant to Schedule 10 - Review Procedure shall be the draft document control and security protocol described in Section 49.5(f).

18.12 Cash Allowance Items

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

- (iv) Project Co shall provide a reconciliation of the Cash Allowance Account to Contracting Authority on a monthly basis;
 - (v) in the event that any payment requirements for Cash Allowance Items, including applicable HST, for any invoice that will be approved by Contracting Authority pursuant to Section 18.12(e) exceed the aggregate of all of the Cash Allowance Amounts, Contracting Authority shall make a deposit(s) into the Cash Allowance Account on an agreed upon date(s);
 - (vi) if, at the earlier of Final Completion and the Termination Date, there exists a positive balance in the Cash Allowance Account (after all invoices for Cash Allowance Items approved by Contracting Authority, together with any HST payable thereon, have been paid), an amount equal to such balance shall be paid by Project Co to Contracting Authority or as Contracting Authority directs; and
 - (vii) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (c) Project Co shall, as part of each Works Report, provide to Contracting Authority the cash allowance information described in Schedule 34 – Works Report Requirements.
- (d) In addition to the Works Report information described in Section 18.12(c), Project Co shall, on a monthly basis, provide to the Contracting Authority Representative a request for payment approval (each, a “**Request for Payment Approval**”) that includes the following information:
- (i) details of all vendor or Project Co Party invoices that are due for payment that month, including relevant supporting documentation, which shall include copies of all vendor and Project Co Party invoices;
 - (ii) evidence that the commitment by Project Co to purchase or perform, as applicable, the Cash Allowance Items has been approved by Contracting Authority; and
 - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items.
- (e) Contracting Authority shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such Request for Payment Approval is approved. Contracting Authority shall only be permitted to withhold its approval if Contracting Authority determines that the Request for Payment Approval does not contain the information that Contracting Authority requires, acting reasonably, to discharge its obligations under this Section 18.12. If Contracting Authority withholds its approval pursuant to this Section 18.12(e) and subsequently receives the information that Contracting Authority requires, acting reasonably, to discharge its obligations under this Section 18.12, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, Contracting Authority’s approval of the invoices set out in the aforementioned Request for Payment Approval. Any Dispute in respect of or arising from any Request for Payment Approval (including the approval thereof) shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

- (f) If Contracting Authority approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or each Project Co Party from the Cash Allowance Account.
- (g) Project Co acknowledges and agrees that:
 - (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Items;
 - (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
 - (iii) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account; and
 - (iv) the Cash Allowance Amounts shall be deposited and the Cash Allowance Account shall be managed by Project Co in accordance with the Works Schedule and any costs, expenses or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

18.13 Community Benefits Plan

- (a) No later than 150 days following Financial Close, Project Co shall submit a draft community benefits plan to Contracting Authority for Contracting Authority’s review and written approval, acting reasonably. Such plan shall set out Project Co’s Project-specific approach to providing community benefits in connection with the performance of the Works and, at a minimum, comply with the requirements of Schedule 39 – Community Benefits, including, but not limited to, the requirements of the outline of the Community Benefits Plan attached as Appendix “A” to Schedule 39 – Community Benefits. When such draft plan is approved in writing by Contracting Authority, such plan shall, for the purposes of this Project Agreement, be the “**Community Benefits Plan**”.
- (b) Project Co shall update the Community Benefits Plan on an annual basis until the Substantial Completion Date. Project Co shall deliver to Contracting Authority for Contracting Authority’s review and written approval, acting reasonably, a copy of each updated Community Benefits Plan by the date that is no later than 15 Business Days before the end of each Contract Year following the Contract Year in which the Community Benefits Plan was initially approved by Contracting Authority.
- (c) When the Community Benefits Plan (including any and all updates thereto) is approved in writing by Contracting Authority, Project Co shall immediately implement the Community Benefits Plan and shall perform the Works in accordance therewith until the Substantial Completion Date.

18.14 Community Benefits Working Group

- (a) Within 45 days following Financial Close, the Parties shall establish a committee (the “**Community Benefits Working Group**”) consisting of:

- (i) two representatives of Project Co, including:
 - (A) the Project Co Community Benefits Lead; and
 - (B) such other representative appointed by Project Co from time to time;
 - (ii) two representatives appointed by Contracting Authority from time to time;
 - (iii) two representatives of the Province appointed by Contracting Authority from time to time; and
 - (iv) a minimum of one representative of each relevant Stakeholder appointed by Contracting Authority from time to time.
- (b) The Project Co Community Benefits Lead shall co-chair the Community Benefits Working Group with a representative of Contracting Authority who is designated by Contracting Authority from time to time.
- (c) Members of the Community Benefits Working Group may invite, on prior notice to the co-chairs, such advisors, consultants, Stakeholders or representatives of government ministries as any of them may require from time to time to attend meetings or to provide briefings to the Community Benefits Working Group.
- (d) The purpose of the Community Benefits Working Group shall be to support and promote the successful implementation of the community benefits initiatives described in Sections 18.13 to 18.15 (inclusive) and Schedule 39 – Community Benefits, to be set out in the Community Benefits Plan, and to be performed by Project Co prior to Substantial Completion, by:
- (i) providing a regularly scheduled forum for dialogue, collaboration, and, as required, issues resolution;
 - (ii) facilitating communication, coordination and relationship-building between Project Co and the Stakeholders and other Project stakeholders;
 - (iii) outlining clearly defined roles and responsibilities, and opportunities for collaboration, for each of the community benefits initiatives;
 - (iv) defining work plan priorities for each of the community benefits initiatives; and
 - (v) providing transparent oversight for monitoring progress and tracking results towards the successful implementation of the Community Benefits Plan.
- (e) Once established and until the Substantial Completion Date, the Community Benefits Working Group shall meet, unless otherwise agreed by the members of the Community Benefits Working Group or the Parties:
- (i) at least once each calendar month until the later of (A) the date the Community Benefits Working Group Terms of Reference are finalized or otherwise approved pursuant to Section 18.14(f), and (B) the date that the Community Benefits Plan is approved by Contracting Authority pursuant to Section 18.13(a); and

- (ii) following the later of (A) the date the Community Benefits Working Group Terms of Reference are finalized or otherwise approved pursuant to Section 18.14(f), and (B) the date that the Community Benefits Plan is approved by Contracting Authority pursuant to Section 18.13(a), at least once each calendar quarter.
- (f) No later than 45 days following Financial Close, Project Co shall deliver to the Community Benefits Working Group a draft of the terms of reference for the Community Benefits Working Group substantially in the form set out in Schedule 41 – Community Benefits Working Group Terms of Reference. Following the delivery of such draft terms of reference, Project Co shall use reasonable commercial efforts to finalize such terms of reference with the other members of the Community Benefits Working Group by a date that is no later than 90 days following Financial Close. If Project Co is unable to finalize such terms of reference by such date, then once such terms of reference are otherwise approved by Contracting Authority, acting reasonably, such terms of reference shall, for the purposes of this Project Agreement, be the “**Community Benefits Working Group Terms of Reference**”.

18.15 Community Benefits Reporting

- (a) Until the Substantial Completion Date, in each Works Report, Project Co shall provide the reporting in respect of Community Benefits Plan set out in Schedule 34 – Works Report Requirements.
- (b) On the first Business Day of each Contract Year quarter from Financial Close until the Substantial Completion Date, Project Co shall provide a written quarterly progress update report to Contracting Authority and the Community Benefits Working Group on the status of the implementation of the Community Benefits Plan (each is a “**Community Benefits Quarterly Update**”). Each Community Benefits Quarterly Update shall include information setting out Project Co’s progress toward achieving the objectives set out in the Community Benefits Plan, including an identification of any barriers that prevented Project Co from achieving such objectives.
- (c) On or about December 15 of each Contract Year until the Substantial Completion Date (on which date the last submission under this Section 18.15(c) shall be made), Project Co shall provide an annual report to Contracting Authority and the Community Benefits Working Group on the status of the implementation of the Community Benefits Plan (each is a “**Community Benefits Annual Report**”).
- (d) Each Community Benefits Annual Report shall, at a minimum, include:
 - (i) detailed information setting out Project Co’s progress toward achieving the objectives set out in the Community Benefits Plan, including an identification of any barriers that prevented Project Co from achieving such objectives; and
 - (ii) an assessment of lessons learned on the Project.
- (e) Contracting Authority may require Project Co to amend its Community Benefits Plan, any Community Benefits Annual Report or any Community Benefits Quarterly Update if, in Contracting Authority’s opinion, acting reasonably, Project Co is failing to maximize community benefits opportunities on the Project pursuant to the Community Benefits Plan.

- (f) Contracting Authority may, in its sole discretion, release the Community Benefits Plan and any or all Community Benefits Quarterly Updates and Community Benefits Annual Reports to the public or require Project Co to publish for the public the Community Benefits Plan or any and all Community Benefits Quarterly Updates and Community Benefits Annual Reports. None of the Community Benefits Plan, any Community Benefits Quarterly Update or any Community Benefits Annual Report (or any part thereof) shall be Confidential Information.

18.16 Existing Facilities Repairs and Independent Assessor

- (a) Each of Project Co and Contracting Authority shall comply with the provisions of Schedule 33 – Existing Facilities Repairs and Independent Assessor.

19. CONTRACTING AUTHORITY ACCESS AND MONITORING

19.1 Contracting Authority Access During the Works Phase

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

19.2 Right to Use Site by Contracting Authority and Province Persons

- (a) During the Operational Term, Contracting Authority, each Province Person (including, for certainty, the Design Compliance Consultant), and Macdonald Block Service Users shall have a right to use, enter on, have access to, and occupancy of, the Site and the Facility as is required by them for any purpose, including to perform the Macdonald Block Activities and the Contracting Authority FM Services and to ensure the achievement of Design Acceptability, Project Co hereby confirms that such right to enter on, occupy, use and access the Site and Facility including the unrestricted right to full access to the Site and the Facility to Contracting Authority, all Province Persons (including, for certainty, the Design Compliance Consultant) and Macdonald Block

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 Macdonald Block Activities or the Contracting Authority FM Services or compromise the nature of the Province's public services, so as to affect public confidence in such services.

19.3 Right of Access to Additional Contractors

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

19.4 Increased Monitoring

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

19.5 Right to Open Up

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

subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

19.6 No Relief from Obligations

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

20. WORKS SCHEDULE AND WORKS REPORT

20.1 Completion of Works

- (a) Project Co shall complete the Works in accordance with this Project Agreement and achieve:
- (i) Substantial Completion by the Scheduled Substantial Completion Date;
 - (ii) Final Completion by the Scheduled Final Completion Date;
 - (iii) each Fit-Out Works Phase Completion by its applicable Scheduled Fit-Out Works Phase Completion Date; and
 - (iv) Fit-Out Works Final Completion by the Scheduled Fit-Out Works Final Completion Date.

20.2 The Works Schedule

- (a) From Financial Close until the Draft Works Schedule becomes the Works Schedule pursuant to Section 20.2(d), the Proposed Works Schedule shall be deemed to be the Works Schedule and, until such time, the following provisions of the Project Agreement applicable to the Works Schedule shall be applicable to the Proposed Works Schedule as though the Proposed Works Schedule was the Works Schedule: 9.6(d)(ii), 9.6(d)(iii), 11.2(d)(ii), 14.1(e), 18.1(a)(iv), 18.4(b)(v), 18.5(a)(iii), 18.12(g)(iv), 20.4, 20.6(a), and 21.8 of the Project Agreement; Sections 2.1 and 2.7(b) of Part A and Section 6.2 of Appendix A of Schedule 10 – Review Procedure; Section 1.6(b)(vi) of Schedule 22 – Variation Procedure; Section 1(d) of Schedule 34 – Works Report Requirements; the definition of “**Critical Non-Conformance**” set forth in Schedule 1 – Definitions and Interpretation; clauses (g), (u)(i) and (v) of Appendix A of Schedule 6 – Independent Certifier Agreement; and Sections 4.2 and 10.6 of Schedule 14 – Outline Commissioning Program.
- (b) Project Co shall, in accordance with Schedule 12 – Works Scheduling Requirements, prepare and submit to Contracting Authority and the Independent Certifier:
- (i) within 45 calendar days of Financial Close, the Draft Works Schedule and a report indicating the differences between the Proposed Works Schedule and the Draft Works Schedule;
 - (ii) every month within 10 Business Days following the end of each calendar month from Financial Close until Fit-Out Works Final Completion, a Progress Works Schedule;

- (iii) every month within 10 Business Days following the end of each calendar month from Financial Close until the Fit-Out Works Final Completion Date, a Look-ahead Schedule;
- (iv) within 10 calendar days following the written request from Contracting Authority, acting reasonably, a Works Area Micro-Schedule for any specific area, and every two weeks thereafter an updated Works Area Micro-Schedule for the specific area until the Works in the area is complete;
- (v) within 15 calendar days of the Fit-Out Works Final Completion Date, the As-built Works Schedule and the final Works Report; and
- (vi) at any time prior to the Fit-Out Works Final Completion Date, within 5 calendar days following the written request by Contracting Authority, existing current or past versions of the Works Schedule or Works Report,

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

- (c) Contracting Authority shall, within 15 Business Days of receipt thereof, provide Project Co with comments on the first Draft Works Schedule in accordance with Schedule 10 – Review Procedure. Project Co shall revise and resubmit the Draft Works Schedule to the extent required by Schedule 10 – Review Procedure within 15 Business Days of receipt of any comments from Contracting Authority. Contracting Authority shall provide any comments on each subsequent Draft Works Schedule within 5 Business Days of receipt thereof. Section 38.5(a) shall apply in respect of any Compensation Event that occurs after the date that is 66 days following Financial Close and prior to Contracting Authority assigning the comment “NO COMMENT” or “MINOR NON-CONFORMANCE” to the Draft Works Schedule referred to in Section 20.2(b)(i), provided that in the event that Contracting Authority does not provide Project Co with its comments on the Draft Works Schedule within such 15 Business Day time period, such 66 day time period shall be automatically extended by the number of days that Contracting Authority failed to provide such comments following the expiry of such 15 Business Day time period.
- (d) When agreed by the Parties, the Draft Works Schedule shall become the Works Schedule, and on such date the Works Schedule shall replace the Proposed Works Schedule.
- (e) Project Co shall submit a draft Works Area Micro-Schedule in accordance with Section 20.2(b)(iv) and Schedule 12 – Works Scheduling Requirements for any portion of the Progress Works Schedule relating to any specific area of the Works involving:
 - (i) integration or commissioning activities where the current scheduling information is not sufficiently detailed to allow for the effective use of resources of Contracting Authority; or
 - (ii) work activities by either Project Co or Contracting Authority that are dependent upon the activities of the other Party,

where such activity, in Contracting Authority’s opinion, acting reasonably, requires enhanced scheduling detail from Project Co to support the effective coordination of such activity in that specific area.

- (f) Contracting Authority shall provide Project Co with comments on the draft of a Works Area Micro-Schedule in accordance with Schedule 10 - Review Procedure. Project Co shall revise the draft of the Works Area Micro-Schedule to the extent required by Schedule 10 - Review Procedure within 5 days of receipt of any comments from Contracting Authority.
- (g) When agreed by the Parties in writing, the draft of the Works Area Micro-Schedule shall become the Works Area Micro-Schedule for that specific area.
- (h) At the request of the Contracting Authority Representative, the Project Co Representative shall review the Works Schedule with the Contracting Authority Representative to explain to the Contracting Authority Representative's satisfaction:
 - (i) the activity logic and planning assumptions contained in the Works Schedule;
 - (ii) any proposed changes to the critical path of the Works;
 - (iii) the impact of the Works on the Works Milestones; and
 - (iv) any other matter raised by the Contracting Authority Representative concerning the Project Schedules.
- (i) Project Co shall participate in meetings and conduct workshops with Contracting Authority in relation to the Project Schedules in accordance with Section 3 of Schedule 12 – Works Scheduling Requirements.
- (j) Project Co and Contracting Authority shall comply with the provisions of Schedule 12 – Works Scheduling Requirements.
- (k) Contracting Authority shall provide Project Co with comments on the As-built Works Schedule in accordance with Schedule 10 – Review Procedure. Project Co shall revise the As-built Works Schedule to the extent required by Schedule 10 - Review Procedure within 10 days of receipt of any comments from Contracting Authority.
- (l) Any comment or lack of comment by Contracting Authority in regards to any Project Schedules indicating potential Delay Events pursuant to Section 37.1(a) of the Project Agreement shall not constitute any acknowledgement or acceptance of the potential delay.

20.3 Changes to the Works Schedule

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

20.4 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Section 37, if, at any time:
- (i) the actual progress of the Works has significantly fallen behind the Works Schedule or a Recovery Schedule, as applicable, including, for clarity, any failure of Project Co to achieve a Works Milestone; or
 - (ii) the revised implementation strategy, forecast dates for future activities or staging has changed to the extent that it is no longer practical to compare the Current Progress Works Schedule to the Works Schedule or the current Recovery Schedule, using Project Co's scheduling software; or
 - (iii) Contracting Authority is of the opinion that:
 - (A) the actual progress of the Works has significantly fallen behind the Current Progress Works Schedule;
 - (B) Project Co will not achieve Substantial Completion by the Scheduled Substantial Completion Date;
 - (C) Project Co will not achieve Substantial Completion by the Longstop Date;
 - (D) Project Co will not achieve any Fit-Out Works Phase Completion by the Scheduled Fit-Out Works Phase Completion Date; or
 - (E) the revised implementation strategy, forecast dates for future activities or staging has changed to the extent that it is no longer practical to compare the Current Progress Works Schedule to the Works Schedule or the current Recovery Schedule,

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

- (iv) within 5 Business Days of receipt, or within one month in the circumstances set forth in Sections 20.4(a)(ii) or 20.4(a)(iii)(C), of notice from Contracting Authority, to produce and deliver to each of the Contracting Authority Representative and the Independent Certifier:
 - (A) a schedule (the "**Recovery Schedule**") which shall comply with all requirements of a Progress Works Schedule as set out in Section 8 of Schedule 12 – Works Scheduling Requirements, except that
 - (I) its title shall be "Recovery Schedule", and
 - (II) for the first Recovery Schedule, the Works Schedule baseline shall be shown in the Recovery Schedule using the scheduling software's baseline functionality to visually indicate the variance between the Works Schedule and the first Recovery Schedule, or

- (III) for subsequent Recovery Schedules, if applicable, the current Recovery Schedule baseline shall be shown in the new Recovery Schedule using the scheduling software's baseline functionality to visually indicate the variance between the current Recovery Schedule and the new Recovery Schedule,

and, if applicable, the Recovery Schedule shall show the new strategy or steps that are to be taken by Project Co to eliminate or reduce the delay to:

- (IV) achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (V) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; or
- (VI) achieve the applicable Fit-Out Works Phase Completion by its Scheduled Fit-Out Works Phase Completion Date; and

- (B) a report (the "**Recovery Schedule Report**") which shall comply with all requirements of a Works Schedule Progress Report as set out in Section 1(d) of Schedule 34 – Works Report Requirements except that:

- (I) its title shall be "Recovery Schedule Report";
- (II) the Recovery Schedule Report shall describe in narrative form:
 - (i) all variances between the Works Schedule and the Recovery Schedule, or, if applicable, between the current Recovery Schedule and a new Recovery Schedule; and
 - (ii) if applicable, the reasons for the delay and/or changes to the implementation strategy together with a description of the new strategy or steps that are to be taken by Project Co to eliminate or reduce the delay to Project Co, as applicable:
 - a. achieving Substantial Completion by the Scheduled Substantial Completion Date,
 - b. achieving Substantial Completion by the Longstop Date, or
 - c. achieving the applicable Fit-Out Works Phase Completion by its Scheduled Fit-Out Works Phase Completion Date; and

- (v) if applicable, bring the progress of the Works back on schedule in accordance with the deliverables provided for in Section 20.4(a)(iv).

- (b) Contracting Authority may, acting reasonably, give notice to the Lenders' Agent pursuant to Section 13 of the Lenders' Direct Agreement that Project Co is failing to maintain the schedule, together with the relevant information supporting Contracting Authority's opinion that Project Co is failing to maintain the schedule.
- (c) For greater certainty, provided that Project Co has complied with this Section 20.4 and is not in default under Section 42.1(a)(iii), the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date or any Fit-Out Works Phase Completion by its Scheduled Fit-Out Works Phase Completion Date on its own shall not be a Project Co Event of Default for the purposes of Section 42.1(a)(vi).

20.5 Notification of Early Substantial Completion

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

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

20.5A Notification of Early Fit-Out Works Phase Completion

- (a) Unless Project Co obtains the prior written consent of Contracting Authority, in Contracting Authority's sole discretion, Project Co shall not be entitled to a Fit-Out Works Phase Completion Certificate prior to, and the applicable Fit-Out Works Phase Completion Date and the applicable Fit-Out Works Phase Completion Payment Date shall not be earlier than, the Scheduled Fit-Out Works Phase Completion Date in respect of the applicable Phase of the Fit-Out Works.
- (b) If Project Co advises Contracting Authority that Project Co expects to be able to achieve a Fit-Out Works Phase Completion prior to the applicable Scheduled Fit-Out Works Phase Completion Date, the Contracting Authority Representative shall be entitled to require Project Co to produce and submit to the Contracting Authority Representative a revised Progress Works Schedule or Recovery Schedule, as applicable, showing the manner and the periods in which the Works shall

be performed and what the revised date for the applicable Fit-Out Works Phase Completion would be so as to enable Contracting Authority to consider at its sole discretion:

- (i) whether to agree to an earlier Fit-Out Works Phase Completion Date or Scheduled Fit-Out Works Phase Completion Date; and
- (ii) what modifications, if any, shall be required to this Project Agreement in order to accommodate such earlier Fit-Out Works Phase Completion Date or Scheduled Fit-Out Works Phase Completion Date.

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

20.6 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within 10 Business Days following the end of each calendar month from Financial Close until the Fit-Out Works Final Completion Date, Project Co shall provide to the Contracting Authority Representative and the Independent Certifier a works report (each, a “**Works Report**”), which will include:
 - (i) an executive summary describing the general status of the Works and progress made over the relevant month;
 - (ii) a Current Progress Works Schedule and a Look-ahead Schedule, all in accordance with Schedule 12 – Works Scheduling Requirements;
 - (iii) a narrative description of any Dispute related to the Works, including any action that has taken place over the relevant month to resolve such Dispute;
 - (iv) a narrative description of the status of any Proceeding at Risk Matter that has not been resolved pursuant to Section 11.6(f), in accordance with Schedule 27 – Dispute Resolution Procedure or otherwise;
 - (v) an update on those matters set out in Schedule 34 – Works Report Requirements; and
 - (vi) any other information specifically requested by Contracting Authority on the progress of the Works,all in form and substance satisfactory to Contracting Authority, acting reasonably.
- (b) Project Co shall use and interact with, and ensure that the Construction Contractor uses and interacts with the On-line (web-based) Project Management (“**OCPM**”) software system specified by Contracting Authority. It is contemplated that the OCPM software system will automate certain aspects of the processes identified in Schedule 10 – Review Procedure, Schedule 11A – Design Quality Plan and Construction Quality Plan, Schedule 11B – Service Quality Plan Outline, Schedule 22 – Variation Procedure, and Schedule 34 – Works Report Requirements and other processes as determined by Contracting Authority in its sole discretion.

21. FURNITURE, FIXTURES AND EQUIPMENT

21.1 FF&E Steering Committee

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**FF&E Steering Committee**”) consisting of:
 - (i) 5 representatives appointed by Contracting Authority from time to time, namely, the Contracting Authority project manager, the Design Compliance Consultant and other technical and facility representatives appointed by Contracting Authority from time to time; and
 - (ii) 2 representatives of Project Co, one of whom shall be the Project Co Representative, appointed by Project Co from time to time.
- (b) Members of the FF&E Steering Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the FF&E Steering Committee.
- (c) The FF&E Steering Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to FF&E, including the interaction between FF&E commissioning and Plant commissioning.
- (d) The primary role of the FF&E Steering Committee shall be to review all matters, including budget review, and make all required decisions related to Category 1 FF&E, including, without limitation:
 - (i) Project Co’s proposals and recommendations for the quantity, make, model, vendor and any terms and conditions of financing or payment, as the case may be, for all Category 1 FF&E; and
 - (ii) Project Co’s proposals and recommendations with respect to scheduling the procurement, installation and commissioning of all Category 1 FF&E.
- (e) The members of the FF&E Steering Committee may adopt such other procedures and practices for the conduct of the activities of the FF&E Steering Committee as they consider appropriate from time to time.
- (f) 3 representatives of Contracting Authority and 1 representative of Project Co shall constitute a quorum at any meeting of the FF&E Steering Committee. A quorum of members may exercise all of the powers of the FF&E Steering Committee. The members shall not transact business at a meeting of the FF&E Steering Committee unless a quorum is present.

21.2 Separate FF&E and Services Fee and Categories of FF&E

- (a) Contracting Authority shall pay Project Co the Separate FF&E Services Fee pursuant to and in accordance with Section 31.1(c) for all services in connection with Category 1 FF&E described in this Section 21, including pursuant to Sections 21.5(b) to (g), Section 21.6 and Section 21.8.
- (b) FF&E is divided into the following categories:

- (i) Category 1 FF&E: As part of the services applicable to the Separate FF&E Services Fee, Project Co shall be responsible for the procurement of, and for monitoring and coordinating the delivery and installation of, all Category 1 FF&E and for all other services to be performed by Project Co in respect of Category 1 FF&E pursuant to the requirements of this Section 21, other than the design and specification services set forth in Section 21.5(a). For further clarity, the applicable FF&E vendor shall be responsible for the delivery and installation of Category 1 FF&E. The design and specification services to be performed by Project Co in respect of Category 1 FF&E pursuant to Section 21.5(a) form part of the Works and are not paid for by way of the Separate FF&E Services Fee.
- (ii) Category 2 FF&E: **[Intentionally deleted]**
- (iii) Category 3 FF&E: Category 3 FF&E items will be supplied, installed, and owned or leased by Macdonald Block Occupants. The installation and commissioning of Category 3 FF&E is not required to be performed by Project Co. All services to be performed by Project Co pursuant to this Section 21 in respect of Category 3 FF&E form part of the Works and are not paid for by way of the Separate FF&E Services Fee. The design service to be performed by Project Co in respect of Category 3 FF&E pursuant to Section 21.5(a) form part of the Works and are not paid for by way of the Separate FF&E Services Fee.
- (iv) Category 4 FF&E: The installation and commissioning of Category 4 FF&E is not required to be performed by Project Co. All services to be performed by Project Co pursuant to this Section 21 in respect of Category 4 FF&E form part of the Works and are not paid for by way of the Separate FF&E Services Fee. The design service to be performed by Project Co in respect of Category 4 FF&E pursuant to Section 21.5(a) form part of the Works and are not paid for by way of the Separate FF&E Services Fee.
- (c) For greater certainty, any item labelled, described or specified as 'fixed furnishings', 'casework' or 'millwork' in the Output Specifications, is not included in any category of FF&E, Facility FF&E, Group 1 Fit-Out FF&E, or Group 2 Fit-Out FF&E for the purposes of this Project Agreement, including, for certainty, this Section 21.
- (d) Any furniture, fixtures or equipment identified in the third party spaces element (Output Specifications Space Code Component B, element 3) and the Building Operations element (Output Specifications Space Code Component E, element 4) in order to satisfy the requirements of the Project Agreement, as well as any and all furniture, fixtures or equipment located in any or all other facilities management space that Project Co designs and constructs in order to manage the Facility does not form part of FF&E for the purposes of this Project Agreement, including, for greater certainty, this Section 21.
- (e) For greater certainty, all services to be performed by Project Co pursuant to Section 21.5(a) form part of the Works and are not paid for by way of the Separate FF&E Services Fee.
- (f) The FF&E Steering Committee shall not have authority to make decisions with respect to, or approve any amendment to or increase or decrease of, the FF&E Budget (as set forth in Section 21.3(b)).
- (g) For greater certainty, this Section 21 is not applicable to any of the Works described in Part 7 of Schedule 15 – Output Specifications.

21.3 FF&E Budget

- (a) Contracting Authority will carry a budget for the following purchase and delivery to the Facility loading dock of all Category 1 FF&E.
- (b) Contracting Authority's FF&E budget is estimated to be \$[REDACTED].

21.4 Contracting Authority FF&E Responsibilities

- (a) Contracting Authority shall review and confirm Project Co's proposals for the method of procurement, quantity, make, model, vendor and any terms and conditions of payment, as the case may be, for all Category 1 FF&E, based upon tenders, quotations or proposals obtained by Project Co under Section 21.6 and Contracting Authority shall enter into all purchase orders and other contracts with respect to the purchase of all Category 1 FF&E.
- (b) For greater certainty, Contracting Authority and not Project Co, shall be liable as "purchaser" to the vendor under every purchase order, contract and manufacturer's installation invoice related to the Category 1 FF&E described in Section 21.4(a) in accordance with the relevant provisions of this Section 21, and shall make all payments related thereto in accordance with the relevant invoice terms.

21.5 Project Co FF&E Responsibilities

(a) **Design**

In addition to any of Project Co's other design responsibilities set forth in this Project Agreement (including, for certainty, the Output Specifications), Project Co shall be responsible for:

- (i) the production of floor layouts showing all FF&E and clearly indicating each category of Category 1 FF&E, Category 3 FF&E, and Category 4 FF&E; and
 - (ii) the production of all Design Data associated with the layouts and servicing of all FF&E and coordinating all structural, mechanical, and electrical information and communications technology building system services requirements to enable the accurate production of a complete working system for all FF&E.
- (b) **[INTENTIONALLY DELETED]**
 - (c) **FF&E Procurement, Planning and Coordinating**

Project Co shall be responsible for preparing, revising, coordinating and finalizing the plan to procure, install and commission, as applicable, all Category 1 FF&E based on the development of Project Co's Design Data and the latest information available from the Contracting Authority Representative and based on the preparation of detailed FF&E floor layouts pursuant to Section 21.5(a).
 - (d) **[INTENTIONALLY DELETED]**

(e) **[INTENTIONALLY DELETED]**

(f) **Delivery, Installation, and Commissioning**

Project Co shall be responsible for:

- (i) scheduling and coordinating the vendors' delivery of all Category 1 FF&E to the loading docks of the Facility;
- (ii) scheduling and coordinating the vendors' delivery of all Category 1 FF&E from the loading docks of the Facility to the final individual locations within the Facility;
- (iii) coordinating and scheduling to determine the delivery date of all Category 1 FF&E, and shall be responsible for providing temporary offsite storage, as well as associated transportation (if required);
- (iv) monitoring the vendors' offloading, unpacking, handling, storing, placing and completing the installation of all Category 1 FF&E in accordance with the Design Data and manufacturer's instructions;
- (v) coordinating, scheduling and completing the commissioning of all Category 1 FF&E in accordance with the Final Commissioning Program;
- (vi) coordinating, scheduling and completing the deficiency review with vendors to ensure the quality, quantity, final location and finish details are accurate for all Category 1 FF&E within one week of each item's delivery and installation. Project Co shall produce a room by room deficiency list with an individual room layout sketch for deficiency work. Project Co shall issue a deficiency report to coordinate, track, and update all deficiency items;
- (vii) cooperating with and providing reasonable assistance to all Category 1 FF&E vendors in respect of Category 1 FF&E, including but not limited to, the vendors' delivery, offloading, unpacking, handling, storing, placing, moving, installing and connecting all Category 1 FF&E; and
- (viii) as required by Contracting Authority from time to time, providing and facilitating Category 1 FF&E vendors' (including, for clarity, their employees, agents, representatives, contractors and subcontractors) access to and within the Site and/or the Facility, including, but not limited to, accommodating the vendors' use of elevators.

For greater certainty, Project Co shall only be responsible for monitoring and coordinating the delivery and installation of Category 1 FF&E. The applicable Category 1 FF&E vendors shall be responsible for the delivery and installation of all Category 1 FF&E.

(g) **FF&E Budget**

Project Co shall be responsible for preparing, maintaining, and updating an FF&E budget with respect to Category 1 FF&E and conducting an ongoing review of the proposed budget with the FF&E Steering Committee.

(h) **FF&E Training**

- (i) For and in respect of each item of FF&E procured by Project Co and operated by Contracting Authority, Macdonald Block Occupants or any other persons, as the case may be, Project Co shall, in accordance with Schedule 14 – Outline Commissioning Program, provide or arrange for adequate, appropriate and timely training in the item's proper operation and maintenance for each of them; and
- (ii) For and in respect of each item of FF&E procured by Project Co and operated by Contracting Authority, Macdonald Block Occupants or any other persons, as the case may be, Contracting Authority shall arrange for each of them to be available for training purposes in accordance with the Works Schedule and the Final Commissioning Program.

(i) **Substantial Completion**

For the purpose of achieving Substantial Completion, all Category 1 FF&E must be successfully assembled, installed and commissioned at the Facility in accordance with the Final Commissioning Program provided that, in respect of any item of Category 1 FF&E, such requirements shall be waived by Contracting Authority if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete or cause the completion of the procurement, installation or commissioning of such item of Category 1 FF&E due to a delay in the performance of any of its obligations by Contracting Authority, an FF&E vendor or manufacturer.

(j) **[Intentionally deleted]**

(k) **Holdback**

Whether or not Final Completion has been achieved, until such time as Project Co has completed the procurement (if applicable), installation (if applicable) and commissioning of all FF&E in accordance with this Section 21, Contracting Authority may withhold from any payment or payments (excluding Construction Period Payments) due to Project Co a holdback amount equal to the greater of the Separate FF&E Services Fee and \$[REDACTED].

21.6 Project Co Procurement and Other Responsibilities

- (a) Project Co shall act as purchasing and procurement manager for Contracting Authority and shall:
 - (i) in consultation with the FF&E Steering Committee, prepare and finalize the list and specifications (performance or preferred) of Category 1 FF&E based on the development of Project Co's Design Data and the latest information available from the Contracting Authority Representative and update the budget for Category 1 FF&E for approval by the FF&E Steering Committee. Category 1 FF&E items shall be divided by Project Co into the following nine subcategories of RFP packages;
 - (A) systems furniture;
 - (B) private office casegoods;
 - (C) tables (ex: small meeting room table, end table, coffee table, etc.);
 - (D) task and meeting chair;

- (E) filing cabinet;
 - (F) soft seating (ex: side chair, lounge seating, dining chair, etc.);
 - (G) lamp (ex: floor lamp, table lamp, etc.);
 - (H) high density filing cabinet unit; and
 - (I) ergonomic desk accessories;
- (ii) in consultation with the FF&E Steering Committee, review the FF&E building system requirements and the FF&E design drawings for reconciliation with the services and space designed prior to purchasing or moving any FF&E;
 - (iii) in consultation with the FF&E Steering Committee, coordinate a furniture fair as well as Design Workshops during the Design Development Submittals stages for all Category 1 FF&E items;
 - (iv) in consultation with the FF&E Steering Committee, establish procurement processes that are fair and competitive, all in accordance with any applicable Contracting Authority policies and good purchasing and procurement practices;
 - (v) use the Government of Ontario Vendors of Record List (the “**VOR**”) to procure all Category 1 FF&E, provided that, for certainty, the procurement process shall be established in accordance with Section 21.6(a)(iv);
 - (vi) in consultation with the FF&E Steering Committee, prepare tenders, requests for quotations or requests for proposals (the “**FF&E Procurement Documentation**”), which shall be conducted in accordance with Section 21.4(a) and this Section 21.6, and which FF&E Procurement Documentation shall include an obligation for each vendor of Category 1 FF&E to be responsible for delivering and installing such FF&E and shall be in form and substance satisfactory to Contracting Authority;
 - (vii) manage the procurement of, and procure on behalf of, Contracting Authority all Category 1 FF&E, including:
 - (A) providing advice to the FF&E Steering Committee in respect of the evaluation of tenders, quotations or proposals from FF&E vendors;
 - (B) assisting the FF&E Steering Committee in the review of the tenders, quotations or proposals from FF&E vendors by clearly delineating the costs and performance of the Category 1 FF&E, the training methods and values, the testing and calibration protocols, the acceptable end results and the party responsible for such testing, be it the vendor, a third party or individuals engaged by Project Co;
 - (C) assisting the FF&E Steering Committee with the selection of tenders, quotations or proposals from FF&E vendors;
 - (D) procure on behalf of Contracting Authority all purchase orders and other contracts with respect to the purchase by Contracting Authority of Category 1 FF&E;

- (E) providing such documentation as Contracting Authority and Contracting Authority require, acting reasonably, to discharge its obligations under this Section 21;
 - (F) in consultation with FF&E Steering Committee, arranging the furniture mock-ups of all Category 1 FF&E items with short listed FF&E vendors during procurement evaluations; and
 - (G) reviewing and approving all furniture specification lists and drawings, including all changes, if required, prior to issuing purchase orders with successful FF&E vendors;
 - (viii) in accordance with the FF&E Procurement Documentation, act as a single point of contact for all FF&E vendors;
 - (ix) test and calibrate any FF&E not tested and calibrated by vendors and coordinate the acceptance testing of all Category 1 FF&E; and
 - (x) for a two-year period following Substantial Completion, coordinate and manage any warranty issues with the Category 1 FF&E vendors.
- (b) Contracting Authority acknowledges and agrees that it will be reasonable for Project Co not to accept a particular VOR for the procurement of Category 1 FF&E if:
- (i) a vendor on the VOR will not provide a 100% performance bond or alternative security in favour of Contracting Authority with the Construction Contractor named as dual obligee or beneficiary, as the case may be, thereunder; and
 - (ii) the vendor on the VOR will not include a provision in its purchase order/agreement whereby it agrees to execute and deliver, under seal, to the Construction Contractor a covenant to and in favour of the Construction Contractor that such vendor on the VOR will perform its obligations under such purchase order/agreement.
- (c) If:
- (i) Project Co does not agree on any of the vendors on the VOR as a result or in circumstances described in 21.6(b)(i) and (ii), 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 FF&E supply contract, as applicable, to a supplier or suppliers acceptable to Contracting Authority (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 FF&E supply contract, as applicable, in accordance with the immediately preceding sentence, Project Co shall tender the FF&E supply contract, as applicable, to a supplier acceptable to Contracting Authority (such acceptance not to be withheld unreasonably) pursuant to an alternative competitive process satisfactory to Contracting Authority in its reasonable discretion. Project Co acknowledges and agrees that all contracts for the supply of Category 1 FF&E under this Project Agreement shall be

between Contracting Authority and the applicable supplier, notwithstanding that such supplier is not a vendor on the VOR.

- (d) Based on the tenders, quotations and proposals received from FF&E vendors, Project Co shall make recommendations to the FF&E Steering Committee for the procurement of each item or type of Category 1 FF&E. Each such recommendation shall include the following information:
- (i) item description, item number, and quantities;
 - (ii) the manufacturer, model number, vendor, specifications and options for the item;
 - (iii) an analysis and recommendation as to which make, model number and vendor of the item provides the overall best value for Contracting Authority, and any other benefits of the recommendation;
 - (iv) an analysis of the effect of the items on the overall design of the Facility and the relevant areas within the Facility;
 - (v) details of the warranties, vendor installation, service agreements, training, supplies, spare parts and start-up consumables included with the items by the relevant manufacturer or vendor;
 - (vi) details of training for all applicable Contracting Authority and Macdonald Block Occupants;
 - (vii) FF&E acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant Category 1 FF&E vendor;
 - (viii) the dates and times when the items shall be delivered to the Facility;
 - (ix) all costs, with a breakdown of applicable HST and net of all direct or indirect discounts, rebates, refunds, chargebacks, credits, price adjustments or any other allowances obtained across all categories of FF&E that effectively reduce the net selling price of such FF&E or reduce the service contract price, and any Taxes applicable to the items;
 - (x) the total amounts and timing of cash flows required to implement the recommendation and the full details of the calculation of such amounts;
 - (xi) whether the procurement is a purchase, a lease, part of a managed equipment program, based on usage pricing or any other arrangement, and the terms and timing of payments thereof;
 - (xii) if so requested by Contracting Authority's Representative, a copy of each quote or proposal and all other relevant information in respect of the items and such other documentation as Contracting Authority may reasonably require, all of which shall be provided on a fully transparent and open basis to the Contracting Authority Representative; and
 - (xiii) if no tenders, quotations and proposals are available or have been received by Project Co, an alternate recommended course of action for procurement by Project Co, including possible substitutes for such items.

- (e) In response to any recommendation made by Project Co in accordance with Section 21.6(d), Contracting Authority may do any of the following with respect to some or all of the items:
 - (i) instruct Project Co to proceed with the procurement;
 - (ii) withdraw the requirement for Project Co to proceed with the procurement;
 - (iii) increase or decrease the quantities of any item, require the procurement of other items in substitution for such items or otherwise change the items to be procured or the terms on which such items are to be procured; and
 - (iv) reject any FF&E vendor or item.
- (f) Project Co shall provide to the Contracting Authority Representative, as soon as reasonably practicable following a request therefor, such additional information as Contracting Authority may require in respect of any recommendation made by Project Co in accordance with Section 21.6(d).

21.7 Minimizing Disruptions

- (a) Project Co shall perform all of its obligations under this Section 21 so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations, the operation of the Macdonald Block Activities and the Contracting Authority FM Services. Project Co acknowledges and agrees that such activities may require work outside of normal working hours in order to accommodate the efficient operation of the Facility. Project Co shall coordinate any activities undertaken pursuant to this Section 21.7(a) in accordance with its obligations pursuant to Section 25.3 of the Project Agreement.

21.8 Scheduling of FF&E Procurement and Installation

- (a) Project Co shall, in consultation with Contracting Authority, prepare a schedule for the procurement, as applicable, installation and commissioning of all FF&E, and shall incorporate the timing of procurement, as applicable, installation and commissioning of all FF&E into the Works Schedule and the Final Commissioning Program. Such schedule shall include the date by which Contracting Authority must make a final determination of the quantity, make, service contract, model and vendor, as the case may be, of each piece or type of Category 1 FF&E.
- (b) Contracting Authority shall review and confirm Project Co's proposal for the quantity, make, service contract, model and vendor of each piece of Category 1 FF&E, and shall execute or cause to be executed any purchase order, contract, manufacturer's installation invoice and/or other documentation related to the Category 1 FF&E, by the relevant date set out in the Works Schedule, provided that Contracting Authority's Representative shall have received such documentation as Contracting Authority requires, acting reasonably, to discharge its obligations under this Section 21 no later than 30 days prior to the relevant date set out in the Works Schedule.

21.9 Maintenance of FF&E

- (a) Project Co is not responsible for the maintenance, replacement or refurbishment of any Category 1 FF&E, Category 3 FF&E, and Category 4 FF&E except as set out in Schedule 15 - Output Specifications.

- (b) Project Co is only responsible for providing certain cleaning of furniture and equipment services and FF&E Services and Moves, Adds and Changes Services in respect of FF&E as more particularly described in Schedule 15 - Output Specifications.

22. LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN

22.1 LEED Design and Construction Obligations

- (a) Project Co shall perform the Works so as to achieve the prerequisites and credits required to achieve the LEED BD+C Silver Rating and, in so doing, Project Co shall at a minimum achieve the LEED credits identified as mandatory in Sections 1, 2, and 4 of Part 1 of Schedule 15 – Output Specifications.

22.2 LEED Progress Reports

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

22.3 LEED Certification

- (a) Contracting Authority confirms that, prior to the date of this Project Agreement, Contracting Authority caused the Project to be registered with CaGBC. Project Co acknowledges and confirms that, as of the date of this Project Agreement, the Project is registered with CaGBC and Project Co is satisfied that the registration is valid and is effective.
- (b) If there is a change in the requirements for achievement of LEED BD+C Silver Rating under the LEED BD+C Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify Contracting Authority of such change and such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (d) Project Co shall apply to the CaGBC to obtain LEED BD+C Silver Rating for the Facility as soon as possible.
- (e) In the event that LEED BD+C Silver Rating is not obtained within 24 months after the Substantial Completion Date, other than as a direct result of any act or omission of Contracting Authority or any Contracting Authority Party, Project Co shall pay to Contracting Authority liquidated damages in the amount of \$[REDACTED]. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Contracting Authority will suffer as a result of the happening of the specified event and would be difficult or impossible to quantify upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Contracting Authority as a result of a failure by Project Co to achieve LEED BD+C Silver Rating and, for greater certainty, a failure by Project Co to achieve LEED BD+C Silver Rating shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not Contracting Authority incurs or mitigates its damages, and that Contracting Authority shall not have any obligation to mitigate any such damages.

22.4 Greenhouse Gas Credits

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

22.5 Energy Matters

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

23. INDEPENDENT CERTIFIER

23.1 Appointment

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

23.2 Role of Independent Certifier

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

23.3 Changes to Terms of Appointment

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

23.4 Right to Change Appointment

- (a) The Parties agree that the Independent Certifier shall not provide any services or reports or other information to Project Co, the Lenders, the Project Co Parties or any other person other than pursuant to the performance of the functions of the Independent Certifier under this Project

Agreement unless agreed to in writing by both Parties. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days' notice to the Independent Certifier. If such notice is given, then, pursuant to Section 23.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

23.5 Cooperation

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

23.6 Payment of Independent Certifier

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

23.7 Replacement

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

23.8 Security Clearance Checks

- (a) Each employee and representative of the Independent Certifier involved in the Project (collectively, the “**IC’s Representatives**” and individually, an “**IC Representative**”) shall submit to a Security Clearance Check. In the event that any of the events specified in paragraphs 12(c) through 12(f)

of Schedule 7 - Security Clearance Check Requirements have occurred in respect of the IC's Representatives, Contracting Authority may, in its sole discretion, terminate the Independent Certifier's appointment unless (i) any such IC Representative's employment or engagement by the Independent Certifier is immediately terminated and evidence of termination thereof has been provided to Contracting Authority in writing within five Business Days of the occurrence of any of the events described in paragraph 12(c) through and including 12(f) of Schedule 7 - Security Clearance Check Requirements; or (ii) the Independent Certifier has satisfied Contracting Authority, acting reasonably, that such IC Representative is no longer involved in the Project and is no longer involved in providing any of the "Functions" described in the Independent Certifier's Contract. If for reasons specified in this Section 23.8(a), Contracting Authority terminates the Independent Certifier and notice of such termination has been provided to Project Co, Project Co agrees that it shall not permit any of the IC's Representatives to have access to the Site or the Facility.

24. COMMISSIONING AND COMPLETION

24.1 Commissioning Activities

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

24.2 Final Commissioning Program

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect to the Project Co Commissioning and the Contracting Authority Commissioning and shall provide a copy thereof to the Independent Certifier, the Contracting Authority Commissioning Agent and the Contracting Authority Representative not less than 365 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall:
 - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co Commissioning shall be completed to achieve:
 - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
 - (B) Final Completion on or before the Scheduled Final Completion Date;
 - (ii) describe the requirements, and the timing and sequence of such requirements, of the Contracting Authority Commissioning activities;
 - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
 - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on Contracting Authority than those set out in the Outline Commissioning Program, unless otherwise agreed to by Contracting Authority;

- (v) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
 - (vi) include a schedule of each of the Project Co Commissioning Tests and the Contracting Authority Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
 - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning and the Contracting Authority Commissioning;
 - (viii) provide for the re-verification of systems following the Contracting Authority Commissioning; and
 - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law.
- (c) Contracting Authority shall provide Project Co with comments on the draft Final Commissioning Program in accordance with Schedule 10 – Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent required by Schedule 10 – Review Procedure within 30 days of receipt of any comments from Contracting Authority.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program.

24.3 Commencement of Project Co Commissioning

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

24.4 Substantial Completion Certificate

- (a)
- (i) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice (the "**10-Day Notice**").
 - (ii) For the purposes of determining Substantial Completion, and in accordance with Section 2(2) of the Construction Act, the Parties have agreed not to expeditiously complete the Fit-Out Works. The Parties have agreed that the price of the services or materials to be supplied, and required, to complete the Fit-Out Works shall be deducted from the total cost of the Works in determining substantial performance. For greater certainty, the Fit-Out Works shall be completed as a requirement of achieving Fit-Out Works Final Completion.
- (b) Project Co shall deliver notice to the Independent Certifier and the Contracting Authority Representative upon the satisfaction of all of the requirements for Substantial Completion under this Project Agreement (the "**Substantial Completion Notice**"). The Substantial Completion Notice shall (i) describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, (ii) include as appendices all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List, and (iii) include Project Co's opinion that the conditions for issuance of the Substantial Completion Certificate under this Project Agreement have been satisfied.
- (c) Within two Business Days of receiving the Substantial Completion Notice from Project Co, the Independent Certifier shall review the Substantial Completion Notice to determine whether or not the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List. For the purposes of this Section 24.4(c), if the Substantial Completion Notice contains a Substantial Completion Deliverable that, in the reasonable opinion of the Independent Certifier, is of such poor quality that it would impede, in a material way, the ability of Contracting Authority and the Independent Certifier to assess whether or not the requirements for Substantial Completion under this Project Agreement have been satisfied, then such Substantial Completion Deliverable shall be deemed to have not been included as part of the Substantial Completion Notice. Following such review and determination by the Independent Certifier and before the expiry of such two Business Day period, the Independent Certifier shall either deliver notice to Project Co and Contracting Authority:
- (i) confirming that the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List (the "**IC Substantial Completion Deliverables Confirmation**"); or
 - (ii) setting out a list of the Substantial Completion Deliverables that were not included in the Substantial Completion Notice (an "**IC Substantial Completion Deliverables Deficiencies List**").

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

the IC Substantial Completion Deliverables Confirmation is provided by the Independent Certifier to Project Co and Contracting Authority.

- (d) Contracting Authority shall, within 5 Business Days after receipt of the IC Substantial Completion Deliverables Confirmation, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied or, if applicable, any reasons as to why Contracting Authority considers that the Substantial Completion Certificate should not be issued.
- (e) Within 5 Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 24.4(d), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, to determine whether any Minor Deficiencies exist, and to issue to Contracting Authority and to Project Co either:
 - (i) the Substantial Completion Certificate, confirming the date of issue as the Substantial Completion Date and setting out the Minor Deficiencies List (if applicable) in accordance with Section 24.8; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (f) Where the Independent Certifier has issued a report in accordance with Section 24.4(e)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

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

- (g) In the event the Substantial Completion Certificate has not been issued within 45 days after the delivery of a 10-Day Notice or the delivery of a Substantial Completion Notice, unless the Substantial Completion Certificate has not been issued as a result of a failure of the Independent Certifier or Contracting Authority to comply with its applicable obligations in Sections 24.4(c) to 24.4(e), inclusive, such 10-Day Notice or Substantial Completion Notice, as applicable, shall be deemed to have been rescinded by Project Co and Project Co shall be required to deliver a new 10-Day Notice in order to initiate a new application for Substantial Completion.

- (h) For greater certainty, the Independent Certifier's decision to issue the IC Substantial Completion Deliverables Confirmation shall not limit or otherwise affect (i) any of Project Co's obligations under this Project Agreement to satisfy the requirements of Substantial Completion or (ii) the opinion of Contracting Authority or the determination of the Independent Certifier as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied pursuant to Section 24.4(d) and Section 24.4(e) respectively.
- (i) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Payment Commencement Date, and a Dispute in relation to the Payment Commencement Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.
- (j) The submission of the Substantial Completion Notice by Project Co in accordance with Section 24.4(b) shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority under this Project Agreement, arising prior to the submission of the Substantial Completion Notice, except:
 - (i) without limitation to the specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) arising prior to the submission of the Substantial Completion Notice and still unsettled; and
 - (ii) any third party claim which was not known to Project Co or a Project Co Party or could not reasonably have been known to Project Co or a Project Co Party at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from Contracting Authority in accordance with this Project Agreement.

24.5 Operation and Maintenance Manuals and Warranties

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

24.6 Contracting Authority Commissioning

- (a) The Parties acknowledge that the Contracting Authority Commissioning shall be performed both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall give Contracting Authority, Macdonald Block Occupants and any employees and subcontractors of any of the foregoing full access to the Site, the Facility and all relevant parts thereof at such times as may be set out in the Final Commissioning Program to enable Contracting Authority and Macdonald Block Occupants to undertake the Contracting Authority Commissioning in accordance with the Final Commissioning Program. Contracting Authority shall comply, and shall ensure that all Macdonald Block Occupants and all other Contracting Authority Parties comply, with the

directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing the Contracting Authority Commissioning.

- (b) Contracting Authority acknowledges that, during the Contracting Authority Commissioning Period, Project Co and each Subcontractor will be active in the Facility and, if applicable, in the Existing Facilities, in both the completion and rectification of Minor Deficiencies and the completion of Project Co Commissioning, and Contracting Authority shall take commercially reasonable steps to allow such activities to proceed in accordance with the Final Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the Contracting Authority Commissioning Period, Project Co and its Subcontractors shall cooperate with Contracting Authority and all Macdonald Block Occupants and all other Contracting Authority Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the Contracting Authority Commissioning activities are able to be completed in the timeframe for completion set out in the Final Commissioning Program.

24.7 Countdown Notice and Substantial Completion Deliverables

- (a) Project Co shall deliver a notice (the “**Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).
- (b) The Countdown Notice shall be delivered not less than 180 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 180 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.
- (c) In accordance with Section 20.5(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of Contracting Authority, in its sole discretion.
- (d) Within 15 Business Days of the Independent Certifier’s receipt of the Countdown Notice in accordance with Section 24.7(a), the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare and deliver to Project Co and Contracting Authority a list of deliverables (the “**Substantial Completion Deliverables List**”) that (A) are to be appended to and form part of the Substantial Completion Notice to be submitted by Project Co pursuant to Section 24.4(b), and (B) will constitute a minimum amount of evidence necessary for Project Co, in the Substantial Completion Notice, to describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion and to support Project Co’s opinion that the conditions for issuance of the Substantial Completion Certificate have been satisfied (collectively, the “**Substantial Completion Deliverables**”).
- (e) From time to time until the date that is 60 days prior to the Anticipated Substantial Completion Date, the Independent Certifier, in consultation with Project Co and Contracting Authority, may amend the Substantial Completion Deliverables List, including to set out any additional Substantial Completion Deliverables not identified in the Substantial Completion Deliverables List pursuant to Section 24.7(d). Each amended Substantial Completion Deliverables List shall, following its

preparation, be deemed to be the Substantial Completion Deliverables List for the purposes of this Project Agreement and be promptly delivered to Project Co and Contracting Authority.

- (f) For greater certainty, nothing in Section 24.7(d) or Section 24.7(e) limits or otherwise affects any of Project Co's obligations under this Project Agreement to satisfy the requirements of Substantial Completion or to describe, in reasonable detail, the satisfaction of such requirements in the Substantial Completion Notice pursuant to Section 24.4(b).

24.8 Minor Deficiencies

- (a) In the event that Minor Deficiencies exist when Project Co gives the Substantial Completion Notice, the Independent Certifier, in consultation with and being informed by the respective views of Project Co and Contracting Authority, shall prepare a list of all Minor Deficiencies (the "**Minor Deficiencies List**") identified at that time and an estimate of the cost for Contracting Authority, and the time for Project Co, to complete and rectify such Minor Deficiencies. Contracting Authority may withhold from the Substantial Completion Payment a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for Contracting Authority to complete and rectify all Minor Deficiencies (the "**Completion Holdback**"), which holdback shall be held in an interest bearing account.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for completing and rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of Contracting Authority's or any Macdonald Block Occupant's use and enjoyment of the Existing Facilities and/or Facility or disruption of the Project Operations or the performance of the Macdonald Block Activities or the Contracting Authority FM Services.
- (c) The Independent Certifier must prepare the Minor Deficiencies List in relation to the Substantial Completion Notice as soon as reasonably practicable and, in any event, before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) No later than 20 Business Days prior to the Anticipated Final Completion Date, Contracting Authority may direct the Independent Certifier to amend, in consultation with and being informed by the respective views of Project Co and Contracting Authority, the Minor Deficiencies List on one occasion to include a list of any and all Minor Deficiencies that were identified after the preparation of, or not included in, the Minor Deficiencies List pursuant to Section 24.8(a). The Independent Certifier shall prepare the amended Minor Deficiencies List as soon as reasonably practicable and, in any event, within 10 Business Days of such direction given by Contracting Authority. The amended Minor Deficiencies List shall, following its preparation, be deemed to be the Minor Deficiencies List for the purposes of this Project Agreement, including, without limitation, for the purposes of Sections 24.8 to 24.10 (inclusive). The amount of the Completion Holdback shall not be affected by the amended Minor Deficiencies List.
- (e) Where the Independent Certifier has been directed by Contracting Authority to amend the Minor Deficiencies List pursuant to Section 24.8(d), the Independent Certifier shall specify a completion and rectification time for any newly added Minor Deficiencies that is no greater than 10 Business Days from the date of the issuance of such amended Minor Deficiencies List.

- (f) Contracting Authority may, in its sole discretion, waive any requirement for Substantial Completion, including with respect to FF&E, and the failure to meet any such requirement shall constitute a Minor Deficiency.
- (g) Nothing in this Section 24.8 shall prevent Contracting Authority from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 – Payment Mechanism.

24.9 Rectification of Minor Deficiencies

- (a) Project Co shall, in consultation with the Contracting Authority Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations, the performance of the Macdonald Block Activities and the Contracting Authority FM Services, complete and rectify all Minor Deficiencies
 - (i) within 45 days of the issuance of the Minor Deficiencies List pursuant to Section 24.8(a) for all Minor Deficiencies where no time for completion and rectification has been specified by the Independent Certifier; or
 - (ii) within the time for completion and rectification of any Minor Deficiency where such a time was specified by the Independent Certifier in the Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Facility and the Existing Facilities.

24.10 Failure to Rectify Minor Deficiencies

- (a) If Project Co fails to complete and rectify any Minor Deficiency within the time for its completion and rectification specified in Section 24.9, upon the delivery of not less than five Business Days prior notice to Project Co, Contracting Authority may, in its sole discretion, engage others to perform the work necessary to complete and rectify such Minor Deficiency at the risk and cost of Project Co, and Contracting Authority may deduct such cost from the Completion Holdback and interest accrued thereon.
- (b) Within 2 Business Days of the completion and rectification of all Minor Deficiencies, Contracting Authority shall release to Project Co the Completion Holdback, together with all interest accrued thereon and applicable HST. Where Contracting Authority exercises its rights pursuant to Section 24.10(a), if the cost of such completion and rectification exceeds the amount of the Completion Holdback and interest, then Project Co shall reimburse Contracting Authority for all such excess cost.

24.11 Final Completion Countdown Notice

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

Notice not less than 90 days prior to the Scheduled Final Completion Date, the Anticipated Final Completion Date shall be deemed to be the same date as the Scheduled Final Completion Date.

24.12 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates delivering the Final Completion Notice.
- (b) Project Co shall give the Independent Certifier and the Contracting Authority Representative notice (the "**Final Completion Notice**") upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies, together with Project Co's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied.
- (c) Contracting Authority shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 24.12(b), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and to Project Co either:
 - (i) the Final Completion Certificate, confirming the date of issue as the Final Completion Date; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.12(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Final Completion

Notice and Sections 24.12(b) to (e), inclusive, shall be repeated until the Final Completion Certificate has been issued.

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

24.13 Effect of Certificates/Use

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate, any taking over or use by Contracting Authority of any part of the Facility under the terms of this Project Agreement, and any commencement of any Macdonald Block Activities or any Contracting Authority FM Services shall, in no way:
 - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List; or
 - (ii) be construed as an approval by Contracting Authority or any Province Person of the Works or the way in which they have been carried out.

24.14 [INTENTIONALLY DELETED]

24.15 [INTENTIONALLY DELETED]

24A. FIT-OUT WORKS COMMISSIONING AND COMPLETION

24A.1 Fit-Out Works Commissioning Activities

- (a) Project Co shall perform all Fit-Out Works Phase Project Co Commissioning, and shall facilitate the performance of all Fit-Out Works Phase Contracting Authority Commissioning, pursuant to each Fit-Out Works Phase Commissioning Program.

24A.2 Fit-Out Works Phase Commissioning Program

- (a) Project Co shall prepare a draft Fit-Out Works Phase Commissioning Program in respect of each Fit-Out Works Phase Project Co Commissioning and Fit-Out Works Phase Contracting Authority

Commissioning and shall provide a copy thereof to the Independent Certifier, the Contracting Authority Commissioning Agent and the Contracting Authority Representative not less than 60 days prior to each applicable Scheduled Fit-Out Works Phase Completion Date.

- (b) Each Fit-Out Works Phase Commissioning Program shall:
- (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the applicable Fit-Out Works Phase Project Co Commissioning shall be completed to achieve:
 - (A) Fit-Out Works Phase Completion on or before the applicable Scheduled Fit-Out Works Phase Completion Date; and
 - (B) with respect to the last Phase of the Fit-Out Works to be completed by Project Co, Fit-Out Works Final Completion on or before the Scheduled Fit-Out Works Final Completion Date;
 - (ii) describe the requirements, and the timing and sequence of such requirements, of the applicable Fit-Out Works Phase Contracting Authority Commissioning activities;
 - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
 - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on Contracting Authority than those set out in the Outline Commissioning Program, unless otherwise agreed to by Contracting Authority;
 - (v) include the names of the individuals or companies proposed to perform all applicable Fit-Out Works Phase Project Co Commissioning;
 - (vi) include a schedule of each of the Fit-Out Works Phase Project Co Commissioning Tests and the Fit-Out Works Phase Contracting Authority Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
 - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the applicable Fit-Out Works Phase Project Co Commissioning and the Fit-Out Works Phase Contracting Authority Commissioning;
 - (viii) provide for the re-verification of systems following the applicable Fit-Out Works Phase Contracting Authority Commissioning; and
 - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of each Fit-Out Works Phase Commissioning Program or Applicable Law.
- (c) Contracting Authority shall provide Project Co with comments on each draft Fit-Out Works Phase Commissioning Program in accordance with Schedule 10 – Review Procedure, and Project Co shall revise each draft Fit-Out Works Phase Commissioning Program to the extent required by Schedule 10 – Review Procedure within 10 days of receipt of any comments from Contracting Authority.

- (d) When agreed by the Parties, the applicable Fit-Out Works Phase Commissioning Program shall replace the Outline Commissioning Program with respect to the applicable Fit-Out Works Phase Completion.

24A.3 Commencement of Fit-Out Works Phase Project Co Commissioning

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

24A.4 Fit-Out Works Phase Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates delivering any Fit-Out Works Phase Completion Notice.
- (b) Project Co shall give the Independent Certifier and the Contracting Authority Representative notice (the "**Fit-Out Works Phase Completion Notice**") upon the satisfaction of all requirements for a Fit-Out Works Phase Completion, which Fit-Out Works Phase Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for the Fit-Out Works Phase Completion, together with Project Co's opinion as to whether the conditions for issuance of the Fit-Out Works Phase Completion Certificate have been satisfied.
- (c) Contracting Authority shall, within 5 Business Days after receipt of the Fit-Out Works Phase Completion Notice, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions for issuance of the applicable Fit-Out Works Phase Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that such Fit-Out Works Phase Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 24A.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the applicable Fit-Out Works Phase Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, to determine whether any Fit-Out Works Phase Minor Deficiencies exist, and to issue to Contracting Authority and to Project Co either:

- (i) the applicable Fit-Out Works Phase Completion Certificate, confirming the date of issue as the Fit-Out Works Phase Completion Date and setting out the applicable Fit-Out Works Phase Minor Deficiencies List (if applicable) in accordance with Section 24A.8; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the applicable Fit-Out Works Phase Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24A.4(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Fit-Out Works Phase Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Fit-Out Works Phase Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Fit-Out Works Phase Completion Notice and Sections 24A.4(c) to (e), inclusive, shall be repeated until the applicable Fit-Out Works Phase Completion Certificate has been issued.

- (f) The Independent Certifier’s decision to issue or not to issue a Fit-Out Works Phase Completion Certificate shall be final and binding on the Parties solely in respect of determining the applicable Fit-Out Works Phase Completion Payment Date, and a Dispute in relation to any Fit-Out Works Phase Completion Payment Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier’s decision to issue or not to issue the applicable Fit-Out Works Phase Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

24A.5 Fit-Out Works Operation and Maintenance Manuals and Warranties

- (a) Project Co shall prepare and deliver to Contracting Authority any and all necessary operation and maintenance manuals for each Phase of the Fit-Out Works no later than 10 days prior to the Fit-Out Works Phase Completion Date and shall ensure that Contracting Authority has the direct benefit of all applicable manufacturers’ warranties for the applicable Phase of the Fit-Out Works. From and after such date and throughout the remainder of the Project Term, Project Co shall prepare and keep current, and at all reasonable times make available to Contracting Authority, such operation and maintenance manuals and all other such manuals prepared from time to time in respect of such Phase of the Fit-Out Works.

24A.6 Fit-Out Works Phase Contracting Authority Commissioning

- (a) The Parties acknowledge that each Fit-Out Works Phase Contracting Authority Commissioning shall be performed both before and after each Fit-Out Works Phase Completion Date. Prior to each Fit-Out Works Phase Completion, Project Co shall give Contracting Authority, Macdonald Block

Occupants and any employees and subcontractors of any of the foregoing full access to the Site, the Facility and all relevant parts thereof at such times as may be set out in the applicable Fit-Out Works Phase Commissioning Program to enable Contracting Authority and Macdonald Block Occupants to undertake the applicable Fit-Out Works Phase Contracting Authority Commissioning in accordance with such Fit-Out Works Phase Commissioning Program. Contracting Authority shall comply, and shall ensure that all Macdonald Block Occupants and all other Contracting Authority Parties comply, with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing the Fit-Out Works Phase Contracting Authority Commissioning.

- (b) Contracting Authority acknowledges that, during each Fit-Out Works Phase Contracting Authority Commissioning Period, Project Co and each Subcontractor will be active in the Facility and, if applicable, in the Existing Facilities, in both the completion and rectification of Fit-Out Works Phase Minor Deficiencies and the completion of Fit-Out Works Phase Project Co Commissioning, and Contracting Authority shall take commercially reasonable steps to allow such activities to proceed in accordance with the applicable Fit-Out Works Phase Commissioning Program.
- (c) Project Co acknowledges that, prior to and during each Fit-Out Works Phase Contracting Authority Commissioning Period, Project Co and its Subcontractors shall cooperate with Contracting Authority and all Macdonald Block Occupants and all other Contracting Authority Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the applicable Fit-Out Works Phase Contracting Authority Commissioning activities are able to be completed in the timeframe for completion set out in the applicable Fit-Out Works Phase Commissioning Program.

24A.7 Fit-Out Works Phase Countdown Notice

- (a) With respect to each Fit-Out Works Phase Completion, Project Co shall deliver a notice (the “**Fit-Out Works Phase Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates that the applicable Fit-Out Works Phase Completion will be achieved (the “**Anticipated Fit-Out Works Phase Completion Date**”).
- (b) Each Fit-Out Works Phase Countdown Notice shall be delivered not less than 30 days prior to the applicable Anticipated Fit-Out Works Phase Completion Date. If Project Co fails to deliver any Fit-Out Works Phase Countdown Notice not less than 30 days prior to the applicable Scheduled Fit-Out Works Phase Completion Date, then the applicable Anticipated Fit-Out Works Phase Completion Date shall be deemed to be the same date as such Scheduled Fit-Out Works Phase Completion Date.
- (c) In accordance with Section 20.5A(a), no Anticipated Fit-Out Works Phase Completion Date shall be earlier than the applicable Scheduled Fit-Out Works Phase Completion Date without the prior written consent of Contracting Authority, in its sole discretion.

24A.8 Fit-Out Works Phase Minor Deficiencies

- (a) In the event that Fit-Out Works Phase Minor Deficiencies exist in respect of a Phase of the Fit-Out Works when Project Co gives a Fit-Out Works Phase Completion Notice, the Independent Certifier, in consultation with and being informed by the respective views of Project Co and Contracting Authority, shall prepare a list of all Fit-Out Works Phase Minor Deficiencies in respect of such Phase of the Fit-Out Works (the “**Fit-Out Works Phase Minor Deficiencies List**”) identified at

that time and an estimate of the cost for Contracting Authority, and the time for Project Co, to complete and rectify such Fit-Out Works Phase Minor Deficiencies. Contracting Authority may withhold from the next payment or payments otherwise due to Project Co a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for Contracting Authority to complete and rectify all Fit-Out Works Phase Minor Deficiencies identified in the applicable Fit-Out Works Phase Minor Deficiencies List (the “**Fit-Out Works Phase Completion Holdback**”), which holdback shall be held in an interest bearing account.

- (b) Each Fit-Out Works Phase Minor Deficiencies List will contain the schedule for the completion and rectification of the applicable Fit-Out Works Phase Minor Deficiencies. In determining the relevant time for completing and rectifying such Fit-Out Works Phase Minor Deficiencies, Project Co shall schedule the completion and rectification of such Fit-Out Works Phase Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of Contracting Authority's or any Macdonald Block Occupant's use and enjoyment of the Existing Facilities and/or Facility or disruption of the Project Operations or the performance of the Macdonald Block Activities or the Contracting Authority FM Services.
- (c) The Independent Certifier must prepare the Fit-Out Works Phase Minor Deficiencies List in relation to each Fit-Out Works Phase Completion Notice as soon as reasonably practicable and, in any event, before the applicable Fit-Out Works Phase Completion Certificate is issued, but shall not withhold such Fit-Out Works Phase Completion Certificate by reason solely that there are Fit-Out Works Phase Minor Deficiencies.
- (d) No later than 25 Business Days after each Fit-Out Works Phase Completion Date, Contracting Authority may direct the Independent Certifier to amend, in consultation with and being informed by the respective views of Project Co and Contracting Authority, the applicable Fit-Out Works Phase Minor Deficiencies List on one occasion to include a list of any and all Fit-Out Works Phase Minor Deficiencies in respect of the applicable Phase of the Fit-Out Works that were identified after the preparation of, or not included in, such Fit-Out Works Phase Minor Deficiencies List pursuant to Section 24A.8(a). The Independent Certifier shall prepare such amended Fit-Out Works Phase Minor Deficiencies List as soon as reasonably practicable and, in any event, within 10 Business Days of such direction given by Contracting Authority. Each amended Fit-Out Works Phase Minor Deficiencies List shall, following its preparation, be deemed to be the Fit-Out Works Phase Minor Deficiencies List in respect of the applicable Phase of the Fit-Out Works for the purposes of this Project Agreement, including, without limitation, for the purposes of Sections 24A.8 to 24A.10 (inclusive). No amount of a Fit-Out Works Phase Completion Holdback shall be affected by any amended Fit-Out Works Phase Minor Deficiencies List.
- (e) Where the Independent Certifier has been directed by Contracting Authority to amend a Fit-Out Works Phase Minor Deficiencies List pursuant to Section 24A.8(d), the Independent Certifier shall specify a completion and rectification time for any newly added Fit-Out Works Phase Minor Deficiencies in respect of the applicable Phase of the Fit-Out Works that is no greater than 10 Business Days from the date of the issuance of such amended Fit-Out Works Phase Minor Deficiencies List.
- (f) Contracting Authority may, in its sole discretion, waive any requirement for a Fit-Out Works Phase Completion, and the failure to meet any such requirement shall constitute a Fit-Out Works Phase Minor Deficiency.

- (g) Nothing in this Section 24A.8 shall prevent Contracting Authority from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 – Payment Mechanism.

24A.9 Rectification of Fit-Out Works Phase Minor Deficiencies

- (a) Project Co shall, in consultation with the Contracting Authority Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations, the performance of the Macdonald Block Activities and the Contracting Authority FM Services, complete and rectify all Fit-Out Works Phase Minor Deficiencies in respect of a Phase of the Fit-Out Works
 - (i) within 45 days of the issuance of the applicable Fit-Out Works Phase Minor Deficiencies List pursuant to Section 24A.8(a) for all Fit-Out Works Phase Minor Deficiencies where no time for completion and rectification has been specified by the Independent Certifier; or
 - (ii) within the time for completion and rectification of any Fit-Out Works Phase Minor Deficiency where such a time was specified by the Independent Certifier in the applicable Fit-Out Works Phase Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Fit-Out Works Phase Minor Deficiencies in respect of a Phase of the Fit-Out Works may require work outside of normal working hours in order to accommodate the efficient operation of the Facility, including such Phase of the Fit-Out Works.

24A.10 Failure to Rectify Fit-Out Works Phase Minor Deficiencies

- (a) If Project Co fails to complete and rectify any Fit-Out Works Phase Minor Deficiency within the time for its completion and rectification specified in Section 24A.9, upon the delivery of not less than five Business Days prior notice to Project Co, Contracting Authority may, in its sole discretion, engage others to perform the work necessary to complete and rectify such Fit-Out Works Phase Minor Deficiency at the risk and cost of Project Co, and Contracting Authority may deduct such cost from the Fit-Out Works Phase Completion Holdbacks and interest accrued thereon.
- (b) Within 2 Business Days of the completion and rectification of all Fit-Out Works Phase Minor Deficiencies, Contracting Authority shall release to Project Co the Fit-Out Works Phase Completion Holdbacks, together with all interest accrued thereon and applicable HST. Where Contracting Authority exercises its rights pursuant to Section 24A.10(a), if the cost of such completion and rectification exceeds the amount of the Fit-Out Works Phase Completion Holdbacks and interest, then Project Co shall reimburse Contracting Authority for all such excess cost.

24A.11 Fit-Out Works Final Completion Countdown Notice

- (a) Project Co shall deliver a notice (the “**Fit-Out Works Final Completion Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates that Fit-Out Works Final Completion will be achieved (the “**Anticipated Fit-Out Works Final Completion Date**”).

- (b) The Fit-Out Works Final Completion Countdown Notice shall be delivered not less than 60 days prior to the Anticipated Fit-Out Works Final Completion Date. If Project Co fails to deliver the Fit-Out Works Final Completion Countdown Notice not less than 60 days prior to the Scheduled Fit-Out Works Final Completion Date, the Anticipated Fit-Out Works Final Completion Date shall be deemed to be the same date as the Scheduled Fit-Out Works Final Completion Date.

24A.12 Fit-Out Works Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates delivering the Fit-Out Works Final Completion Notice.
- (b) Project Co shall give the Independent Certifier and the Contracting Authority Representative notice (the "**Fit-Out Works Final Completion Notice**") upon the satisfaction of all requirements for Fit-Out Works Final Completion, which Fit-Out Works Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Fit-Out Works Final Completion, including the completion and rectification of all Fit-Out Works Phase Minor Deficiencies, together with Project Co's opinion as to whether the conditions for issuance of the Fit-Out Works Final Completion Certificate have been satisfied.
- (c) Contracting Authority shall, within 5 Business Days after receipt of the Fit-Out Works Final Completion Notice, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions for issuance of the Fit-Out Works Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Fit-Out Works Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 24A.12(b), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Fit-Out Works Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and to Project Co either:
 - (i) the Fit-Out Works Final Completion Certificate, confirming the date of issue as the Fit-Out Works Final Completion Date; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Fit-Out Works Final Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24A.12(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and

- (iii) any additional Fit-Out Works Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Fit-Out Works Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Fit-Out Works Final Completion Notice and Sections 24A.12(b) to (e), inclusive, shall be repeated until the Fit-Out Works Final Completion Certificate has been issued.

- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Fit-Out Works Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) The submission of the Fit-Out Works Final Completion Notice by Project Co in accordance with Section 24A.12(b), shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority, arising prior to the submission of the Fit-Out Works Final Completion Notice, except:
 - (i) without limitation to the specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) prior to the Fit-Out Works Final Completion Notice and still unsettled; and
 - (ii) any third party claim which was not known to Project Co or a Project Co Party or could not reasonably have been known to Project Co or a Project Co Party at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from Contracting Authority in accordance with this Project Agreement.

24A.13 Effect of Certificates/Use

- (a) The issuance of a Fit-Out Works Phase Completion Certificate and the Fit-Out Works Final Completion Certificate and any taking over or use by Contracting Authority of any part of a Phase of the Fit-Out Works under the terms of this Project Agreement, shall, in no way:
 - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the applicable Fit-Out Works Phase Minor Deficiencies List; or
 - (ii) be construed as an approval by Contracting Authority of the Works or the way in which they have been carried out.

25. PROJECT CO SERVICE OBLIGATIONS

25.1 Overall Responsibility

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

25.2 Commencement of Services

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

25.3 Coordination and No Disruption

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

25.4 No Closure of Facility

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

25.5 Equipment for Project Co Services

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

26. MAINTENANCE**26.1 Maintenance Plans**

- (a) No later than 90 days prior to the Substantial Completion Date, Project Co shall submit to the Contracting Authority Representative for review pursuant to Schedule 10 – Review Procedure, the Scheduled Maintenance Plan for the first Contract Year and the Five-Year Maintenance Plan for the first 5 Contract Years, and shall update such plans as provided for in the Output Specifications thereafter.
- (b) Project Co shall perform the Maintenance Work as identified in the Scheduled Maintenance Plan, and, without limiting Project Co's other obligations in respect of the performance of the Project Operations, shall undertake all Maintenance Work:
- (i) in accordance with the Output Specifications;
 - (ii) at the times scheduled for such Maintenance Work;
 - (iii) in accordance with Good Industry Practice;
 - (iv) in a manner that allows the Facility to remain operational at all times;
 - (v) otherwise in accordance with the Scheduled Maintenance Plan; and
 - (vi) in a manner consistent with the Lifecycle Replacement Schedule, as such may be amended or updated from time to time in accordance with the terms of this Project Agreement.

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

26.2 Revisions to Scheduled Maintenance Plan

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

26.3 Contracting Authority Change in Timing

- (a) Notwithstanding the establishment of or entitlement to proceed with any Scheduled Maintenance Plan, the Contracting Authority Representative may, at any time and from time to time, require Project Co to accelerate or defer any Scheduled Maintenance by giving written notice to Project Co not less than 15 Business Days prior to the scheduled date for performing such Scheduled Maintenance, which notice shall set out the time and periods at or during which Contracting Authority requires the Scheduled Maintenance to be performed.

- (b) Within 5 Business Days after receipt by Project Co of a notice referred to in Section 26.3(a), Project Co shall notify Contracting Authority of the amount of any additional reasonable costs which it estimates it shall incur as a direct consequence of such acceleration or deferral (the “**Estimated Increased Maintenance Costs**”). Contracting Authority shall, within 5 Business Days after receipt by Contracting Authority of notification of the amount of the Estimated Increased Maintenance Costs, at its option, either confirm or withdraw its request to accelerate or defer the Scheduled Maintenance. If Contracting Authority does not respond within 5 Business Days, the request shall be deemed to have been withdrawn. Contracting Authority shall reimburse Project Co for any reasonable costs actually incurred by Project Co as a consequence of such acceleration or deferral up to, but not exceeding, the amount of the Estimated Increased Maintenance Costs.

26.4 Unscheduled Maintenance Work

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

26.5 Emergency Maintenance Work

- (a) If, as a result of an Emergency, the need arises for Unscheduled Maintenance Work, Project Co may perform such Unscheduled Maintenance Work, provided that Project Co shall notify the Contracting Authority Representative as soon as possible (and in any event within 2 Business Days of the occurrence of the Emergency) of the reasons for and extent of the Unscheduled Maintenance Work.
- (b) Project Co shall use commercially reasonable efforts to minimize the duration of such Unscheduled Maintenance Work and its impact upon the performance of the Macdonald Block Activities and the Contracting Authority FM Services. Project Co acknowledges and agrees that Unscheduled Maintenance Work may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.
- (c) Nothing in this Section 26.5 shall prevent Contracting Authority from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 - Payment Mechanism.

26.6 Other Maintenance Work

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

26.7 Plant Services

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

26.8 Performance Audits

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

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

- (b) Contracting Authority shall notify Project Co in writing at least 10 Business Days prior to the date that Contracting Authority wishes to cause a Performance Audit to be undertaken. Contracting Authority shall, acting in good faith, consider any reasonable request by Project Co for the Performance Audit to be performed on an alternative date if such request is made by Project Co in writing at least 5 Business Days prior to the date originally requested by Contracting Authority, on the basis that performing the Performance Audit on the date originally requested by Contracting Authority would materially prejudice Project Co's ability to provide the Project Co Services.
- (c) When causing any Performance Audit to be undertaken, Contracting Authority shall use commercially reasonable efforts to minimize any disruption caused to the provision of the Project Co Services. The cost of a Performance Audit, except where Section 26.8(d) applies, shall be borne by Contracting Authority. Project Co shall provide Contracting Authority, at no additional cost or charge, with any reasonable assistance required by Contracting Authority from time to time during the Performance Audit.
- (d) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Contracting Authority shall:
- (i) provide Project Co with a written notice of non-compliance;
 - (ii) provide Project Co with instructions regarding rectification or Maintenance Work required to be performed by Project Co in order for Project Co to perform its obligations;
 - (iii) specify a reasonable period of time within which Project Co must perform such rectification or Maintenance Work; and
 - (iv) be entitled to exercise all rights pursuant to Section 30.

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

27. HUMAN RESOURCES

27.1 [INTENTIONALLY DELETED]

27.2 [INTENTIONALLY DELETED]

27.3 [INTENTIONALLY DELETED]

27.4 Admittance of Personnel

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

27.5 Confirmation of Action

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

27.6 Notification of Personnel

- (a) If and when so requested by Contracting Authority, Project Co shall, within 3 Business Days of such request, provide a list of the names of, as applicable, all persons performing Project Operations or that it expects may require admission, in connection with this Project Agreement, to any premises

occupied by Contracting Authority, specifying the capacities in which those persons are concerned with this Project Agreement and, subject to Applicable Law, giving such other particulars as Contracting Authority may reasonably require.

27.7 Finality as to Admission

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

27.8 Adherence to Governmental Authority Regulations, Policies and Directions

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

27.9 [INTENTIONALLY DELETED]**27.10 [INTENTIONALLY DELETED]****27.11 Security Clearance Check Requirements and Changes in Security Clearance Check Requirements**

- (a) Project Co shall, at its sole cost and expense (except as otherwise specifically provided in Schedule 7 - Security Clearance Check Requirements), comply with the requirements of Schedule 7 - Security Clearance Check Requirements, and ensure that all Designated Project Co Individuals, potential Project Co Staff and other persons outlined in Schedule 7 - Security Clearance Check Requirements comply with the requirements of such Schedule.
- (b) If Project Co has complied with the provisions of Schedule 7 - Security Clearance Check Requirements in relation to a particular Designated Project Co Individual and Contracting Authority requires that a Designated Project Co Individual be removed from the Project (including, for clarity, the Facility) on the grounds of public interest and/or security, Project Co shall remove such Designated Project Co Individual from the Project.
- (c) If Project Co has not complied with the provisions of Schedule 7 - Security Clearance Check Requirements, in relation to a particular Designated Project Co Individual and Contracting Authority requires that such Designated Project Co Individual be removed from the Project (including, for clarity, the Facility) on the grounds of public interest and/or security Project Co shall remove such Designated Project Co Individual from the Project.
- (d) Contracting Authority shall notify Project Co of any proposed change to the Security Clearance Check Requirements as soon as practicable (and in any event prior to the change taking effect). Contracting Authority shall consult with Project Co about such changes, but the final decision shall be Contracting Authority's.
- (e) Any change in Security Clearance Check Requirements from those in existence on Commercial Close shall, to the extent such change materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely effects Project Co's cost of performing the Project Operations, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

- (f) Contracting Authority may, in its sole discretion, notify Project Co that Project Co shall not be obliged, for the period of time specified in the notice, to comply with any change of the Security Clearance Check Requirements and that Project Co should continue to comply with the Security Clearance Check Requirements in effect prior to any change.

27.12 Staff Competency

- (a) Project Co shall ensure that:
- (i) there shall at all times be a sufficient number of competent persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Co Services with the requisite level of skill and experience to perform the Project Co Services in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Project Co or any Project Co Party to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for each of the Project Co Services;
 - (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) who are engaged in the provision of the Project Co Services receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all (i) health and safety legislation, rules, procedures and requirements that apply to the Project Operations, and (ii) Authority Requirements; and
 - (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Co Services to ensure the proper performance of this Project Agreement.

27.13 Convictions

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

27.14 Effect of Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party to, ensure that no person who:

- (i) discloses any Relevant Conviction, or who is found to have any Relevant Convictions following the completion of the Security Clearance Check set forth in Schedule 7 - Security Clearance Check Requirements;
- (ii) discloses that he or she has been arrested or detained; or
- (iii) discloses that he or she has been charged with an offence that could lead to a Relevant Conviction,

in all cases of which Project Co or a Project Co Party is aware or ought to be aware, is allowed to perform any of the Project Co Services, including to access the Site and/or the Facility to perform such services, without the prior written consent of Contracting Authority, in its sole discretion.

27.15 Notification of Convictions

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that Contracting Authority is kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Project Co Services who, subsequent to the commencement of such employment or engagement, (i) has been arrested or detained; (ii) receives a Relevant Conviction; or (iii) is charged with an offence that could lead to a Relevant Conviction (of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party). Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to Contracting Authority as contemplated in this Section 27.
- (b) Project Co shall not permit any Designated Project Co Individual who performs any of the Project Operations who has been charged with an offence that could lead to a Relevant Conviction to perform such Project Operations, including to access the Site or the Facility to perform his work, while such charge is outstanding.

27.16 Disciplinary Action

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

27.17 Human Resources Policies

- (a) Project Co shall ensure that there are set up and maintained by Project Co and by all Project Co Parties, and that each of them shall comply and cause compliance with, human resources policies

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

- (b) If Contracting Authority provides any comments on, or requests any amendments, modifications or changes to, the policies or procedures maintained pursuant to Section 27.17(a), Project Co shall consider such comments and amendments, modifications and changes and discuss them with Contracting Authority. Project Co shall incorporate those comments, amendments, modifications and changes with which it agrees, acting reasonably, to the extent that such comments, amendments, modifications or changes comply with Applicable Laws.

27.18 Management Organizations

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

28. STOCKS, CONSUMABLES, MATERIAL AND EQUIPMENT

28.1 Standards

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

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

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

28.2 Hazardous Substances and Materials

- (a) Except to the extent required pursuant to the Output Specifications, Project Co shall not bring, install, keep, maintain or use in or on the Existing Facilities or the Facility, or cause, authorize or permit any Project Co Party to bring, install, keep, maintain or use, any substances, materials, equipment or apparatus, which is likely to cause or in fact causes:
- (i) material damage to the Existing Facilities or the Facility;

- (ii) dust, noise or vibration or any other nuisance to the owners or occupiers of any property adjoining or near to the Existing Facilities or the Facility;
- (iii) the generation, accumulation or migration of any Hazardous Substance in an unlawful manner whether within or outside the Existing Facilities or the Facility; or
- (iv) an adverse effect on the health or well-being of any Province Person or any Macdonald Block Service User,

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

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

- (B) prevent any adverse effect on the health or well-being of any person, including any Province Person and any Macdonald Block Service User,

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

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

28.3 Change in Hazardous Materials Policies

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

29. MONITORING**29.1 Monitoring of Performance**

- (a) Project Co shall monitor the performance of the Project Co Services in the manner and at the frequencies set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations, as set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, Project Co shall, as reasonably requested by Contracting Authority, provide the Contracting Authority Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) Contracting Authority may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.

29.2 Failure Points

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

29.3 Warning Notices

- (a) Without prejudice to Contracting Authority's rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues more than:
- (i) [REDACTED] Failure Points in respect of Availability Failures;
 - (ii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the General Management Services;
 - (iii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Plant Services;
 - (iv) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the FM Help Desk Services;
 - (v) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Cleaning Services;
 - (vi) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of the FF&E Services and Moves, Adds and Changes Services; or
 - (vii) an aggregate of [REDACTED] Failure Points in respect of System Failures,

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

29.4 Monitoring Notices

(a) Without prejudice to Contracting Authority’s rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues more than:

- (i) [REDACTED]Failure Points in respect of Availability Failures;
- (ii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the General Management Services;
- (iii) an aggregate of [REDACTED]Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Plant Services;
- (iv) an aggregate of [REDACTED]Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the FM Help Desk Services;
- (v) an aggregate of [REDACTED]Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Cleaning Services;
- (vi) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of the FF&E Services and Moves, Adds and Changes Services; or
- (vii) an aggregate of [REDACTED]Failure Points in respect of System Failures,

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

(b) Contracting Authority may give a Warning Notice pursuant to Section 29.3 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.

(c) If a Monitoring Notice is given, then:

- (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;
- (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that Contracting Authority was not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, notify Contracting Authority in writing of the matters objected to and any changes

necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;

- (iii) if Project Co gives Contracting Authority a notice under Section 29.4(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of Contracting Authority's receipt of such notice, may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure;
 - (iv) if Project Co fails to increase Project Co's monitoring as provided herein, Contracting Authority may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 29.4(c)(iii);
 - (v) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that Contracting Authority was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse Contracting Authority for any reasonable costs and expenses incurred by or on behalf of Contracting Authority in relation to the giving of such Monitoring Notice; and
 - (vi) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that Contracting Authority was not entitled to give the applicable Monitoring Notice, Contracting Authority shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of Contracting Authority that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar Project Co Service, Project Co may apply for the withdrawal of such Monitoring Notice. If Contracting Authority is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) If it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that Contracting Authority was not entitled to give any Monitoring Notice, Contracting Authority shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

30. CONTRACTING AUTHORITY'S REMEDIAL RIGHTS

30.1 Exercise of Remedial Rights

- (a) Contracting Authority may exercise all rights set out in this Section 30 at any time and from time to time if:
 - (i) Contracting Authority, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:

- (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any user of any part of or the whole of the Site, and/or the Facility, including employees, volunteers, visitors to the Existing Facilities or the Facility, Province Persons, Macdonald Block Service Users and other members of the public;
- (B) does or can reasonably be expected to result in a materially adverse interruption in the provision of one or more of the Project Operations;
- (C) does or can reasonably be expected to materially prejudice Contracting Authority's ability to carry out the Macdonald Block Activities or provide the Contracting Authority FM Services; or
- (D) may potentially compromise the reputation or integrity of Contracting Authority or any Province Person or the nature of the Province's public services, so as to affect public confidence in such services,

provided that:

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

- (D) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the FM Help Desk Services;
 - (E) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the Cleaning Services;
 - (F) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of the FF&E Services and Moves, Adds and Changes Services; or
 - (G) an aggregate of [REDACTED] Failure Points in respect of System Failures;
- (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the same or similar Project Co Service;
 - (iv) if, pursuant to Section 26.8, a Performance Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or Maintenance Work as provided pursuant to Section 26.8(e)(i);
 - (v) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations, the Macdonald Block Activities or the Contracting Authority FM Services;
 - (vi) Contracting Authority has received a notice under either the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement that entitles Contracting Authority to exercise step-in rights thereunder;
 - (vii) Project Co has failed to comply with any written direction issued by or on behalf of Contracting Authority (or any designate appointed pursuant to Section 60.1);
 - (viii) Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to its COR Certification or OHSAS 18001 Accreditation, as the case may be, in accordance with Section 9.9, or Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to H&S Construction Inspections in accordance with Section 13.1(i), or to perform its obligations to rectify any non-compliance noted in any H&S Construction Inspection Report in accordance with Section 13.1(l); or
 - (ix) Project Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 9.10 or Project Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 9.10.

30.2 Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, Contracting Authority may exercise all of the rights set out in this Section 30 at any time and from

time to time if Contracting Authority, acting reasonably, considers the circumstances to constitute an Emergency.

30.3 Rectification

- (a) Without prejudice to Contracting Authority's rights under Section 42 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 30.1 or 30.2, Contracting Authority may, by written notice, require Project Co to take such steps as Contracting Authority, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of each Subcontractor or a limited suspension of the performance of the Works, and Project Co shall use commercially reasonable efforts to comply with Contracting Authority's requirements as soon as reasonably practicable.
- (b) If Contracting Authority gives notice to Project Co pursuant to Section 30.3(a) and either:
 - (i) Project Co does not either confirm, within 5 Business Days of such notice or such shorter period as is appropriate in the case of an Emergency or in the event Contracting Authority is entitled to exercise step-in rights under the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement, that it is willing to take the steps required in such notice or present an alternative plan to Contracting Authority to mitigate, rectify and protect against such circumstances that Contracting Authority may accept or reject acting reasonably; or
 - (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as Contracting Authority, acting reasonably, shall think fit,

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

- (c) Notwithstanding the foregoing provisions of this Section 30.3, in the event of an Emergency, the notice under Section 30.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and Contracting Authority may, prior to Project Co's confirmation under Section 30.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where Contracting Authority considers it to be necessary to do so, the steps which Contracting Authority may take pursuant to this Section 30.3 subsequent to the provision of the notice under Section 30.3(a) unless the notice is given at a later time as provided in Section 30.3(c), may, at Contracting Authority's option, include the partial or total suspension of Project Co's right and obligation to deliver any part of the Project Operations having regard to the circumstances in question (without any extension of the Project Term or suspension of any other part of the Project Operations), and the provisions of Section 39, including Section 39.1(a)(v) and Section 39.2, shall apply in respect of the Project Operations, but such suspension shall be only for so long as, as applicable:

- (i) the circumstances referred to in Section 30.1 or 30.2 subsist; or
- (ii) in respect of any such circumstances relating to Project Co's performance of the Project Operations, until such time as Project Co shall have demonstrated to the reasonable satisfaction of Contracting Authority that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of each Subcontractor, as are required pursuant to this Section 30.3 and as are necessary to be capable of performing its obligations in respect of the relevant part of the Project Operations to the required standard in accordance with this Project Agreement, and thereafter Project Co shall perform its obligations as aforesaid.

30.4 Costs and Expenses

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

30.5 Reimbursement Events

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

- (c) If, in exercising its rights pursuant to this Section 30, Contracting Authority performs any part of the Project Co Services either itself or by engaging others, Contracting Authority shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Project Co Services. If Contracting Authority makes such a deduction, then Project Co shall be relieved of its reimbursement obligations under Section 30 up to the amount that is equal to that deduction.

30.6 Reimbursement if Improper Exercise of Rights

- (a) If Contracting Authority exercises its rights pursuant to this Section 30, but Contracting Authority was not entitled to do so, Contracting Authority shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of Contracting Authority issued as a result of Contracting Authority having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not Contracting Authority is entitled to exercise its rights pursuant to this Section 30 before taking any such action that Contracting Authority may require and Project Co shall comply with all of Contracting Authority's requirements. Only concurrently with or after complying with Contracting Authority's requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

31. PAYMENT

31.1 Payments During the Construction Period

- (a) Contracting Authority shall pay to Project Co the Construction Period Payments, plus, for clarity, applicable HST in accordance with Schedule 19 – Construction Period Payments and the other applicable provisions of this Project Agreement.
- (b) Contracting Authority shall pay to Project Co the Substantial Completion Payment plus, for clarity, applicable HST on the Payment Commencement Date, in accordance with Schedule 19 – Construction Period Payments and this Project Agreement.
- (c) On the later of the Payment Commencement Date and the date on which Project Co has completed the procurement, installation and commissioning of all FF&E in accordance with Section 21, including, for certainty, completion of all obligations of Project Co pursuant to Section 21, other than the design responsibilities set forth in Section 21.5(a), Contracting Authority shall pay to Project Co the Separate FF&E Services Fee.
- (d) Contracting Authority shall pay to Project Co each Fit-Out Works Phase Completion Payment plus, for clarity, applicable HST, on each applicable Fit-Out Works Phase Completion Payment Date in accordance with Schedule 19 – Construction Period Payments, Schedule 20 – Payment Mechanism and the other applicable provisions of this Project Agreement.
- (e) Contracting Authority and Project Co each acknowledge that the purpose of the Construction Period Payments, the Substantial Completion Payment, the Separate FF&E Services Fee and the Fit-Out Works Phase Completion Payments is to assist Project Co with costs of construction incurred by Project Co in respect of the Facility.

31.2 Monthly Service Payments

- (a) Subject to and in accordance with this Project Agreement, including this Section 31 and Schedule 20 – Payment Mechanism, Contracting Authority shall pay to Project Co the all-inclusive Monthly Service Payments for the performance of all of the Project Operations.

31.3 Payment Adjustments

- (a) Project Co acknowledges and agrees that:
- (i) the amount of any Monthly Service Payment may be adjusted pursuant to Schedule 20 – Payment Mechanism; and
 - (ii) such adjustments are integral to the provisions of this Project Agreement.
- (b) If, for any reason, any adjustment (including a Deduction) made pursuant to Schedule 20 – Payment Mechanism is invalid and unenforceable, and an Applicable Law that is a Change in Law is enacted that permits the Province to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits Contracting Authority to recover or to cause such adjustment to be enforceable) shall be deemed to not be a Relevant Change in Law and Project Co shall not be entitled to any compensation hereunder for such Change in Law.

31.4 Payment Commencement

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

31.5 Adjustments to Payment Periods

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

31.6 Invoicing and Payment Arrangements

- (a) Within 5 Business Days following the end of each Payment Period, Project Co shall issue to Contracting Authority an invoice for:
- (i) the amount of the Monthly Service Payment owing by Contracting Authority to Project Co for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period; and
 - (ii) the amount(s) of any Fit-Out Works Phase Completion Payment(s) owing by Contracting Authority to Project Co for such Payment Period.

- (b) Project Co shall comply with all requirements of Schedule 20 – Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as Contracting Authority may reasonably require in connection with payments hereunder.
- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:
 - (i) as applicable, the Monthly Service Payment or any Fit-Out Works Phase Completion Payment(s), payable in respect of the applicable Payment Period;
 - (ii) any adjustments to the Monthly Service Payment set out in the Payment Adjustment Report issued in the previous Payment Period;
 - (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 27 – Dispute Resolution Procedure;
 - (iv) any amount owing to Contracting Authority under this Project Agreement;
 - (v) any amount owing to Project Co under this Project Agreement; and
 - (vi) the net amount owing by Contracting Authority to Project Co, or by Project Co to Contracting Authority, as applicable.
- (d) HST shall be shown separately on all invoices from Project Co, together with Project Co’s HST registration number.
- (e) Each monthly invoice delivered during the period from the Substantial Completion Date until 45 days following the Fit-Out Works Final Completion Date shall include up-to-date copies of the parcel registers for the Lands.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.
- (g) The Contracting Authority Representative shall review each invoice submitted in accordance with this Section 31.6, and, within 5 Business Days of receiving such invoice, Contracting Authority shall pay the amount stated in such invoice. Any such payment shall be subject to adjustment pursuant to Section 31.6(k).
- (h) Contracting Authority shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, Contracting Authority shall not be obligated to pay an invoice for a Monthly Service Payment delivered by Project Co after the second Payment Period following the Payment Commencement Date until Project Co has delivered the Performance Monitoring Report and the Payment Adjustment Report referred to in Section 31.6(i) for the previous Payment Period. In the event that Project Co delivers any Performance Monitoring Report or Payment Adjustment Report later than the stipulated date in Section 31.6(i), Contracting Authority’s obligation to pay the invoice for the Monthly Service Payment issued by Project Co for the immediately following Payment Period shall be extended by the number of days by which Project Co was late in delivering the applicable Performance Monitoring Report or Payment Adjustment Report to Contracting Authority.

- (i) Within 5 Business Days following the end of each Payment Period, Project Co shall submit to Contracting Authority:
 - (i) a Performance Monitoring Report in respect of the Payment Period just ended, which, without limiting any provision of this Project Agreement, shall be the primary source of the factual information regarding the performance of the Project Co Services during such Payment Period used to calculate the relevant Monthly Service Payment and the number of Failure Points awarded to Project Co pursuant to Schedule 20 – Payment Mechanism; and
 - (ii) a report (a “**Payment Adjustment Report**”) setting out any adjustments required between the actual Monthly Service Payment determined by Project Co to be owing by Contracting Authority to Project Co in respect of the Payment Period just ended and the amount that was paid by Contracting Authority during such Payment Period, including details of:
 - (A) all Deductions in relation to Availability Failures;
 - (B) all Deductions in relation to Quality Failures;
 - (C) all Deductions in relation to Service Failures;
 - (D) all Deductions in relation to Energy Failures;
 - (E) all Deductions in relation to System Failures; and
 - (F) any Gainshare Adjustment or Painshare Adjustment.
- (j) No later than 365 days prior to the Scheduled Substantial Completion Date, the Parties shall, acting reasonably, agree to the form of Performance Monitoring Report and the form of Payment Adjustment Report to be used during the Operational Term, which forms, for greater certainty, shall, at a minimum, reflect and satisfy all of the applicable requirements of this Project Agreement. If the Parties fail to agree to such forms by such date, then either Party may at any time refer such matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. Upon agreement of the Parties, acting reasonably, the form of Performance Monitoring Report and the form of Payment Adjustment Report may be changed from time to time.
- (k) Contracting Authority shall review each Performance Monitoring Report and Payment Adjustment Report submitted by Project Co pursuant to Section 31.6(i) within 10 Business Days of Contracting Authority’s receipt of such Performance Monitoring Report or Performance Adjustment Report, as applicable, provided that no review by Contracting Authority of a Performance Monitoring Report or a Payment Adjustment Report shall constitute acceptance or approval by Contracting Authority of such Performance Monitoring Report or Payment Adjustment Report. Subject to Section 31.9 and Part E of Schedule 20 – Payment Mechanism, the adjustments set out in a Payment Adjustment Report shall be reflected by Project Co in the Monthly Service Payment invoice next issued by Project Co.
- (l) Project Co shall (i) include with each Performance Monitoring Report and Payment Adjustment Report submitted by Project Co pursuant to Section 31.6(i) such supporting documentation as is reasonably required to substantiate and confirm the contents of such Performance Monitoring Report or Payment Adjustment Report (including the adjustments set out in each Payment

Adjustment Report); and (ii), upon the request of Contracting Authority from time to time, provide to Contracting Authority additional supporting documentation that Contracting Authority believes is reasonably necessary to substantiate and confirm the contents of a Performance Monitoring Report or Payment Adjustment Report.

- (m) In respect of all invoices issued by Project Co for payment from and after the Payment Commencement Date through to the Payment Period ending no less than 45 days following the date of the Fit-Out Works Final Completion Certificate, Project Co shall cause its solicitors to:
 - (i) subsearch title to the Lands as at noon of the day that each payment is due; and
 - (ii) promptly send to Contracting Authority
 - (A) a Notice;
 - (B) a statutory declaration from an officer of Project Co and, upon request by Contracting Authority, from any Project Co Party, with respect to Construction Act compliance and payment to all lien claimants; and
 - (C) up-to-date copies of the parcel registers for all parts of the Lands with respect to the subsearches of title described in Section 31.6(m)(i).
- (n) Project Co acknowledges that the provisions of Section 15.3 shall apply in respect to Construction Act compliance.

31.7 Electronic Invoicing

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

31.8 Final Payment Periods

- (a) At the beginning of each of the final 3 Payment Periods immediately prior to the Expiry Date, Contracting Authority shall estimate, acting reasonably, the adjustments to the Monthly Service Payment for each such Payment Period. Contracting Authority may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final 3 Payment Periods.
- (b) Within 10 Business Days of receipt by Contracting Authority of the applicable Payment Adjustment Report for each of the final 3 Payment Periods, the Contracting Authority Representative shall either:
 - (i) review the Payment Adjustment Report and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount Contracting Authority previously paid in respect of the applicable Payment Period. Based on such reconciliation, either Contracting Authority or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or

- (ii) if Contracting Authority disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice Contracting Authority is reasonably able to quantify it) which Contracting Authority disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the Contracting Authority Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount Contracting Authority previously paid in respect of the applicable Payment Period. Based on such reconciliation, either Contracting Authority or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that Contracting Authority shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 31.9.

31.9 Performance Monitoring Report and Payment Adjustment Report Disputes

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

31.10 Payments

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice therefor.

- (b) Project Co shall maintain, or cause to be maintained, all holdbacks required pursuant to the Construction Act and shall only release holdbacks on being satisfied that no claims for lien can be claimed in respect of the Subcontracts for which holdbacks are to be released.

31.11 Manner of Payment

- (a) All payments under this Project Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by the recipient from time to time by written notice to the other Party.
- (b) If the due date is not a Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.
- (c) For the purposes of this Project Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the details of the transfer.

31.12 [Intentionally Deleted]

31.13 Set-Off

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

31.14 Effect of Payment

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

31.15 Audit of Performance of Project Operations

- (a) Without limiting Contracting Authority’s rights and Project Co’s obligations pursuant to Section 34.2 and subject to Part E of Schedule 20 – Payment Mechanism, at any time and from time to time until 180 days after the Termination Date, Contracting Authority may give notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and

payments by or to Contracting Authority within the 7 year period prior to the date of such notice, including any Performance Monitoring Reports, Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.

- (b) Contracting Authority shall appoint an auditor to perform and complete such audit at Contracting Authority's cost and expense and pursuant to terms of reference determined by Contracting Authority.
- (c) Within a reasonable time following receipt of a notice referred to in Section 31.15(a), Project Co shall make available to Contracting Authority's auditor, any Performance Monitoring Reports, Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.
- (d) Contracting Authority shall notify Project Co of the results of the audit, and if Contracting Authority's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 27 – Dispute Resolution Procedure:
 - (i) Project Co shall:
 - (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Performance Monitoring Report, Payment Adjustment Report or other record, report, information, document or data; and
 - (B) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by Contracting Authority, reimburse Contracting Authority for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
 - (I) the actual costs relating to the auditor and audit; or
 - (II) an amount equal to the amount of any overpayment;
 - (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by Contracting Authority, Project Co shall reimburse Contracting Authority for the amount of such overpayment, and, further, shall indemnify Contracting Authority from and against any damages suffered or incurred resulting from such overpayment by Contracting Authority as provided for at Section 53.1(e) on the basis that the due date was the date of the overpayment by Contracting Authority; and
 - (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment, whether or not material, by Contracting Authority, Contracting Authority shall pay Project Co the amount of such underpayment and, further, shall indemnify Project Co from and against any damages suffered or incurred resulting from such underpayment by Contracting Authority as provided for at Section 53.2(c) on the basis that the due date was the date of the underpayment by Contracting Authority.

31.16 No Other Entitlement

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

32. TAXES**32.1 Taxes**

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law. For clarity, Contracting Authority shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any such HST from Contracting Authority, Contracting Authority shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.
- (b) Contracting Authority shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site, the Facility and/or the Existing Facilities.
- (c) Contracting Authority shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by Contracting Authority upon and in connection with payments by Contracting Authority to Project Co under this Project Agreement. For greater certainty, the Parties agree that the conditions set out in paragraph 168(3)(c) of the *Excise Tax Act* (Canada) are not satisfied at the time of Substantial Completion hereunder and, unless otherwise required by Applicable Law, any HST payable by Contracting Authority hereunder shall be calculated solely by reference to the amount of the payment, without any deductions or adjustments on account of paragraph 168(3)(c) of the *Excise Tax Act* (Canada).

32.2 Changes in Scope of Taxation

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

32.3 Changes in Recoverability of Tax Credits

- (a) Contracting Authority will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to Contracting Authority from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 32.3, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to Contracting Authority which is consumed, used or supplied,

or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

- (c) For the purposes of this Section 32.3, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

32.4 Information and Assistance Provided by Project Co

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

32.5 Residency – *Income Tax Act* (Canada)

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

32.6 Taxes – General

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

32.7 Taxes – Indemnity

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

33. FINANCIAL MODEL**33.1 Appointment of Custodian**

- (a) On or prior to the date of this Project Agreement, the Parties shall appoint a suitably qualified and experienced person to act as the Custodian for the purposes of this Project Agreement, and shall enter into an agreement with the Custodian substantially in the form of Schedule 3 – Custody Agreement.

33.2 Delivery and Use of Financial Model

- (a) In accordance with Schedule 2 – Completion Documents, Project Co shall deliver copies of the Financial Model (1 printed copy and 2 copies on CD-ROM) to Contracting Authority and the Custodian to be held in custody on terms to be agreed by the Parties.
- (b) Following the approval by Contracting Authority of any amendment to the Financial Model, Project Co shall promptly deliver copies of the revised Financial Model, in the same form as the original Financial Model (or such other form as may be agreed by the Parties from time to time), to Contracting Authority and the Custodian.
- (c) The Parties shall instruct the Custodian to keep both a hard copy and an electronic copy of all versions of the Financial Model.
- (d) Project Co hereby grants to Contracting Authority an irrevocable, royalty free perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Project Term.
- (e) For greater certainty, Project Co acknowledges and agrees that Contracting Authority shall not be liable to Project Co for, and Project Co shall not seek to recover from Contracting Authority, any Contracting Authority Party or any Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

34. RECORDS, INFORMATION AND AUDIT**34.1 Records Provisions**

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

34.2 Information and General Audit Rights

- (a) Project Co shall provide and shall cause each Subcontractor to provide to Contracting Authority all information, reports, documents, records and the like, including as referred to in Schedule 26 - Record Provisions, in the possession of, or available to, Project Co as Contracting Authority may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor and the Service Provider shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to Contracting Authority, and shall require each Subcontractor, including the Construction Contractor and the Service Provider, to provide to Contracting Authority (at Contracting Authority's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 34.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as Contracting Authority may reasonably require from time to time to enable Contracting Authority to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Site and the Facility, security, health and safety, fire

- safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide Contracting Authority with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Project Co Party from any Governmental Authority in relation to any of the Project Operations, the Macdonald Block Activities, the Contracting Authority FM Services, the Site or the Facility, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify Contracting Authority of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to Contracting Authority hereunder, shall be subject and open to inspection and audit by Contracting Authority at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless Contracting Authority and Project Co otherwise agree. Contracting Authority shall also have the right to monitor and audit the performance of any and all parts of the Works or Project Co Services wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of Contracting Authority monitoring and auditing such parts of the Works or Project Co Services, including providing them with access and copies (at Contracting Authority's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works or Project Co Services. Except as otherwise provided herein, all of Contracting Authority's costs for the inspections, audits and monitoring shall be borne by Contracting Authority.
- (f) In conducting an audit of Project Co under Section 34.2(e) or as otherwise provided under this Project Agreement, Contracting Authority shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at Contracting Authority's reasonable cost) of all books and records of Project Co required to be provided to or available to Contracting Authority hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with Contracting Authority and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with Contracting Authority all matters arising from such audits, including the refunding of monies to Contracting Authority where applicable. At the reasonable request of Contracting Authority's auditors, Project Co shall provide such information, reports, documents and records as Contracting Authority's auditors may reasonably require, other than Sensitive Information.
- (g) Contracting Authority's rights pursuant to this Section 34.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.

- (h) Contracting Authority's rights pursuant to this Section 34.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.
- (i) Contracting Authority's right pursuant to this Section 34.2 may also be exercised by the Auditor General of Ontario, Her Majesty the Queen in Right of Canada and the Auditor General of Canada without the requirement for further action on the part of Contracting Authority.

34.3 Delivery of Reports to Contracting Authority

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

35. CHANGES IN LAW

35.1 Performance after Change in Law

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

35.2 Works Change in Law

- (a) On the occurrence of a Works Change in Law:
 - (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;

- (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
- (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
- (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Variation Procedure.

35.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 35.3.
- (b) On the occurrence of a Relevant Change in Law:
 - (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;

- (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
- (F) any entitlement to compensation payable shall be in accordance with this Section 35.3, and any calculation of compensation shall take into consideration, inter alia:
 - (I) any failure by a Party to comply with Section 35.3(b)(iii)(E);
 - (II) the extent to which a Party has been, or shall be, compensated in respect of such Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Project Agreement;
 - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 37 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 35.3, and Section 38 shall be construed accordingly.
- (d) In relation to a Relevant Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Operations, taking into consideration, inter alia, Section 35.3(b)(iii)(E), if the cost impact of such Relevant Change in Law in a given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$[REDACTED] (index linked) in that Contract Year, neither Contracting Authority nor Project Co shall be entitled to any payment or compensation pursuant to this Section 35.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 37 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

36. VARIATIONS

36.1 Variation Procedure

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

36.2 Innovation and Value Engineering

- (a) Project Co acknowledges that Contracting Authority at all times desires to reduce the Monthly Service Payments and the overall cost to Contracting Authority of the Existing Facilities and the Facility and the Project Co Services, and Project Co agrees to cooperate, explore and work with Contracting Authority in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by notice to Contracting Authority.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
 - (i) any Variation Enquiry initiated by Contracting Authority;
 - (ii) any Variation resulting from a Change in Law; or
 - (iii) any change to the Macdonald Block Activities or the Contracting Authority FM Services.
- (d) The Innovation Proposal must:
 - (i) set out sufficient detail to enable Contracting Authority to evaluate the Innovation Proposal in full;
 - (ii) specify Project Co’s reasons and justification for proposing the Innovation Proposal;
 - (iii) request Contracting Authority to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes Contracting Authority requires as a result;

- (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and Contracting Authority;
 - (v) indicate, in particular, whether an increase or decrease to the Monthly Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
 - (vi) indicate if there are any dates by which a decision by Contracting Authority must be made;
 - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (viii) include such other information and documentation as may be reasonably requested by Contracting Authority to fully evaluate and consider the Innovation Proposal.
- (e) Contracting Authority shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
- (i) a change in the Monthly Service Payments will occur;
 - (ii) the Innovation Proposal affects the quality of the Works, the Facility, the Existing Facilities or the Project Co Services, or the likelihood of successful completion of the Works or delivery of the Project Co Services;
 - (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the Existing Facilities, the Facility, or the performance of the Macdonald Block Activities or the Contracting Authority FM Services;
 - (iv) the Innovation Proposal will interfere with the relationship between Contracting Authority and third parties;
 - (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Project Co Services, as applicable;
 - (vi) the residual value of the Existing Facilities or the Facility is affected;
 - (vii) the Innovation Proposal will change the Lifecycle Payment;
 - (viii) the Innovation Proposal materially affects the risks or costs to which Contracting Authority is exposed; or
 - (ix) any other matter Contracting Authority considers relevant.
- (f) Contracting Authority may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) Contracting Authority may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If Contracting Authority accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation,

together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.

- (i) Unless Contracting Authority specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 36.2(h), there shall be no increase in the Monthly Service Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of each Subcontractor to decrease, the net savings in the costs of Project Co and/or each Subcontractor will be shared equally by Project Co and Contracting Authority, and Contracting Authority's share of the net savings shall, if the Parties agree, be reflected in either a lump sum payment or in a reduction of the Monthly Service Payments.
- (k) If an Innovation Proposal causes or will cause the costs of Contracting Authority to decrease, the net savings in the costs of Contracting Authority will be shared as follows:
 - (i) equally by Project Co and Contracting Authority for the first 5 years following the implementation of the Innovation Proposal; and
 - (ii) thereafter, Contracting Authority shall be entitled to the full benefit of the net savings in costs (if applicable),

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

37. DELAY EVENTS

37.1 Definition

- (a) For the purposes of this Project Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that it affects the Works so as to cause a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date or a Fit-Out Works Phase Completion by the applicable Scheduled Fit-Out Works Phase Completion Date:
 - (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
 - (ii) any breach by Contracting Authority of any of Contracting Authority's obligations under this Project Agreement (including any delay by Contracting Authority in giving access to the Site pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, any delay by Contracting Authority in carrying out its obligations set forth in Section 21.8(b) or any delay by Contracting Authority in carrying out its obligations set forth in Schedule 10 - Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) an opening up of the Works pursuant to Section 19.5 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts

and the Design Data), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by Contracting Authority in respect of the same or a similar component of the Works or subset of the Works;

- (iv) a requirement pursuant to Sections 16.2(b) or 16.2(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (v) a requirement pursuant to Sections 16.3(b) or 16.3(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (vi) subject to compliance by Project Co with the provisions of Section 9.6, the execution of Additional Works on the Site by Additional Contractors;
- (vii) a requirement pursuant to Section 13.1 of Schedule 27 – Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of Contracting Authority during the pendency of a Dispute, which Dispute is subsequently determined in Project Co’s favour;
- (viii) an event of Force Majeure;
- (ix) a Relief Event;
- (x) a Relevant Change in Law;
- (xi) a requirement pursuant to Section 16.4(c)(ii) for Project Co to perform any alteration, addition, construction, demolition, extension or variation in the Project Operations, or to suspend or delay performance of the Project Operations, as a result of a Defect for which Contracting Authority is responsible and which would not otherwise be required under this Project Agreement; or
- (xii) a delay in receiving the final results of a Complete Security Clearance Check Application from the Relevant Security Clearance Check Authority (as such terms are defined in Schedule 7 – Security Clearance Check Requirements) subject to and in accordance with Section 6 of Schedule 7 – Security Clearance Check Requirements.

37.2 Consequences of a Delay Event

- (a) Project Co shall provide written notice to the Contracting Authority Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of any event or circumstances described in Section 37.1(a)(ii), (iv), (v), (vi) or (xi) which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for relief under Section 37.2(f) as a Delay Event.

- (b) Project Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 37.2(a), provide further written details to the Contracting Authority Representative and the Independent Certifier which shall include:
- (i) identification of the category of Delay Event on which Project Co's future claim for relief would be based if such event or circumstances were to form the basis of a claim for relief as a Delay Event;
 - (ii) details of the event or circumstances forming the basis of Project Co's notification under Section 37.2(a);
 - (iii) details of the contemporary records which Project Co shall thereafter maintain to substantiate its claim for extra time if the event or circumstances detailed in accordance with Section 37.2(b)(ii) forms the basis of a future claim by Project Co for relief as a Delay Event;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon the Scheduled Substantial Completion Date or any Scheduled Fit-Out Works Phase Completion Date if such an event or circumstances forms the basis for a future claim by Project Co for relief as a Delay Event; and
 - (v) details of any measures that Project Co proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Project Co for relief as a Delay Event or to mitigate the consequences of such claim if such event or circumstances were to become a Delay Event.
- (c) If Project Co does not provide further written details to the Contracting Authority Representative and the Independent Certifier as required under Section 37.2(b) within the 10 Business Day period referred to in such Section, Project Co acknowledges and agrees that, after a further 10 Business Days, Project Co shall not be entitled to rely upon, and the Contracting Authority Representative shall not be obligated to consider, the notice given under Section 37.2(a) for the purposes of determining Project Co's entitlement to relief under this Section 37. Project Co, at its option, may submit a new, currently dated notice which complies with the provisions of Section 37.2(a) for the same event or circumstance which gave rise to the previous, unsubstantiated notice, and the provisions of this Section 37 shall apply to any new notice, *mutatis mutandis*. Project Co acknowledges and agrees that the Contracting Authority Representative, in determining Project Co's entitlement to an extension of time pursuant to this Section 37, without limiting any other right of the Contracting Authority Representative under this Project Agreement, shall be entitled to take into account the delay between:
- (i) Project Co becoming aware of the occurrence of the event or circumstance forming the basis of the original notice delivered pursuant to Section 37.2(a); and
 - (ii) Project Co submitting the new notice pursuant to Section 37.2(a) in respect of that event or occurrence.
- (d) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 37.2(a), Project Co shall submit further particulars based on such information to the Contracting Authority Representative and the Independent Certifier.

- (e) The Contracting Authority Representative shall, after receipt of written details under Section 37.2(b), or of further particulars under Section 37.2(d), be entitled by written notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall afford the Contracting Authority Representative and the Independent Certifier reasonable facilities for their investigations, including, without limitation, on-site inspection.
- (f) In addition to complying with its obligations under Sections 37.2(a) and 37.2(b), Project Co shall provide written notice to the Contracting Authority Representative and the Independent Certifier within 5 Business Days of becoming aware that an event or circumstances has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details of the Delay Event to the Contracting Authority Representative and the Independent Certifier including, if and as applicable, to supplement the information given in Sections 37.2(a), 37.2(b), 37.2(d) and 37.2(e), to substantiate or support Project Co's claim which details shall include to the extent not previously provided:
- (i) a statement of which Delay Event upon which the claim is based;
 - (ii) details of the circumstances from which the Delay Event arises;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date or any Scheduled Fit-Out Works Phase Completion Date, including a critical path analysis of the event or circumstances indicating the impact upon the Scheduled Substantial Completion Date or any Scheduled Fit-Out Works Phase Completion Date, if such event or circumstances were to become a Delay Event; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (g) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 37.2(f), Project Co shall submit further particulars based on such information to the Contracting Authority Representative and the Independent Certifier.
- (h) The Contracting Authority Representative shall, after receipt of written details under Section 37.2(f), or of further particulars under Section 37.2(g), be entitled by written notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall afford the Contracting Authority Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (i) Subject to the provisions of this Section 37, the Contracting Authority Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised Scheduled Substantial Completion Date or a revised Scheduled Fit-Out Works Phase Completion

Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:

- (i) the date of receipt by the Contracting Authority Representative of Project Co's notice given in accordance with Section 37.2(f) and the date of receipt of any further particulars (if such are required under Section 37.2(g)), whichever is later; and
 - (ii) the date of receipt by the Contracting Authority Representative of any supplemental information supplied by Project Co in accordance with Section 37.2(g) and the date of receipt of any further particulars (if such are required under Section 37.2(h)), whichever is later.
- (j) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (k) If:
- (i) the Contracting Authority Representative declines to fix a revised Scheduled Substantial Completion Date or a revised Scheduled Fit-Out Works Phase Completion Date, as applicable;
 - (ii) Project Co considers that a different Scheduled Substantial Completion Date or Scheduled Fit-Out Works Phase 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 Schedule 27 – Dispute Resolution Procedure.
- (l) Subject to Sections 9.8(b) and 9.8(c), Contracting Authority shall provide Project Co with access to and use of the Site, the Facility and the Existing Facilities as required pursuant to Section 14 of this Project Agreement in a manner consistent with the Works Schedule and in accordance with the notification requirements and restrictions set out in the Project Agreement, provided that Project Co agrees that the inability of Contracting Authority to provide Project Co with access to an area for construction activities not on the critical path for reasons set out in Sections 9.8(b) and 9.8(c) will not result in the occurrence of a Delay Event (and, for greater certainty, there shall not be a resulting change to the Scheduled Substantial Completion Date or to any Scheduled Fit-Out Works Phase Completion Date) or a Compensation Event (and, for certainty, such an event shall not entitle Project Co to request or form the basis for a claim for a Variation, additional compensation or damages).
- (m) To the extent that Project Co does not comply with its obligations under Sections 37.2(a) – (h), inclusive, and subject to Section 37.2(c), such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 37.
- (n) Where there are concurrent delays, some of which are caused by Contracting Authority or others for whom Contracting Authority is responsible, and some of which are caused by Project Co or others for whom Project Co is responsible, Project Co shall not be entitled to an extension in the Scheduled Substantial Completion Date or any Scheduled Fit-Out Works Phase Completion Date,

or additional compensation to the extent of the concurrent delays. Concurrent delays are those that are caused by two or more independent events which affect the Scheduled Substantial Completion Date or any Scheduled Fit-Out Works Phase Completion Date where the time period over which such delays occur overlap in time, but only for the duration of the overlap.

- (o) In no event shall the extension of time for a Delay Event be more than the necessary extension of the critical path as a result of the Delay Event and Project Co shall not be entitled to claim any ownership of the Schedule Cushion.

37.3 Mitigation

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

38. COMPENSATION EVENTS

38.1 Definition

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

38.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 38. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
 - (i) Schedule 22 – Variation Procedure, in the case of a Delay Event referred to in Section 37.1(a)(i);
 - (ii) Section 41, in the case of a Delay Event referred to in Section 37.1(a)(viii);
 - (iii) Section 40, in the case of a Delay Event referred to in Section 37.1(a)(ix); and
 - (iv) Section 35, in the case of a Delay Event referred to in Section 37.1(a)(x).

- (b) Subject to Sections 38.2(c), 38.2(d), 38.3, 38.4 and 38.5, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by Contracting Authority to Project Co. Project Co shall promptly provide the Contracting Authority Representative with any information the Contracting Authority Representative may require in order to determine the amount of such compensation.
- (c) If Contracting Authority is required to compensate Project Co pursuant to this Section 38.2, then Contracting Authority may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, Contracting Authority may request Project Co to agree to an adjustment to the Monthly Service Payments. If Project Co agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 22 – Variation Procedure shall apply.
- (d) To the extent that Project Co does not comply with its obligations under Sections 37.2(a) – (h), inclusive, and subject to Section 37.2(c), such failure shall be taken into account in determining Project Co’s entitlement to relief pursuant to this Section 38.
- (e) Notwithstanding any other provision in this Project Agreement, including Section 38.2(b), where Contracting Authority elects to apply all or any portion of the number of days of Schedule Cushion, Project Co shall not be entitled to any Direct Losses or any other additional compensation related to the time that is reduced or eliminated by the Schedule Cushion except as otherwise provided in Section 1.2(g) of Schedule 22 – Variation Procedure.

38.3 Mitigation

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

38.4 Insured Exposure

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

38.5 Delivery of Works Schedule

- (a) If an event referred to in Sections 37.1(a)(iii), (iv), (v), (vi) or (vii) occurs after the date that is 66 days following Financial Close, as such date may be extended in accordance with Section 20.2(c), and prior to Contracting Authority assigning the comment “NO COMMENT” or “MINOR NON-CONFORMANCE” to the Draft Works Schedule referred to in Section 20.2(b)(i), Project Co shall not be entitled to receive any compensation under this Section 38 in respect of such Compensation Event unless such Compensation Event is also a Delay Event, in which case Project Co shall be entitled to compensation in an amount equal to the lesser of:
- (i) the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay; and
 - (ii) the compensation which, but for the application of this Section 38.5, Project Co would have been entitled to pursuant to Section 38.2(b).

39. EXCUSING CAUSES**39.1 Definition**

- (a) For the purposes of this Project Agreement, “**Excusing Cause**” means any of the following events or circumstances if it occurs after the Substantial Completion Date and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Project Co Services:
- (i) the implementation of a Variation to the extent Project Co has identified any impact on the Project Co Services in its Estimate and such impact has been documented in the Variation Confirmation;
 - (ii) any breach by Contracting Authority of any of Contracting Authority’s obligations under this Project Agreement (including any obstruction of the rights afforded to Project Co under Section 14.1), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) any deliberate or negligent act or omission of any Province Person or any failure by any Province Person (having regard to the interactive nature of the activities of such Province Person and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co’s performance of the Project Co Services, except to the extent:
 - (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
 - (B) the Province Person is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
 - (C) any such act, omission or failure was contemplated in Schedule 15 – Output Specifications or was otherwise provided for in this Project Agreement; or

- (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co's obligations under this Project Agreement;
- (iv) the outbreak or the effects of any outbreak of Medical Contamination, except to the extent that such Medical Contamination, or the effects of such Medical Contamination, are caused, or contributed to, by Project Co or any Project Co Party, including any failure by Project Co or any Project Co Party to comply with procedures or instructions relating to control of infection or to take commercially reasonable steps to mitigate the effects of such Medical Contamination, provided that neither Project Co nor any Project Co Party shall be deemed to have caused, or contributed to, an outbreak of Medical Contamination if such Medical Contamination was caused, or contributed to, by an employee of Project Co or any Project Co Party who was unaware of his or her condition;
- (v) the implementation of any action taken by Contracting Authority, or any suspension of Project Co's obligation to deliver all or any part of the Project Co Services, or the compliance by Project Co with instructions given by Contracting Authority, in each case in the circumstances referred to in Section 30;
- (vi) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between Contracting Authority and Project Co;
- (vii) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of any Province Person;
- (viii) any breach by Contracting Authority of its obligation to perform the Contracting Authority FM Services in accordance with this Project Agreement to the extent that such breach has a material adverse effect on Project Co's ability to perform the Project Co Services;
- (ix) the performance of any Scheduled Maintenance in accordance with the Scheduled Maintenance Plan and any acceleration of Scheduled Maintenance pursuant to Section 26.3, provided that:
 - (A) improperly performed Scheduled Maintenance and the effects thereof shall not constitute an Excusing Cause; and
 - (B) where the Scheduled Maintenance continues beyond the period set out in the Scheduled Maintenance Plan or beyond the period required for its accelerated performance pursuant to Section 26.3 (except where the continuation was due to an Excusing Cause other than as set out in this Section 39.1(a)(ix)), Failure Points may accrue from the time the Scheduled Maintenance was due to have been completed in accordance with the Scheduled Maintenance Plan or Section 26.3, as applicable;
- (x) the occurrence of any Contamination for which Contracting Authority is responsible pursuant to Section 16.2;
- (xi) any Defect for which Contracting Authority is responsible pursuant to Section 16.4;

- (xii) the exercise by Contracting Authority of its rights pursuant to and in accordance with Section 14.3 to limit or restrict Project Co's and each Project Co Party's access to designated portions of the Site and/or the Facility for purposes related to the provision of the Macdonald Block Activities or related to security and confidentiality, where such limitation or restriction materially adversely interferes with Project Co's ability to perform the Project Operations; or
- (xiii) a delay in receiving the final results of a Complete Security Clearance Check Application from the Relevant Security Clearance Check Authority (as such terms are defined in Schedule 7 – Security Clearance Check Requirements) subject to and in accordance with Section 6 of Schedule 7 – Security Clearance Check Requirements.

39.2 Consequences of an Excusing Cause

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

- (vi) the Monthly Service Payments payable by Contracting Authority shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Project Co Services as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 – Variation Procedure.

39.3 Mitigation

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
 - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Excusing Cause; and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 39.3, such failure shall be taken into account in determining Project Co’s entitlement to relief pursuant to this Section 39.

39.4 Insured Exposure

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

40. RELIEF EVENTS

40.1 Definition

- (a) For the purposes of this Project Agreement, “**Relief Event**” means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
 - (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
 - (ii) failure by any Utility Company, local authority or other like body, other than a District Energy Provider, to perform works or provide services;
 - (iii) accidental loss or damage to the Works, the Existing Facilities and/or the Facility or any roads servicing the Site;

- (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo falling short of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the public services facility, construction, building maintenance or facilities management industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Project Operations or the construction and/or operation of public services facilities similar to the Facility in general, provided, however, that a civil disobedience or protest action shall not, in any event, be cause for a Relief Event unless Project Co has fully complied with Section 9.7,

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

40.2 Consequences of a Relief Event

- (a) Subject to Section 40.3:
 - (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 44.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement; and
 - (ii) as soon as the events or circumstances constituting a Relief Event have ceased, any Failure Points accrued in respect of any failure by Project Co to perform any of its obligations under this Project Agreement shall be cancelled and any related Warning Notices and Monitoring Notices shall be withdrawn,

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

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 37.1(a)(ix):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37; and
 - (ii) in respect of a Relief Event referred to in Section 40.1(a)(v), 40.1(a)(vi) or 40.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum, Non-Default Termination Sum or Breach

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

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

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

40.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 40.3, such failure shall preclude such Party’s entitlement to relief pursuant to this Section 40.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.

- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 40.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 40.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

40.4 Insured Exposure

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

41. FORCE MAJEURE

41.1 Definition

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

41.2 Consequences of Force Majeure

- (a) Subject to Section 41.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 37.1(a)(viii):
- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37; and
 - (ii) where such Delay Event causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum, as applicable, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would not have been paid by Project Co to the Lenders.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 40.2(b)(ii), 40.2(d) and 46.
- (d) During an event of Force Majeure which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 – Payment Mechanism will be suspended, and Contracting Authority shall pay to Project Co, for each Payment Period, the Senior Debt Service Amount, the Junior Debt Service Amount and an amount which reflects the cost to Project Co of the Project Co Services provided to Contracting Authority, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 41.2(d) shall never be more than the Maximum Service Payment.
- (e) In respect of an event of Force Majeure that,
- (i) occurs prior to the Initial Capital Investment Date; and
 - (ii) causes a delay to Project Co in performing the Works,

Contracting Authority shall pay to Project Co, on the first Construction Period Payment date after the Initial Capital Investment Date is achieved, an amount equal to the Senior Debt Service Amount accrued and paid, or which became payable, by Project Co or any Project Co Party to the Senior Lenders, in accordance with the Lending Agreements, during the period of the delay, up to and including the first Construction Period Payment date, together with interest thereon at the rate

payable on the Senior Debt Amount, which, but for the delay caused by the event of Force Majeure would not have been paid by Project Co to the Senior Lenders.

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

41.3 Mitigation and Process

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

41.4 Insured Exposure

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

41.5 Modifications

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

42. PROJECT CO DEFAULT

42.1 Project Co Events of Default

- (a) For the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by Contracting Authority of its payment obligations hereunder:
- (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co’s assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, Contracting Authority, a Contracting Authority Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Macdonald Block Activities or the Contracting Authority FM Services (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors’ obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 42.1(a)(i)(A);
- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co’s ability to perform its obligations under this Project Agreement;

- (C) if any execution, sequestration, extent, garnishment or other process of or order of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
 - (D) Project Co suffers any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 42.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 42.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
 - (iii) Project Co either:
 - (A) failing to deliver a Recovery Schedule under Section 20.4(a)(iv)(A);
 - (B) delivering a Recovery Schedule under Section 20.4(a)(iv)(A) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
 - (C) delivering a Recovery Schedule under Section 20.4(a)(iv)(A) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Sections 20.4(a)(iv) and 20.4(a)(v);
 - (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Project Operations, the Macdonald Block Activities or the Contracting Authority FM Services, or that may compromise (1) the Province's reputation or integrity or the nature of the Province's public services, or (2) the ability of the Province to conduct its business, so as to affect public confidence in the Province, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from Contracting Authority;
 - (v) Project Co committing a breach of Sections 49 or 50;
 - (vi) Project Co committing a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in Sections 42.1(a)(i) to (iv) inclusive or 42.1(a)(vii) to (xviii) inclusive) which has or will have a material adverse effect on the performance of the Macdonald Block Activities or the Contracting Authority FM Services, other than where such breach is a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
 - (A) Project Co shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Contracting Authority and the performance of the Macdonald Block Activities or the Contracting Authority FM Services;

- (II) put forward, within 5 Business Days of receipt of notice of such breach from Contracting Authority, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
- (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (B) upon Project Co failing to comply with any of the provisions of Section 42.1(a)(vi)(A):
 - (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on Contracting Authority and the performance of the Macdonald Block Activities or the Contracting Authority FM Services;
 - (II) Project Co shall, within 3 Business Days after notice from Contracting Authority, submit a plan and schedule, which Contracting Authority shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to Contracting Authority, in its sole discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
 - (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 42.1(a)(vi)(B), or Contracting Authority, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;
- (vii) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement;
- (viii) Project Co ceasing to provide any Project Co Service in accordance with this Project Agreement which are necessary for the performance of the Macdonald Block Activities or the Contracting Authority FM Services, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement;
- (ix) Project Co failing to comply with Sections 56.1 or 56.3;
- (x) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 56.4;
- (xi) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 3 Payment Periods during the Operational Term;

- (xii) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 6 Payment Periods during the Operational Term;
- (xiii) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 12 Payment Periods during the Operational Term;
- (xiv) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through Contracting Authority) within 45 days of the earlier of:
 - (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
 - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xv) Project Co failing to pay any sum or sums due to Contracting Authority under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set off by Project Co pursuant to Section 31.13(a)(ii), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from Contracting Authority;
- (xvi) Project Co failing to comply with Section 57;
- (xvii) Project Co failing to comply with Section 7.3 or Schedule 28 – Refinancing;
- (xviii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and:
 - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xix) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xx) at any time after the Substantial Completion Date, Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement) which results in a criminal conviction or a conviction under the *Occupational Health and Safety Act* (Ontario) against Project Co or any Project Co Party or Contracting Authority (an “**H&S Conviction**”) provided however that:

- (A) an H&S Conviction of Project Co, a Project Co Party or Contracting Authority shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 56.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to Contracting Authority, in its sole discretion; and
 - (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 42.1(a)(xx)(B), Contracting Authority shall:
 - (I) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and
 - (II) give all due consideration, where appropriate, to action other than termination of this Project Agreement; or
- (xxi) Project Co failing to comply with Section 27.8 or 27.12.

42.2 Notification of Occurrence

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

42.3 Right to Termination

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

42.4 Remedy Provisions

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

of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice, and Project Co shall:

- (i) within 5 Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to Contracting Authority, acting reasonably; and
 - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 42.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the notice of default, Contracting Authority shall have 5 Business Days from receipt of the same within which to notify Project Co that Contracting Authority does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which Contracting Authority shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 42.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on Contracting Authority and the performance of the Macdonald Block Activities and the Contracting Authority FM Services; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 42.4(a)(i); or
 - (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 42.4(a) and (b); or
 - (iv) where Project Co puts forward a plan and schedule pursuant to Section 42.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

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

- (d) Notwithstanding that Contracting Authority may give the notice referred to in Section 42.4(a), and without prejudice to the other rights of Contracting Authority in this Section 42.4, at any time during which a Project Co Event of Default is continuing, Contracting Authority may, at Project Co's risk and expense, take such steps as Contracting Authority considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the

performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.

- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 42.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and Contracting Authority shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

42.5 Replacement of Non-Performing Service Provider

- (a) Contracting Authority may, acting reasonably, require Project Co to terminate the Service Contract and ensure that a replacement Service Provider is appointed in accordance with Section 56.3 to provide the Project Co Services within 60 days:
 - (i) as an alternative to termination of this Project Agreement pursuant to Sections 42.3 or 42.4, in any circumstance in which Contracting Authority could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Service Provider or otherwise relates to the Project Co Services; or
 - (ii) if Project Co accrues, in any rolling 6 Payment Periods during the Operational Term, more than:
 - (A) an aggregate of [REDACTED] Failure Points in respect of Availability Failures;
 - (B) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the total Plant Services;
 - (C) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the General Management Services;
 - (D) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of the FM Help Desk Services;
 - (E) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of the Cleaning Services;
 - (F) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of the FF&E Services and Moves, Adds and Changes Services; or
 - (G) an aggregate of [REDACTED] Failure Points in respect of System Failures,

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

- (b) If Contracting Authority exercises its rights under this Section 42.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or provision of the Project Co Services, until such time as a replacement Service Provider can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate provision of the

Project Co Services and the Parties cannot agree within a further 3 Business Days to a plan for the interim management or provision of the Project Co Services, then, without prejudice to the other rights of Contracting Authority in this Section 42.5, Contracting Authority itself may perform, or engage others (including a third party) to perform, the Project Co Services and Section 30.3(a) shall apply, *mutatis mutandis*, to the Project Co Services. Any Dispute in respect of the interim management or provision of the Project Co Services may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

- (c) If Project Co fails to terminate, or secure the termination of, the Service Contract, and to secure a replacement Service Provider, in accordance with this Section 42.5, Contracting Authority shall be entitled to exercise its termination rights in accordance with Sections 42.3 and 42.4, as applicable.
- (d) Where a replacement Service Provider is appointed in accordance with this Section 42.5, [REDACTED]% of the Failure Points, accrued by Project Co prior to such replacement, shall be cancelled.

42.6 Contracting Authority's Costs

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

42.7 No other Rights to Terminate

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

43. CONTRACTING AUTHORITY DEFAULT

43.1 Contracting Authority Events of Default

- (a) For the purposes of this Project Agreement, “**Contracting Authority Event of Default**” means any one or more of the following events or circumstances:
 - (i) Contracting Authority failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set off by Contracting Authority pursuant to Section 31.13(a)(i), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:
 - (A) in respect of any Construction Period Payment or the Substantial Completion Payment, such failure continues for 10 Business Days;
 - (B) subject to Section 43.1(a)(i)(C), in respect of any Monthly Service Payment, the Separate FF&E Services Fee or any Fit-Out Works Phase Completion Payment, such failure continues for 30 days;

- (C) in respect of any 3 Monthly Service Payments in any rolling 9 month period, such failure continues for 15 Business Days in respect of each such Monthly Service Payment; or
- (D) in respect of any other payment due and payable by Contracting Authority to Project Co under this Project Agreement, such failure continues for 90 days,

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

- (ii) Contracting Authority committing a material breach of its obligations under Section 14 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or
- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days (for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”).

43.2 Project Co’s Options

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

43.3 Project Co’s Costs

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

43.4 No Other Rights to Terminate

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

44. RELIEF EVENT AND NON-DEFAULT TERMINATION**44.1 Termination for Relief Event**

- (a) Subject to Section 44.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 40.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.
- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 44.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount which, together with the Monthly Service Payment, is equal to or greater than [REDACTED]% of the Maximum Service Payment for the relevant Payment Period.

44.2 Termination for Force Majeure

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

44.3 Termination for Convenience

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

44.4 Automatic Expiry on Expiry Date

- (a) This Project Agreement shall terminate automatically on the Expiry Date.

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

45. EFFECT OF TERMINATION

45.1 Termination

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

45.2 Continued Effect – No Waiver

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

45.3 Continuing Performance

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

45.4 Consequences of Termination

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 44.4:
- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to Contracting Authority as shall not already have been transferred to Contracting Authority pursuant to Section 52.1, Project Co shall transfer to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Contracting Authority), such part of the Works and Facility as shall have been constructed and such items of the Plant and equipment, including FF&E, as shall have been procured by Project Co, and, if Contracting Authority so elects:
- (A) all plant, equipment and materials (other than those referred to in Section 45.4(a)(i)(B)) on or near to the Site shall remain available to Contracting Authority for the purposes of completing the Works; and
- (B) all construction plant and equipment shall remain available to Contracting Authority for the purposes of completing the Works, subject to payment by Contracting Authority of the Construction Contractor's reasonable charges;

- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to Contracting Authority (to the extent such items have not already been delivered to Contracting Authority) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Facility;
- (iii) in so far as title shall not have already passed to Contracting Authority pursuant to Section 52.1 or Section 45.4(a)(i), Project Co shall hand over to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Contracting Authority), the Existing Facilities and Facility together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment, including the FF&E, and to the extent that any such assets or rights are not capable of being transferred by Project Co to Contracting Authority, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Contracting Authority in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
- (iv) if Contracting Authority so elects, Project Co shall ensure that any of the Subcontracts between Project Co and each Subcontractor (including the Construction Contract and the Service Contract), any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to Contracting Authority or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with the Construction Contractor or the Service Provider shall be made by Contracting Authority pursuant to, and subject to, the terms of the applicable Direct Agreement;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if Contracting Authority so elects, execute such sale) to Contracting Authority at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 – Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Contracting Authority), all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Facility, and reasonably required by Contracting Authority in connection with the operation of the Facility or the provision of the Project Co Services;
- (vi) Project Co shall deliver to Contracting Authority (to the extent such items have not already been delivered to Contracting Authority) one complete set of:
 - (A) the most recent As Built Drawings in the format that Contracting Authority, acting reasonably, considers most appropriate at the time showing all alterations made to the Facility since the Substantial Completion Date;
 - (B) the most recent maintenance, operation and training manuals for the Existing Facilities and Facility; and

- (C) the Plant Services manual, fully updated;
 - (vii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to Contracting Authority, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Contracting Authority), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement and included in the Facility;
 - (viii) Project Co shall deliver to Contracting Authority all information, reports, documents, records and the like referred to in Section 34, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to Contracting Authority); and
 - (ix) in the case of the termination of this Project Agreement on the Expiry Date in accordance with Section 44.4, the Facility and elements of the Facility shall be in the condition required in accordance with Section 47 and Schedule 24 – Expiry Transition Procedure.
- (b) If any operation or maintenance requirement of the Facility (or any element thereof) is dependent upon the availability of any stocks of material or other assets, road vehicles, spare parts, critical or custom made spare parts, or other moveable property owned or stored off-site by Project Co, any Project Co Parties or other vendors or service providers, Project Co shall make available to Contracting Authority, three months prior to the Expiry Date, a comprehensive list of such operation or maintenance requirements and the items upon which they are dependent, which list shall include, but not be limited to, a description of the relevant equipment, system, task, services, activity, location, source, vendor details, availability details, frequency of use and any other information Contracting Authority may require to ensure the continuous, proper and safe operation and maintenance of the Facility (including all elements thereof).

45.5 Ownership of Information

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

45.6 Provision in Subcontracts

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

45.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued provision of Project Co Services pursuant to Sections 3.2 and 3.3 of Schedule 23 – Compensation on Termination if applicable:
- (i) cooperate fully with Contracting Authority and any successors providing to Contracting Authority services in the nature of any of the Project Co Services or any part of the Project Co Services in order to achieve a smooth transfer of the manner in which Contracting Authority obtains services in the nature of the Project Co Services and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of the users of the Facility and/or the Existing Facilities, including employees, Macdonald Block Service Users and members of the public;
 - (ii) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by Contracting Authority pursuant to Section 45.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from Contracting Authority requiring it to do so, Contracting Authority may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
 - (iii) forthwith deliver to the Contracting Authority Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Facility; and
 - (B) to the extent transferable and without prejudice to Contracting Authority's rights pursuant to Section 48, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Facility; and
 - (iv) as soon as practicable vacate the Site and, without limiting Project Co's obligations under Schedule 24 – Expiry Transition Procedure, shall leave the Site and the Facility in a safe, clean and orderly condition.
- (b) If Contracting Authority wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the Project Co Services or any of them, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with Contracting Authority fully in such competition process, including by:
- (i) providing any information which Contracting Authority may reasonably require to conduct such competition, including all information contained in the Plant Services manual, other than Sensitive Information; and
 - (ii) assisting Contracting Authority by allowing any or all participants in such competition process unrestricted access to the Site and the Facility.

45.8 Termination upon Aforesaid Transfer

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

45.9 Survival

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
- (i) all representations, warranties and indemnities under this Project Agreement; and
 - (ii) Sections 1.2, 1.3, 5, 6, 7, 15.2, 16.1, 16.2, 16.3(a), 16.4, 23.6, 24.15, 26.8, 29.4, 30, 31.6, 31.8, 31.13, 31.14, 31.15, 32, 33, 34, 42.6, 43.3, 44.4, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 57.3, 58.1, 61.4, 61.8, 61.9, 61.10, 61.11, 61.12 of this Project Agreement, Schedule 23 – Compensation on Termination, Sections 2, 4 and 5 of Schedule 24 – Expiry Transition Procedure, Sections 1.2 to 1.8 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Schedule 36 – Energy Matters and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

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

46. COMPENSATION ON TERMINATION**46.1 Compensation on Termination**

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

46.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 46.2(b), any compensation paid pursuant to this Section 46, including pursuant to Schedule 23 – Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and Contracting Authority, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and Contracting Authority shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 46.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination

itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 31.13 or taken into account pursuant to Schedule 23 – Compensation on Termination in determining or agreeing upon the Contracting Authority Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Breach of Refinancing Termination Sum or any other termination sum, as the case may be;

- (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 45.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
- (iii) any amount owing to Contracting Authority in relation to:
 - (A) taxes or tax withholdings, including workers' compensation levies;
 - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
 - (C) any order made by a court under the *Civil Remedies Act*, S.O. 2001, c.28 and
 - (D) any fraud or other criminal offence committed against Contracting Authority.

47. EXPIRY TRANSITION PROCEDURE

47.1 Expiry Transition

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

48. INTELLECTUAL PROPERTY

48.1 Representation and Warranty

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

48.2 Delivery of Project Data and Intellectual Property Rights

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

48.3 Licence of Project Data and Intellectual Property Rights

- (a) Project Co:
- (i) hereby grants to Contracting Authority an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
 - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor or the Service Provider, obtain the grant of an equivalent licence to that referred to in Section 48.3(a)(i), provided that such licence may, in respect of the Construction Contractor's and the Service Provider's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the relevant Subcontract; and
 - (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor or the Service Provider), obtain the grant of an equivalent licence to that referred to in Section 48.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.
- (b) In this Section 48.3 and Section 48.5(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

48.4 Jointly Developed Materials

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

- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to Contracting Authority.

48.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 48 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of Contracting Authority, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable Contracting Authority or its nominee to access and otherwise use (as such term is defined in Section 48.3(b)), subject to the payment by Contracting Authority of any relevant fee, such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 48.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 48 in accordance with Good Industry Practice. Project Co shall submit to the Contracting Authority Representative Project Co's proposals for the back-up and storage in safe custody of such data, materials and documents and Contracting Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the Contracting Authority Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the Contracting Authority Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 48.5(b) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

48.6 Claims

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

48.7 Contracting Authority Trade-Marks

- (a) Project Co shall not:
- (i) use any Contracting Authority Trade-Marks without obtaining a trade-mark licence on terms and conditions mutually satisfactory to Contracting Authority and Project Co, each acting reasonably; or

- (ii) use the names or any identifying logos or otherwise of Contracting Authority or the Contracting Authority Representative in any advertising or permit them so to be used except with the prior written consent of Contracting Authority.

48.8 Confidential Information

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

48.9 Government Use of Documents

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

48.10 Restrictions

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

49. CONFIDENTIALITY / COMMUNICATIONS**49.1 Disclosure**

- (a) Subject to Sections 49.1(b), 49.1(c) and 49.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, Contracting Authority has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as Contracting Authority, in its sole discretion, may consider appropriate. In exercising its discretion, Contracting Authority will be guided by the principles set out in Sections 49.1(b) and 49.1(c).

- (b) Contracting Authority will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 17(1) of FIPPA.
- (c) Notwithstanding Section 49.1(b), but subject to Section 49.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), Contracting Authority may disclose such information.
- (d) Notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that this Project Agreement and any or all of the terms thereof are subject to the Open Data Directive and that Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Open Data Directive.

49.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), Contracting Authority shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 49.1(b). The Parties acknowledge and agree that the Annual Service Payment, but not the breakdown thereof, may be disclosed.
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 49.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and Contracting Authority shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

49.3 Disclosure to Government

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

49.4 Freedom of Information and Protection of Privacy Act

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

49.5 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 49 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:
 - (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee or agent of the Lenders, and their professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that Contracting Authority may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the Contracting Authority's alternate procurement and financing policies and framework. Contracting Authority will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event with less than a reasonable degree of care.
- (f) Without limiting the generality of Section 49.5, Project Co shall comply with the document control and security protocol submitted by Project Co pursuant to Section 18.11 and approved by

Contracting Authority, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by Contracting Authority.

49.6 Exceptions

- (a) Information of a Party (the “**Proprietor**”) other than Government Sensitive Information and other than Personal Information will not be considered to be Confidential Information in the following circumstances:
- (i) the Proprietor advises the other Party to whom the information has been disclosed (the “**Confidant**”) that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
 - (iii) the information is a matter of public record or in the public domain;
 - (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
 - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant’s knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
 - (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
 - (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
 - (viii) the information is disclosed to Contracting Authority upon a termination of this Project Agreement, pursuant to Section 45 or is otherwise required by Contracting Authority for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Facility, the operation, maintenance or improvement of the Facility, or any other operations or services the same as, or similar to, the Project Operations; or
 - (ix) the information would not be exempt from disclosure under FIPPA.

49.7 Survival of Confidentiality

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

49.8 Communications

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

50. PERSONAL INFORMATION

50.1 General

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

50.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure and shall require each Project Co Party to take all necessary steps and to include provisions in Subcontracts to require Project Co Parties to take all necessary

steps, such that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.

- (b) Project Co shall keep confidential and shall require each Project Co Party to keep confidential all Personal Information, and shall restrict and shall require each Project Co Party to restrict access to Personal Information to only those authorized employees and permitted Project Co Parties that require access to such information to fulfil their job requirements in connection with the Project Operations and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 50 and shall include provisions in all Subcontracts to require all Project Co Parties to keep confidential all Personal Information that any of them may encounter or obtain during the course of their duties.
- (c) Upon termination of this Project Agreement or upon request of Contracting Authority, whichever comes first, Project Co shall immediately cease all use of and return to Contracting Authority or, at the direction of Contracting Authority, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
- (d) To the extent that any of the Project Operations involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Section 50.2(c) above, such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
- (e) Project Co shall immediately inform Contracting Authority of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 50.
- (f) Contracting Authority may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within 2 Business Days of such request an agreement satisfactory to Contracting Authority, acting reasonably, requiring such person to keep Personal Information confidential.
- (g) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to Contracting Authority and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Laws governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.

50.3 Conflict and Survival

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

51. INSURANCE AND PERFORMANCE SECURITY**51.1 General Requirements**

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

51.2 No Relief from Liabilities and Obligations

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

52. TITLE**52.1 Title**

- (a) Title to each item and part of the Facility and the FF&E, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to Contracting Authority (or as Contracting Authority may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the Facility or are to be affixed or attached to the Facility prior to Substantial Completion shall pass to Contracting Authority (or as Contracting Authority may direct) at the time that such items are included in the Facility or affixed or attached to the Facility.

53. INDEMNITIES**53.1 Project Co Indemnities to Contracting Authority**

- (a) Project Co shall indemnify and save harmless Contracting Authority, the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
 - (ii) a failure by Project Co to achieve any Fit-Out Works Phase Completion by its applicable Scheduled Fit-Out Works Phase Completion Date;
 - (iii) any physical loss of or damage to all or any part of the Lands, the Facility and/or the Existing Facilities, or to any equipment, assets or other property related thereto;
 - (iv) the death or personal injury of any person;
 - (v) any physical loss of or damage to property or assets of any third party; or

- (vi) any other loss or damage of any third party

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

- (A) the breach of this Project Agreement by Contracting Authority; or
 - (B) in respect of Section 53.1(a)(i) and Section 53.1(a)(ii), any deliberate or negligent act or omission of Contracting Authority or any Province Person; or
 - (C) in respect of Sections 53.1(a)(iii), 53.1(a)(iv), 53.1(a)(v) or 53.1(a)(vi), any act or omission of Contracting Authority or any Province Person; or
- (vii) a deliberate or negligent act or omission of a Macdonald Block Service User that results in undue interference with Project Co's performance of the Project Co Services and Project Co has been unable to take commercially reasonable steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of Contracting Authority or an appropriate Province Person, except to the extent:
 - (A) any such deliberate or negligent act or omission is caused or contributed to by Project Co or any Project Co Party; or
 - (B) Macdonald Block Service User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (b) Project Co shall indemnify and save harmless Contracting Authority, each Province Person and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
 - (c) Project Co shall indemnify and save harmless Contracting Authority, each Province Person and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
 - (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Project Agreement; or
 - (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which Contracting Authority is responsible pursuant to Section 16.2(a);

except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by Contracting Authority or by any act or omission of Contracting Authority or any Contracting Authority Party.

- (d) Without prejudice to Contracting Authority's rights under Section 42 and any other rights under this Project Agreement, if Contracting Authority exercises its step-in rights under the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement, Project Co shall indemnify Contracting Authority for all obligations of Project Co assumed by Contracting Authority under the Construction Contract or the Service Contract, as the case may be, and for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights.
- (e) Project Co shall indemnify Contracting Authority for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Contracting Authority, or from the date identified (if any) applicable to an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

53.2 Contracting Authority Indemnities to Project Co

- (a) Contracting Authority shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
 - (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by Contracting Authority or any act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
 - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by Contracting Authority or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and
 - (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by Contracting Authority or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

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

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

53.3 Conduct of Claims

- (a) This Section 53.3 shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The Party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 53, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 53.3(d), 53.3(e) and 53.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) With respect to any claim conducted by the Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;

- (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 53.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 53.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section 53.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or
 - (iii) the Indemnifier fails to comply in any material respect with Section 53.3(d).
- (f) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 53.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 53.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except,

however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

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

53.4 Mitigation – Indemnity Claims

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

54. LIMITS ON LIABILITY

54.1 Indirect Losses

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

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

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

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

54.2 No Liability in Tort

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

54.3 Sole Remedy

- (a) Subject to:

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

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

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

54.4 Maximum Liability

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

54A LIQUIDATED DAMAGES

- (a) In the event that a Substantial Completion Certificate has not been issued on or before the date which is 30 days following the Scheduled Substantial Completion Date (the “**LD Commencement Date**”) Project Co shall pay the Liquidated Damages from the LD Commencement Date until the earlier of (i) the Substantial Completion Date and (ii) the date on which the termination of the Project Agreement takes effect in accordance with its terms. Contracting Authority and Project Co agree that such Liquidated Damages are not a penalty but represent a genuine and reasonable pre-estimate of Administrative Costs which Contracting Authority will incur as a result of Project Co’s failure to achieve Substantial Completion by the Scheduled Substantial Completion Date, and which Administrative Costs Project Co agrees with Contracting Authority it would be difficult or impossible to quantify. Subject and without prejudice to the other remedies of Contracting Authority herein (including remedies for termination for a Project Co Event of Default), such payment shall constitute full and final satisfaction of any and all Administrative Costs that may be claimed by Contracting Authority as a result of Project Co not achieving Substantial Completion by the Scheduled Substantial Completion Date. Project Co agrees with Contracting Authority that such Liquidated Damages shall be payable whether or not Contracting Authority incurs or mitigates such Administrative Costs, and that Contracting Authority shall have no obligation to mitigate any such Administrative Costs. Project Co agrees that it is, and shall be, estopped from alleging that such Liquidated Damages are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such Administrative Costs were not incurred.
- (b) Notwithstanding Section 54A(a), Project Co’s obligation to indemnify Contracting Authority pursuant to Section 53.1(a)(i) shall remain unaffected by, and shall apply in addition to, any Liquidated Damages payable by Project Co pursuant to this Section 54A, provided, however, that any amount for which Project Co is required to indemnify Contracting Authority pursuant to 53.1(a)(i) shall exclude administrative costs and expenses in respect of which Liquidated Damages have been paid or are payable.
- (c) Except as expressly provided herein, nothing in this Section 54A shall restrict, limit, prejudice or in any other way impair the rights or remedies of the parties under any other provision of this Project Agreement.
- (d) Where Liquidated Damages are incurred, Project Co shall, without prejudice to Contracting Authority’s rights under Section 31.13(a), pay such amounts to Contracting Authority on a quarterly basis, on the last Business Day of each calendar quarter, commencing the first calendar quarter following the LD Commencement Date.

55. DISPUTE RESOLUTION PROCEDURE

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

56. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL**56.1 Project Co Assignment**

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, the Construction Contract, the Service Contract or any agreement entered into in connection with this Project Agreement without the prior written consent of Contracting

Authority, which shall, in any event, be conditional on Project Co paying to Contracting Authority any amount calculated under Section 56.6(a)(ii) and no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or any of its Affiliates is a Restricted Person or a person whose standing or activities: (i) are inconsistent with Contracting Authority's role (in its reasonable opinion) generally in the Province or with respect to the Macdonald Block Activities; (ii) may compromise the reputation of Contracting Authority, any Macdonald Block Occupants and/or the Province; (iii) may compromise the integrity of the Existing Facilities or the Facility; or (iv) are inconsistent with the nature of the Province's public services, so as to affect public confidence in such services.

- (b) Section 56.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if Contracting Authority so requires.

56.2 Contracting Authority Assignment

- (a) Contracting Authority may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties:
- (i) to the Province;
 - (ii) as may be required to comply with Applicable Law;
 - (iii) to any minister of the Crown;
 - (iv) an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of Contracting Authority under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of Contracting Authority's obligations hereunder and under the other Project Documents to which Contracting Authority is a party in respect of the period from and after the assignment; and
 - (v) in circumstances other than those described in Sections 56.2(a)(i) to 56.2(a)(iv), with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of Contracting Authority hereunder and under any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties in respect of the period from and after the assignment.
- (b) Contracting Authority shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 56.2.

56.3 Subcontractors

- (a) Project Co shall not subcontract any interest in this Project Agreement, the Construction Contract or the Service Contract, and shall not permit the Construction Contractor or the Service Provider to subcontract any interest in the Construction Contract or Service Contract, to a Restricted Person,

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

56.4 Changes in Ownership and Control

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co [REDACTED] or in relation to the operation, management and ownership of the Project.
- (b) No Change in Ownership of Project Co or of any Control Party shall be permitted:
 - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities: (i) are inconsistent with Contracting Authority's role (in its reasonable opinion) generally in the Province or with respect to the Macdonald Block Activities; (ii) may compromise the reputation of Contracting Authority, any Macdonald Block Occupants and/or the Province; (iii) may compromise the integrity of the Existing Facilities or the Facility; or (iv) are inconsistent with the nature of the Province's public services, so as to affect public confidence in such services; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations, the Macdonald Block Activities or the Contracting Authority FM Services.
- (c) In the event that a person having Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project becomes a Restricted Person, Contracting Authority may:

- (i) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control; or
 - (ii) in any other circumstance, require a Change in Ownership so that such Restricted Person shall be divested of its Direct or Indirect Power or Control,
- in each case, on such terms as are satisfactory to Contracting Authority, in its discretion.
- (d) Project Co shall provide notice to Contracting Authority of any Change in Ownership of Project Co or of any Control Party, as the case may be, that is not a Change in Control within 5 Business Days after such Change in Ownership, and such notice shall include:
 - (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership; and
 - (ii) a statement identifying the Excess Equity Gain arising from such Change in Ownership together with supporting calculations and documents.
 - (e) Subject to Sections 56.4(a), (b) and (c) and to the payment by Project Co of any Excess Equity Gain under Section 56.6(a)(i), no Change in Control of Project Co or of any Control Party shall be permitted without the prior written consent of Contracting Authority.
 - (f) Project Co shall provide notice to Contracting Authority of any proposed Change in Control of Project Co or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control, and such notice shall include:
 - (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following any such proposed Change in Control;
 - (ii) as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over Project Co or the relevant Control Party pursuant to such Change in Control; and
 - (iii) a statement identifying the Excess Equity Gain which would arise from such proposed Change in Control together with supporting calculations and documents.
- Following the delivery to Contracting Authority of the notice referred to in this Section 56.4(f), Project Co shall provide Contracting Authority with such other information pertaining to the proposed Change in Control as Contracting Authority may reasonably request.
- (g) Upon request by Project Co and delivery of the information required by Contracting Authority, Contracting Authority shall advise Project Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities: (i) are inconsistent with Contracting Authority's role (in its reasonable opinion) generally in the Province or with respect to the Macdonald Block Activities; (ii) may compromise the reputation of Contracting Authority, any Macdonald Block Occupants and/or the Province; (iii) may compromise the integrity of the Existing Facilities or the Facility; or (iv) are inconsistent with the nature of the Province's public services, so as to affect public confidence in such services.

- (h) Notwithstanding the definition of “Control Parties” set out in Schedule 1 – Definitions and Interpretation, this Section 56.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.
- (i) Section 56.4(d) shall not apply to a Change in Ownership of a Control Party that arises from a change in the shareholdings of such Control Party or an Affiliate of such Control Party (the “**Relevant Entity**”) owned by an employee of such Relevant Entity, unless such changes (i) individually or in the aggregate determined since the date of this Project Agreement, would result in a Change of Control of Project Co, in which case Section 56.4(f) shall apply; or (ii) would result in an obligation to compensate the Contracting Authority in accordance with Section 56.6 of this Project Agreement, in which case Section 56.4(d) and Section 56.6 shall apply.

56.5 Contracting Authority Due Diligence

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

56.6 Gain Share

- (a) Contracting Authority shall be entitled to receive a **[REDACTED]**% share of:
 - (i) any Excess Equity Gain arising from a Change in Ownership of Project Co; and
 - (ii) the amount from the proceeds of a sale of any of Project Co’s assets to a third party, which sale includes an assignment, transfer, disposition of or other alienation of an interest in the Project Agreement by Project Co made in accordance with Section 56.1, that is equal to the amount that would have been payable in accordance with Section 56.6(a)(i) if such sale had proceeded as a Change in Ownership of Project Co.

57. PROHIBITED ACTS

57.1 Definition

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

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

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

57.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then Contracting Authority shall be entitled to act in accordance with the following:
 - (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then Contracting Authority may give written notice to Project Co and Section 42 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then Contracting Authority may give written notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give written notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 56.3;

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

57.3 Permitted Payments

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

57.4 Notification

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

57.5 Replacement of Project Co Party

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

58. NOTICES

58.1 Notices to Parties

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

If to Project Co: [REDACTED]

If to Contracting Authority: [REDACTED]

[REDACTED]

58.2 Notices to Representatives

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

If to Project Co Representative: [REDACTED]

If to the Contracting Authority Representative: [REDACTED]

58.3 Facsimile

- (a) 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 58.3.

58.4 Change of Address

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

58.5 Deemed Receipt of Notices

- (a) Subject to Sections 58.5(b), 58.5(c) and 58.5(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 58.
- (c) 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.
- (d) 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.

58.6 Service on Contracting Authority

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

59. EMERGENCY AND SECURITY MATTERS**59.1 Emergency**

From and after the Substantial Completion Date, Contracting Authority may at any time notify Project Co that an Emergency exists and if either does so and until a reasonable period after receipt of a notice from

Contracting Authority (such period to be determined by Contracting Authority in consultation with Project Co (both parties acting reasonably)) to the effect that the Emergency has ended, Project Co:

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

59.2 Unauthorized Entry

Except in relation to any of the Project Co Parties, Project Co shall take the steps required by the Contracting Authority Representative (to the extent same is not the responsibility of the Security Provider at the Facility, as applicable) in compliance with Applicable Law which Project Co is lawfully able to take to prevent unauthorized persons (other than Project Co Parties) being admitted to the Facility or to enter any secure areas at the Facility, being any areas subject to security clearance control procedures as described in Schedule 15 – Output Specifications, (the “**Secure Areas**”). If the Contracting Authority Representative gives Project Co notice that any particular person (other than emergency services personnel such as the Security Provider, fire and ambulance services) is not to be admitted to the Facility or a Secured Area, Project Co shall (insofar as it is lawfully able to do so) without any compensation being paid to Project Co take all steps to prevent that person being admitted to the Facility and/or the Secure Areas, as the case may be, provided that such functions are not otherwise the responsibility of the Security Provider at the Facility.

59.3 Photographs/Visual Records

- (a) Subject to Sections 5.1(a)(ix) and 5.1(b) of Schedule 18 – Communications, Project Co shall:
 - (i) not, other than (A) for design or construction purposes or otherwise in connection with the proper carrying out of the Works prior to Final Completion, or (B) as specifically required to carry out the Security and Surveillance Services and Project Co’s obligations as a provider of maintenance, repair and lifecycle services in accordance with the terms of this Project Agreement, take or permit to be taken by any Project Co Party any photographs, videos or other visual records of the Existing Facilities and/or the Facility or the Site or any part thereof unless Project Co has obtained the prior written consent of the Contracting Authority Representative;
 - (ii) take all steps necessary to ensure that no such photographs or other visual records taken pursuant to Section 59.3(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 the Contracting Authority Representative; and

- (iii) not use the names or any identifying logos or otherwise of Contracting Authority or the Contracting Authority Representative in any advertising or permit them so to be used except with the prior written consent of Contracting Authority.

60. CONTRACTING AUTHORITY DESIGNATE

60.1 Right to Designate

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

61. GENERAL

61.1 Amendments

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

61.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy. No further waiver in writing is required in order to give effect to the waivers provided for in accordance with the terms of Sections 24.4(j), 24.12(g), and 24A.12(g).
- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

61.3 Relationship Between the Parties

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

61.4 General Duty to Mitigate

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

61.5 Actual Knowledge

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

61.6 Entire Agreement

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

61.7 No Reliance

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

61.8 Severability

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

61.9 Enurement

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

61.10 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.

- (b) Subject to Schedule 27 – Dispute Resolution Procedure both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Project Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

61.11 Cumulative Remedies

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

61.12 Further Assurance

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

61.13 Costs

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

61.14 Language of Agreement

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

61.15 Proof of Authority

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

61.16 Counterparts

- (a) This Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original, faxed form, or pdf, provided that any Party providing its signature in faxed form or by pdf shall promptly

forward to the other Party an original signed copy of this Project Agreement which was so faxed or electronically delivered.

61.17 Province Persons as Third Party Beneficiaries

- (a) The provisions of Sections 3.1(b), 6.1, 6.2(a), 6.3(a), 6.4, 8.1(d), 9.2(a), 9.4(b), 9.5(a)(v), 16.1(a), 18.3(j), 19.1, 19.2, 24.13, 24A.13, 25.3(a), 26.4(b), 28.2(a), 28.2(e), 30.1, 33.2(e), 48.1, 48.6, 53.1 and 54.2 and each other provision of this Project Agreement which is expressed to be for the benefit of a Province Person or a Contracting Authority Party, as applicable, (collectively, the “**Third Party Beneficiary Provisions**”) are:
- (i) intended for the benefit of each Province Person, or Contracting Authority Party, as applicable and, if so set out in the relevant Section, each Province Person’s or Contracting Authority Party’s, as applicable, directors, officers employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, in respect of each Province Person, the “**Province Person Third Party Beneficiaries**”, and in respect of each Contracting Authority Party, the “**Contracting Authority Third Party Beneficiaries**”); and
 - (ii) are in addition to, and not in substitution for, any other rights that the Province Person Third Party Beneficiaries may have in contract or otherwise.
- (b) Contracting Authority shall hold the rights and benefits of each of the Third Party Beneficiary Provisions in trust for and on behalf of the Province Person Third Party Beneficiaries or Contracting Authority Third Party Beneficiaries, as applicable, and Contracting Authority hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Province Person Third Party Beneficiaries or Contracting Authority Third Party Beneficiaries, as applicable.

61.18 Copyright Notice

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

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

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

Per:

[REDACTED]

I have authority to bind the corporation.

**FENGATE PCL PROGRESS PARTNERS
MBR LP, by its general partner, FENGATE PCL
PROGRESS PARTNERS MBR GP INC.**

Per: _____

[REDACTED]

I have authority to bind the corporation.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
 - 1.1 “**10-Day Notice**” has the meaning given in Section 24.4(a)(i) of the Project Agreement.
 - 1.2 “**880 Bay/60 Grosvenor Lands**” has the meaning given in Schedule 35 – Site.
 - 1.3 “**880 Bay/60 Grosvenor Project**” has the meaning given in Section 9.12(a) of the Project Agreement.
 - 1.4 “**Accessibility Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
 - 1.5 “**Account Trustee**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
 - 1.6 “**Actual Cumulative Construction Period Payments**” has the meaning given in Schedule 19 – Construction Period Payments.
 - 1.7 “**Actual Eligible Construction Period Payment**” has the meaning given in Schedule 19 – Construction Period Payments.
 - 1.8 “**Actual Relevant Insurance Cost**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
 - 1.9 “**Ad-Hoc Services**” means those ad hoc services to be carried out pursuant to Section 20.0 of Part 6 of Schedule 15 – Output Specifications.
 - 1.10 “**Ad-Hoc Services Request**” has the meaning given in Schedule 20 – Payment Mechanism.
 - 1.11 “**Additional Contractors**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor, the Service Provider or Project Co) or Contracting Authority’s own forces, engaged by Contracting Authority to carry out the Additional Works.
 - 1.12 “**Additional Repair**” and “**Additional Repairs**” each has the meaning given in Schedule 33 – Existing Facilities Repairs and Independent Assessor.
 - 1.13 “**Additional Repairs Cash Allowance Amount**” has the meaning given in Schedule 33 – Existing Facilities Repairs and Independent Assessor.
 - 1.14 “**Additional Repairs Cash Allowance Item**” has the meaning given in Schedule 33 – Existing Facilities Repairs and Independent Assessor.

- 1.15 “**Additional Works**” means those works in relation to the Facility which are not Works or Project Co Services and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
- 1.16 “**Adjusted Annual Energy Target**” has the meaning given in Schedule 36 – Energy Matters.
- 1.17 “**Adjusted Estimated Fair Value**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.18 “**Adjusted Highest Qualifying Tender Price**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.19 “**Adjusted Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.20 “**Administrative Costs**” means, for the purposes of Section 54A of the Project Agreement, only those costs and expenses incurred by Contracting Authority in the ordinary course in relation to staffing, the Design Compliance Consultant, and the Independent Certifier, in each case assuming normal utilization.
- 1.21 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of its unitholders, shareholders, partners or owners, as the case may be.
- 1.22 “**Ancillary Documents**” means the Construction Contract, the Service Contract [REDACTED] the Facility Co-ordination Agreement, [REDACTED], and the [REDACTED].
- 1.23 “**Annual Energy Target**” has the meaning given in Schedule 36 – Energy Matters.
- 1.24 “**Annual Insurance Report**” has the meaning given in Section 7.2 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.25 “**Annual Review Date**” has the meaning given in Schedule 36 – Energy Matters.
- 1.26 “**Annual Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.27 “**Annual Service Plan**” has the meaning given in Part 6 of Schedule 15 - Output Specifications.
- 1.28 “**Anticipated Final Completion Date**” has the meaning given in Section 24.11(a) of the Project Agreement.

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- 1.29 “**Anticipated Fit-Out Works Final Completion Date**” has the meaning given in Section 24A.11(a) of the Project Agreement.
- 1.30 “**Anticipated Fit-Out Works Phase Completion Date**” has the meaning given in Section 24A.7(a) of the Project Agreement.
- 1.31 “**Anticipated Lifecycle Replacement Year**” means the year, or years, falling within the Operational Term or within the 10-year period following the Expiry Date, as indicated in Appendix A to Schedule 24 – Expiry Transition Procedure, in which an element of the Facility is expected to be replaced, refreshed or refurbished.
- 1.32 “**Anticipated Substantial Completion Date**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.33 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, Contracting Authority, any Contracting Authority Party or any other Province Person.
- 1.34 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.35 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.36 “**Approved Purposes**” means:
- (a) Contracting Authority and the Province Persons performing the Macdonald Block Activities and the Contracting Authority FM Services (and their operations relating to the performance of the Macdonald Block Activities and the Contracting Authority FM Services), their obligations under the Project Agreement and/or any other activities in connection with the Facility, the Existing Facilities, and/or the Site;
 - (b) following termination of the Project Agreement, the design, construction and/or maintenance of the Facility, and/or the performance of any other operations the same as, or similar to, the Project Operations; and

- (c) the development by Contracting Authority, MGCS and/or the Province of best practices for facilities in Ontario similar to the Facility.
- 1.37 “**Area Weighting Percentage**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.38 “**As Built Drawings**” means drawings prepared by Project Co in a format and with content and details that Contracting Authority, acting reasonably, considers appropriate.
- 1.39 “**As-built Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.40 “**Associated Liabilities**” has the meaning given in Section 32.7(b) of the Project Agreement.
- 1.41 “**ASHRAE**” means the American Society for Heating Refrigeration and Air-Conditioning Engineers.
- 1.42 “**Audio-Visual and Concierge Services**” means those audio-visual and concierge services to be carried out pursuant to Section 13.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.43 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.44 “**Availability Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.45 “**Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.46 “**Availability Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.47 “**Average Unit Cost**” has the meaning given in Schedule 36 – Energy Matters.
- 1.48 “**B3.02 Retail Tenant Cash Allowance Works**” means the Works described in Section 1.3.6.8 of Schedule 15 – Output Specifications.
- 1.49 “**Background Information**” means any and all drawings, reports (including the Environmental Reports and Designated Substance Reports and the Geotechnical Reports), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by Contracting Authority or any Contracting Authority Party, or which was obtained from or through any other sources prior to the date of the Project Agreement.
- 1.50 “**Base Case Equity IRR**” means [REDACTED]%, which, for greater certainty, is calculated on a pre-tax basis.

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- 1.51 “**Base Date**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.52 “**Base Relevant Insurance Cost**” has the meaning given in Section 7.1(b) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.53 “**Beneficiary**” has the meaning given in Section 53.3(a) of the Project Agreement.
- 1.54 “**Bond Indenture**” has the meaning given in the Common Terms and Intercreditor Agreement.
- 1.55 “**Bondholders**” has the meaning given to it in the Common Terms and Intercreditor Agreement.
- 1.56 “**Breach of Refinancing Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.57 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario), as amended or replaced from time to time.
- 1.58 “**Building Permit**” means the building permit issued by the City of Toronto with respect to the construction of the Facility on the Site.
- 1.59 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.
- 1.60 “**Business Opportunities**” has the meaning given in Section 4.1(a) of the Project Agreement.
- 1.61 “**CaGBC**” means the Canada Green Building Council.
- 1.62 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.63 “**Canadian GAAP**” shall be deemed to be the generally accepted accounting principles, from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.
- 1.64 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.65 “**Cash Allowance Account**” means [REDACTED].
- 1.66 “**Cash Allowance Amount**” means [REDACTED]:

- (a) \$[REDACTED]for Ceremonial Gardens Cash Allowance Works;
 - (b) \$[REDACTED]for B3.02 Retail Tenant Cash Allowance Works;
 - (c) \$[REDACTED]for Utilities Cash Allowance Works; and
 - (d) each Additional Repairs Cash Allowance Amount,
- and “**Cash Allowance Amounts**” shall be construed accordingly.

1.67 “**Cash Allowance Item**” means each of the following:

- (a) Ceremonial Gardens Cash Allowance Works;
- (b) B3.02 Retail Tenant Cash Allowance Works;
- (c) Utilities Cash Allowance Works; and
- (d) each Additional Repairs Cash Allowance Item,

and “**Cash Allowance Items**” shall be construed accordingly.

1.68 “**Category 1 FF&E**” means all items of fixtures, fittings, furnishings, chattels and equipment located from time to time at the Facility or the Site which Project Co procures on behalf of Contracting Authority and monitors and coordinates the installation thereof into the Facility pursuant to Section 21 of the Project Agreement and includes the categories and types of items identified in Item 4.2 – FF&E Matrix of Part 4 of Schedule 15 – Output Specifications, and excludes, for certainty, Category 3 FF&E and Category 4 FF&E.

1.69 “**Category 2 FF&E**” [For the purposes of the Project, there is no Category 2 FF&E].

1.70 “**Category 3 FF&E**” means all new furniture, fixtures, fittings, chattels and equipment located from time to time at the Facility or the Site and which are procured and installed at the Facility by Macdonald Block Occupants (or their contractors, employees, the vendors of such equipment or such other person designated by the Macdonald Block Occupants) and which includes types of furniture, fixtures, fittings, chattels and equipment identified in Item 4.2 – FF&E Matrix of Part 4 of Schedule 15 – Output Specifications and located in the elements or components of the Facility identified in Item 4.2 – FF&E Matrix of Part 4 of Schedule 15 – Output Specifications, and which excludes, for certainty, Category 1 FF&E and Category 4 FF&E.

1.71 “**Category 4 FF&E**” means all new items of furniture, fixtures, fittings, chattels and equipment located from time to time at the Facility or the Site which Contracting Authority is the owner or lessee and includes the categories and types of items identified in Item 4.2 – FF&E Matrix of Part 4 of Schedule 15 – Output Specifications, and which excludes, for certainty, Category 1 FF&E and Category 3 FF&E.

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- 1.72 “**Ceremonial Gardens Cash Allowance Works**” means the Works described in Section 1.3.6.3 of Schedule 15 – Output Specifications.
- 1.73 “**Certificate of Recognition**” means the certification issued by IHSA to a person confirming that the health and safety management systems of such person comply with the terms, provisions and conditions of the COR Program.
- 1.74 “**Certification Services**” has the meaning given in the Independent Certifier Agreement.
- 1.75 “**Certification Services Variation**” has the meaning given in the Independent Certifier Agreement.
- 1.76 “**Certified H&S Inspector**” means an individual who is an employee or contractor of the IHSA and has the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 13.1(i) of the Project Agreement.
- 1.77 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power or authority, through any contractual right or other power or interest with or over a person, to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person.
- 1.78 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the date of the Project Agreement.
- 1.79 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units or any other ownership interest of such person, or in the direct or indirect power to vote or transfer any of the shares or units or any other ownership interest of such person.
- 1.80 “**Cleaning Services**” means those cleaning services to be carried out pursuant to Section 12 of Part 6 of Schedule 15 – Output Specifications.
- 1.81 “**Common Terms and Intercreditor Agreement**” means the common terms and intercreditor agreement made between, among others, Project Co [REDACTED] the Lenders’ Agent and the Senior Lenders dated the date of the Project Agreement.

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- 1.82 “**Commissioning Team**” has the meaning given in Section 5.1 of Schedule 14 – Outline Commissioning Program.
- 1.83 “**Commercial Close**” means the date of the Project Agreement.
- 1.84 “**Commissioning Plan**” has the meaning given in Schedule 14 – Outline Commissioning Program.
- 1.85 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 – Outline Commissioning Program;
 - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
 - (c) recommended by the manufacturer of any part of the Plant, equipment or FF&E;
 - (d) required to be included in the Final Commissioning Program by the Independent Certifier, the Contracting Authority Commissioning Agent or the Contracting Authority Representative during its development pursuant to Section 24.2 of the Project Agreement; and
 - (e) required to be included in each Fit-Out Works Phase Commissioning Program by the Independent Certifier, the Contracting Authority Commissioning Agent or the Contracting Authority Representative during its development pursuant to Section 24A.2 of the Project Agreement.
- 1.86 “**Community Benefits Annual Report**” has the meaning given in Section 18.15(c) of the Project Agreement.
- 1.87 “**Community Benefits Plan**” has the meaning given in Section 18.13(a) of the Project Agreement.
- 1.88 “**Community Benefits Quarterly Update**” has the meaning given in Section 18.15(b) of the Project Agreement.
- 1.89 “**Community Benefits Working Group**” has the meaning given in Section 18.14(a) of the Project Agreement.
- 1.90 “**Community Benefits Working Group Terms of Reference**” has the meaning given in Section 18.14(f) of the Project Agreement.
- 1.91 “**Compensation Date**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.92 “**Compensation Event**” has the meaning given in Section 38.1(a) of the Project Agreement.

- 1.93 “**Completion Holdback**” has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.94 “**Complex Structure**” means any post-tensioned or pre-tensioned structure that has undergone significant structural alteration making it difficult for personnel at the Site to predict the direction of forces or likely collapse mechanism to be experienced by such structure in connection with any Demolition of all or any part of such structure.
- 1.95 “**Complex Structure Demolition**” means any Demolition where any one or more of the following is applicable:
- (a) significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, or altered;
 - (b) large penetrations are being created through slabs;
 - (c) the Demolition may cause the collapse of any building or structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a building or structure and potentially jeopardize the safety of workers, staff or the general public using such building or structure;
 - (d) the Demolition of any building or structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any building or structure; and
 - (e) any apparent or inferable risk associated with the Demolition poses a significant risk to workers, the public or adjacent property.
- 1.96 “**Condition Assessment**” has the meaning given in Schedule 33 – Existing Facilities Repairs and Independent Assessor.
- 1.97 “**Condition Assessment Reports**” has the meaning given in Schedule 33 – Existing Facilities Repairs and Independent Assessor.
- 1.98 “**Confidant**” has the meaning given in Section 49.6(a)(i) of the Project Agreement.
- 1.99 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement.
- 1.100 “**Construction Act**” means the *Construction Act*, R.S.O. 1990, c.C.30 and regulations enacted thereunder, all as amended from time to time and subject to the application of the transition provisions in Section 87.3 of the Construction Act.
- 1.101 “**Construction Contract**” means the design-build agreement between Project Co and the Construction Contractor dated the date of the Project Agreement.

- 1.102 “**Construction Contractor**” means PCL Constructors Canada Inc., engaged by Project Co to perform the Works and any substitute building contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.103 “**Construction Contractor’s Direct Agreement**” means the direct agreement between Contracting Authority, Project Co, the Construction Contractor and the Construction Guarantor in the form set out in Schedule 5-1 – Construction Contractor’s Direct Agreement.
- 1.104 “**Construction Document Submittals**” has the meaning given in Section 18.3(d)(ii) of the Project Agreement.
- 1.105 “**Construction Guarantor**” means PCL Construction Group Inc.
- 1.106 “**Construction Period Payment**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.107 “**Construction Period Payment Application**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.108 “**Construction Quality Plan**” means such document included in Schedule 11A – Design Quality Plan and Construction Quality Plan.
- 1.109 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.110 “**Contract Day**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.111 “**Contract Month**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.112 “**Contract Year**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.113 “**Contracting Authority**” has the meaning given in the preamble to the Project Agreement.
- 1.114 “**Contracting Authority Commissioning**” means the commissioning activities to be carried out by any one or more of Contracting Authority and/or any Macdonald Block Occupants in accordance with the Final Commissioning Program.
- 1.115 “**Contracting Authority Commissioning Agent**” means the person appointed by Contracting Authority as its commissioning agent.

- 1.116 “**Contracting Authority Commissioning Period**” means the period during which any one or more of Contracting Authority and/or any Macdonald Block Occupants are performing the Contracting Authority Commissioning.
- 1.117 “**Contracting Authority Commissioning Tests**” means all commissioning tests required to be performed by any one or more of Contracting Authority and/or any Macdonald Block Occupants pursuant to the Final Commissioning Program.
- 1.118 “**Contracting Authority Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.119 “**Contracting Authority Design Team**” means any of Contracting Authority, its agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Site, the Facility, the Contracting Authority FM Services and/or the Macdonald Block Activities on behalf of Contracting Authority, which, for greater certainty, includes the Design Compliance Consultant but excludes Project Co and any Project Co Party.
- 1.120 “**Contracting Authority Event of Default**” has the meaning given in Section 43.1(a) of the Project Agreement.
- 1.121 “**Contracting Authority FM Services**” means all facilities management services and activities provided or performed at the Facility and/or Existing Facilities by Contracting Authority, any Macdonald Block Occupants, or any contractor, employee or other person performing such services or activities on behalf of Contracting Authority or any Macdonald Block Occupants from time to time, including (i) shredding of confidential documentation, (ii) portering (except portering related to the Project Co Services, which is the responsibility of Project Co under the Project Agreement), and (iii) services provided by the Security Provider pursuant to Part 6 of Schedule 15 – Output Specifications, but excluding the Macdonald Block Activities and, for clarity, the Project Co Services.
- 1.122 “**Contracting Authority Party**” means Contracting Authority’s agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the Macdonald Block Activities or the Contracting Authority FM Services, but excluding Project Co and any Project Co Party, and the “**Contracting Authority Parties**” shall be construed accordingly.
- 1.123 “**Contracting Authority Permits, Licences, Approvals and Agreements**” means those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations (including Development Approvals) which are the responsibility of Contracting Authority to obtain as set out in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation, but, for greater certainty, shall not include any permission, consent, approval, certificate, permit, licence, agreement or authorization not set out in Appendix 1 – Permits, Licences, Approvals and

Agreements to this Schedule 1 – Definitions and Interpretation but required by the terms of any such item set out in such Appendix.

- 1.124 “**Contracting Authority Representative**” means the person designated as such by Contracting Authority on the date of the Project Agreement and any permitted replacement.
- 1.125 “**Contracting Authority Review Period**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.126 “**Contracting Authority Security Deposits**” means any and all letters of credit, securities, prepaid fees, deposits and similar instruments paid or posted by, or on behalf of, Contracting Authority in connection with the Project Operations including, but not limited to, those instruments listed in Appendix 2 – Contracting Authority Security Deposits of this Schedule 1 – Definitions and Interpretation.
- 1.127 “**Contracting Authority Taxes**” means taxes, or payments in lieu of taxes, imposed on Contracting Authority and HST and property taxes for which Contracting Authority is responsible pursuant to Section 32 of the Project Agreement.
- 1.128 “**Contracting Authority Trade-Marks**” means any and all Trade-Marks used by Contracting Authority in any manner whatsoever.
- 1.129 “**Contracting Authority Work**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.130 “**Contractor Site Specific Safety Manual**” means the document describing the Construction Contractor’s health and safety management program for the Project and the Site during the Works, all in accordance with the minimum requirements set out in Schedule 29 – Contractor Site Specific Safety Manual Requirements.
- 1.131 “**Control Parties**” means, collectively:
- (a) all persons with any form of direct ownership interest in Project Co[REDACTED];
- and “**Control Party**” means any of the Control Parties.
- 1.132 “**COR Certification**” means, in respect of a person, (a) receipt by such person of its Certificate of Recognition and Letter of Good Standing or (b) receipt by another person within a group of persons where the other person’s: (i) Certificate of Recognition; and (ii) Letter of Good Standing extends and applies to such person.
- 1.133 “**COR-Certified Construction Project Co Party**” has the meaning given in Section 9.9(a)(ii) of the Project Agreement.

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1.134 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by Contracting Authority.

1.135 “**COR-Qualified Construction Project Co Party**” means one of the following:

- (a) where the Construction Contractor is a single legal entity, the Construction Contractor; or
- (b) where the Construction Contractor is a joint venture, each member of the joint venture, or
- (c) where the Construction Contractor is a partnership, each partner of the partnership,

provided that each such person has current OHSAS 18001 Accreditation in good standing.

1.136 “**Countdown Notice**” has the meaning given in Section 24.7(a) of the Project Agreement.

1.137 “**CPI**” means CPI-XFET for Canada, as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, most closely resembles such index.

1.138 “**CPIn**” has the meaning given in Section 4.1 of Part B of Schedule 20 of the Project Agreement.

1.139 “**CPIo**” has the meaning given in Section 4.1 of Part B of Schedule 20 of the Project Agreement.

1.140 “**Credit Agreement**” has the meaning given in the Common Terms and Intercreditor Agreement.

1.141 “**Critical Non-Conformance**” means any Non-Conformance, or combination of Major Non-Conformances, that:

- (a) in the reasonable opinion of Contracting Authority, demonstrates that Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion or any Fit-Out Works Phase Completion;
- (b) is persistent, ongoing or repeated; or

- (c) in the reasonable opinion of Contracting Authority, by its continued existence or through the process of rectification, would:
 - (i) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to traffic flow;
 - (ii) prejudice or is reasonably expected to materially prejudice the performance of any Macdonald Block Activities and/or Contracting Authority FM Services;
 - (iii) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the Facility and/or the Existing Facilities, including employees, volunteers and visitors to the Facility and/or the Existing Facilities, and member of the public;
 - (iv) materially increase Contracting Authority’s risk or transfer risk to Contracting Authority or any Contracting Authority Party;
 - (v) materially adversely affect the ability of any Contracting Authority Party to perform their activities as permitted or contemplated by the Project Agreement;
 - (vi) materially adversely affect or change the critical path of the Project as defined in the Current Progress Works Schedule, adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Fit-Out Works Phase Completion by the Scheduled Fit-Out Works Phase Completion Date, require a material resequencing of the Works, or cause any delay in achieving Substantial Completion or any Fit-Out Works Phase Completion; or
 - (vii) potentially compromise the reputation or integrity of Contracting Authority and/or any Province Person or the nature of the Province’s public services so as to negatively affect public perception of such services.

1.142 “**Crown**” means Her Majesty the Queen in Right of Ontario.

1.143 “**CSA Standard**” means, at the applicable time, the Canadian Standards Association standards.

1.144 “**CSIS**” means the Canadian Security Intelligence Service.

1.145 “**Current Progress Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.

- 1.146 “**Current Replacement Cost**” means the index-linked “Total Capital Cost” of \$[REDACTED] in 2019 dollars set out in the Financial Model.
- 1.147 “**Custodian**” means the person appointed as the Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.
- 1.148 “**Custody Agreement**” means the custody agreement between Project Co, Contracting Authority, the Custodian and the Lenders’ Agent in the form set out in Schedule 3 – Custody Agreement.
- 1.149 “**Debt Financing**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.150 “**Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.151 “**Defect**” means any defect (including, for clarity, any hidden or concealed defect) with respect to any of the buildings, structures, artworks, improvements or landscaping at the Existing Facilities; and “**Defects**” shall be construed accordingly. For greater certainty, the term “Defect” does not include any Contamination at the Existing Facilities.
- 1.152 “**Defects Background Information**” means the specific Background Information contained in the folder entitled “Documents \ 01 Proponent Bid Docs \ 01c Defects Background Information” in Contracting Authority’s electronic data room for the Project using e-Builder software, as of Financial Close.
- 1.153 “**Delay Event**” has the meaning given in Section 37.1(a) of the Project Agreement.
- 1.154 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.155 “**Demolition Default Event**” has the meaning given in Section 9.10(b) of the Project Agreement.
- 1.156 “**Demolition Guidelines**” means those guidelines set forth in the document entitled “Professional Engineers Providing Services for Demolition of Buildings and other Structures” published by the Professional Standards Committee established by the Professional Engineers of Ontario and having a publication date of April, 2011.
- 1.157 “**Demolition Plan**” means a plan or other document prepared by a professional engineer, limited licence holder or provisional licence holder in accordance with subsection (3) of the Performance Standards Regulation with respect to the Demolition of a building or structure, and includes any changes to the plan or other document that are made by a professional engineer, limited licence holder or provisional licence holder.
- 1.158 “**Demolition Requirements**” has the meaning given in Section 9.10(a)(iv)(C) of the Project Agreement.

- 1.159 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by Project Co in accordance with Section 9.10(a)(iv)(A) of the Project Agreement.
- 1.160 “**Demolition Supervisor**” has the meaning given in Section 9.10(a)(ii) of the Project Agreement.
- 1.161 **Design Acceptability**” means that the design of the Facility enables Contracting Authority, Macdonald Block Occupants and Macdonald Block Service Users to carry out all Macdonald Block Activities in accordance with the requirements of the Output Specifications. Design Acceptability shall be a salient evaluation factor of importance to Contracting Authority at all stages of development of the Facility.
- 1.162 “**Design Acceptability Report**” has the meaning given in Section 18.6(b) of the Project Agreement.
- 1.163 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.164 “**Design Compliance Consultant**” means a consultant to Contracting Authority to act as an advocate for Contracting Authority throughout the design and construction stage of the Project, being, the date of the Project Agreement, [REDACTED].
- 1.165 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations and other data prepared by Project Co relating to the design, construction or testing of the Facility, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.166 “**Design Development Submittals**” has the meaning given in Section 18.3(d)(i) of the Project Agreement.
- 1.167 “**Design Quality Plan**” means such document included in Schedule 11A – Design Quality Plan and Construction Quality Plan.
- 1.168 “**Design Review Meetings**” has the meaning given in Section 18.5(a) of the Project Agreement.
- 1.169 “**Design Team**” means:
- (a) [REDACTED],
- in each case engaged by Project Co or a Subcontractor to design the Facility and any substitute design team engaged by Project Co or a Subcontractor as may be permitted by the Project Agreement.
- 1.170 “**Design Workshops**” has the meaning given in Section 18.5(a) of the Project Agreement.

- 1.171 “**Designated Project Co Individuals**” has the meaning given in Schedule 7 – Security Clearance Check Requirements.
- 1.172 “**Developer**” has the meaning given in Section 9.12(a) of the Project Agreement.
- 1.173 “**Development Approval**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Agreements required from time to time for construction of the Facility.
- 1.174 “**Direct Agreements**” means the Construction Contractor’s Direct Agreement and the Service Provider’s Direct Agreement.
- 1.175 “**Direct Cost**” has the meaning given in Schedule 22 -Variation Procedure.
- 1.176 “**Direct Losses**” means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.177 “**Direct or Indirect Power or Control**” means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (a) ownership, beneficial or otherwise, of greater than [REDACTED] percent of any of the shares, units or equity interests of a person;
 - (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual’s ownership, beneficial or otherwise, is equal to or exceeds [REDACTED] percent of the voting securities, units or equity interests of such person; or
 - (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.
- 1.178 “**Discount Rate**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.179 “**Discriminatory Change in Law**” means any Change in Law which applies expressly to:
- (a) facilities whose design, construction, financing and facilities management are procured by a contract similar to the Project Agreement and not to other similar facilities;

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

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

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

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

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

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

1.183 “**District Energy**” has the meaning given in Schedule 36 – Energy Matters.

1.184 “**District Energy Provider**” means an entity that delivers or will deliver District Energy to the Site or generates or will generate District Energy at the Site.

1.185 “**Draft Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.

1.186 “**Drawing Management Services**” means the services and requirements described in Section 21.0 of Part 6 of Schedule 15 – Output Specifications.

1.187 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.

1.188 “**Elevator Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.

1.189 “**Elevator Availability Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.

1.190 “**Emergency**” means any situation, event, occurrence, or multiple occurrences

(a) that:

- (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and/or safety of any persons or the safety of any part or the whole of the Existing Facilities or the Facility;
- (ii) causes or may cause damage or harm to property, buildings and/or equipment; or
- (iii) constitutes a hostage situation or state of emergency declared as such by the Contracting Authority Representative (acting reasonably);
- (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Facility, the Existing Facilities, any part of the Site, the conduct of the Project Operations, the conduct of Macdonald Block Activities or the conduct of the Contracting Authority FM Services; or
- (v) constitutes a period of transition to or from war;

and which, in the opinion of Contracting Authority, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing,

or

- (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) the police, the armed forces, fire or ambulance services.

1.191 “**Emergency Maintenance Work**” is a type of Unscheduled Maintenance Work and is described in Section 26.5(a) of the Project Agreement.

1.192 “**Emergency Management Services**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.

1.193 “**Emergency Response Plan**” means an emergency response plan prepared by Contracting Authority that describes actions to be taken in the event of an Emergency at the Existing Facilities or the Facility.

1.194 “**Employee Termination Payments**” has the meaning given in Schedule 23 – Compensation on Termination.

1.195 “**Encumbrance**” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including

claims of the Workplace Safety and Insurance Board, Canada Revenue Agency, and other Governmental Authorities.

- 1.196 “**Energy**” has the meaning given in Schedule 36 – Energy Matters.
- 1.197 “**Energy Consumption**” has the meaning given in Schedule 36 – Energy Matters.
- 1.198 “**Energy Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.199 “**Energy Year**” has the meaning given in Schedule 36 – Energy Matters.
- 1.200 “**Environmental and Sustainability Services**” means those environmental and sustainability services to be carried out pursuant to Section 18.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.201 “**Environmental Reports and Designated Substance Reports**” has the meaning given in Schedule 38 – Reports.
- 1.202 “**Enwave Protective Measures Works**” means the Works described in Section 3.2.6.3.3.1 of Schedule 15 – Output Specifications.
- 1.203 “**Equity Capital**” means the aggregate (without double counting) of all subscribed share capital, shareholder loans and other contributed capital of Project Co, excluding, for greater certainty, any amounts advanced to Project Co under the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders.
- 1.204 “**Equity Contribution Agreement**” means the equity contribution agreement dated the date of the Project Agreement between Project Co [REDACTED] the Lenders’ Agent and the other parties thereto.
- 1.205 “**Equity IRR**” has the meaning given in Schedule 28 – Refinancing.
- 1.206 “**Equity Providers**” means, [REDACTED].
- 1.207 “**Equity Sale Amount**” means the gross amount, without taking into account any transaction costs and fees, received in consideration of a percentage of Equity Capital.
- 1.208 “**Equity Sale IRR**” means the annualized internal rate of return realized by the seller on a sale of any percentage Equity Capital, between the date on which such seller initially invests in or acquires such percentage of Equity Capital, and the date on which the sale of such percentage of Equity Capital occurs. Equity Sale IRR shall be calculated using the XIRR function in Excel, by taking into account the Equity Sale Amount, together with all Distributions received by the seller with respect to such percentage of Equity Capital, and the amount initially paid by the same seller to invest in or acquire the percentage of the

Equity Capital in question, as well as the actual timing of payment and/or receipt of all such amounts.

- 1.209 “**Escalation Factor**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.210 “**Escrow Account**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.211 “**Estimate**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.212 “**Estimated Fair Value**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.213 “**Estimated Increased Maintenance Costs**” has the meaning given in Section 26.3(b) of the Project Agreement.
- 1.214 “**Event**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.215 “**Excess Equity Gain**” means an amount equal to the greater of zero and the difference between:
- (a) the Equity Sale Amount; and
 - (b) the Threshold Equity Sale Amount.
- 1.216 “**Excusing Cause**” has the meaning given in Section 39.1(a) of the Project Agreement.
- 1.217 “**Exempt Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.218 “**Exercise Date**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.219 “**Existing Facilities**” means, collectively:
- (a) the lands and facilities located at 900 Bay Street, Toronto, Ontario (commonly known as “Macdonald Block”);
 - (b) the lands and facilities located at 60 Grosvenor Street, Toronto, Ontario; and
 - (c) the Whitney Block.
- For greater certainty, the limited Project Operations to be performed at and to the portions of the Existing Facilities at 60 Grosvenor Street and the Whitney Block are expressly set out in Schedule 15 – Output Specifications, including Sections 1.3.1 and 1.3.2 of Part 1 of Schedule 15 – Output Specifications and the Phasing Requirements.
- 1.220 “**Expert**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.221 “**Expiry Date**” means the 30th anniversary of the original Scheduled Substantial Completion Date.

- 1.222 “**Expiry Lifecycle Costs**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.223 “**Expiry Transition Amount**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.224 “**Expiry Transition Facility Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.225 “**Expiry Transition Procedure**” means the procedure for Expiry Transition described in Schedule 24 – Expiry Transition Procedure.
- 1.226 “**Expiry Transition Requirements**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.227 “**Expiry Transition Security**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.228 “**Expiry Transition Works**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.229 “**Expiry Transition Works Costs**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.230 “**Facilities Management Committee**” has the meaning given in Section 12.1(a) of the Project Agreement.
- 1.231 “**Facility**” means:
- (a) all buildings, facilities and other structures;
 - (b) the Plant;
 - (c) all site services, utilities, roadways and parking areas required to support such buildings, facilities and structures;
 - (d) all supporting systems, infrastructure and improvements; and
 - (e) all other works, improvements, and demolitions to occur on the Site, including the Fit-Out Works,
- in each case required to meet the Output Specifications and the requirements under the Permits, Licences, Approvals and Agreements and whether or not in the course of construction, installation or completion.
- 1.232 “**Facility Co-ordination Agreement**” means the facility co-ordination agreement between the Construction Contractor, the Service Provider and Project Co dated the date of the Project Agreement.

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- 1.233 “**Facility FF&E**” has the meaning given in Part 6 of Schedule 15 - Output Specifications.
- 1.234 “**Facility Technical Review**” has the meaning given in Part 6 of Schedule 15 - Output Specifications.
- 1.235 “**Failure Event**” means a Quality Failure, an Availability Failure, an Energy Failure, a System Failure or a Service Failure.
- 1.236 “**Failure Points**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.237 “**Failure Type**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.238 “**FF&E**” means, collectively, the Category 1 FF&E, the Category 3 FF&E, and the Category 4 FF&E.
- 1.239 “**FF&E Design and Construction Coordination Sub-Plan**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.240 “**FF&E Procurement Documentation**” has the meaning given in Section 21.6(a)(vi) of the Project Agreement.
- 1.241 “**FF&E Procurement Sub-Plan**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.242 “**FF&E Services and Moves, Adds and Changes Services**” means those furniture and office equipment and moves, adds and changes services to be carried out pursuant to Section 22.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.243 “**FF&E Steering Committee**” has the meaning given in Section 21.1(a) of the Project Agreement.
- 1.244 “**Final Commissioning Program**” means the program to be jointly developed and agreed by Contracting Authority and Project Co in accordance with Section 24.2 of the Project Agreement.
- 1.245 “**Final Completion**” means the completion of the Works other than the Fit-Out Works in accordance with the Project Agreement, including the completion of all Minor Deficiencies.
- 1.246 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.12(d) of the Project Agreement.
- 1.247 “**Final Completion Countdown Notice**” means the notice to be delivered by Project Co in accordance with Section 24.11(a) of the Project Agreement.
- 1.248 “**Final Completion Date**” means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, as such date shall be stated therein.

- 1.249 “**Final Completion Notice**” has the meaning given in Section 24.12(b) of the Project Agreement.
- 1.250 “**Final Expiry Transition Facility Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.251 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.252 “**Financial Close Target Date**” means August 9, 2019, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.253 “**Financial Model**” means the computer spreadsheet model for the Project incorporating statements of Project Co’s cash flows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.254 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable Taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations save and except for the Contracting Authority Security Deposits.
- 1.255 “**FIPPA**” means the Freedom of Information and Protection of Privacy Act (Ontario).
- 1.256 “**Fit-Out Design and Construction Coordination Sub-Plan**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.257 “**Fit-Out FF&E**” has the meaning given in Section 7.1.3 of Part 7 of Schedule 15 – Output Specifications.
- 1.258 “**Fit-Out Sub-Plan**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.259 “**Fit-Out Works**” means all of the Works to be completed under the Project Agreement pursuant to Part 7 of Schedule 15 – Output Specifications.
- 1.260 “**Fit-Out Works Final Completion**” means the completion of the Fit-Out Works in accordance with the Project Agreement, including the completion of all Fit-Out Works Phase Minor Deficiencies. For greater certainty, Fit-Out Works Final Completion shall occur after Final Completion.
- 1.261 “**Fit-Out Works Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24A.12(d) of the Project Agreement.

- 1.262 **“Fit-Out Works Final Completion Countdown Notice”** has the meaning given in Section 24A.11(a) of the Project Agreement.
- 1.263 **“Fit-Out Works Final Completion Date”** means the date on which Fit-Out Works Final Completion is achieved as evidenced by the Fit-Out Works Final Completion Certificate, as such date shall be stated therein.
- 1.264 **“Fit-Out Works Final Completion Notice”** has the meaning given in Section 24A.12(b) of the Project Agreement.
- 1.265 **“Fit-Out Works Phase Commissioning Program”** means each program to be jointly developed and agreed to by Contracting Authority and Project Co in accordance with Section 24A.2 of the Project Agreement.
- 1.266 **“Fit-Out Works Phase Completion”** means the point at which (i) a Phase of the Fit-Out Works has been completed in accordance with the Project Agreement; (ii) if required by Applicable Law, a Fit-Out Works Phase Occupancy Permit has been issued in respect of the applicable Phase of the Fit-Out Works; and (iii) all requirements for the applicable Fit-Out Works Phase Completion described in the applicable Fit-Out Works Phase Commissioning Program, other than in respect of Fit-Out Works Phase Minor Deficiencies, have been satisfied.
- 1.267 **“Fit-Out Works Phase Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 24A.4(d) of the Project Agreement.
- 1.268 **“Fit-Out Works Phase Completion Date”** means the date on which each Fit-Out Works Phase Completion is achieved as evidenced by the applicable Fit-Out Works Phase Completion Certificate, as such date shall be stated therein.
- 1.269 **“Fit-Out Works Phase Completion Holdback”** has the meaning given in Section 24A.8(a) of the Project Agreement; and **“Fit-Out Works Phase Completion Holdbacks”** means, as the context requires, more than one Fit-Out Works Phase Completion Holdback.
- 1.270 **“Fit-Out Works Phase Completion Notice”** has the meaning given in Section 24A.4(b) of the Project Agreement.
- 1.271 **“Fit-Out Works Phase Completion Payment Date”** means the date following each Fit-Out Works Phase Completion Date determined pursuant to Section 6 of Part B of Schedule 20 – Payment Mechanism upon which Contracting Authority shall pay to Project Co the applicable Fit-Out Works Phase Completion Payment.
- 1.272 **“Fit-Out Works Phase Completion Payments”** means, collectively, all of the payments described in Section 6 of Part B of Schedule 20 – Payment Mechanism; and **“Fit-Out Works Phase Completion Payment”** means any one of those payments.

- 1.273 “**Fit-Out Works Phase Contracting Authority Commissioning**” means the commissioning activities to be carried out by Contracting Authority in accordance with each Fit-Out Works Phase Commissioning Program.
- 1.274 “**Fit-Out Works Phase Contracting Authority Commissioning Period**” means each period during which Contracting Authority is performing Fit-Out Works Phase Contracting Authority Commissioning.
- 1.275 “**Fit-Out Works Phase Contracting Authority Commissioning Tests**” means all Commissioning Tests required to be performed by Contracting Authority pursuant to each Fit-Out Works Phase Commissioning Program.
- 1.276 “**Fit-Out Works Phase Countdown Notice**” has the meaning given in Section 24A.7(a) of the Project Agreement.
- 1.277 “**Fit-Out Works Phase Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve an applicable Fit-Out Works Phase Completion and that would not materially impair Contracting Authority’s or any Macdonald Block Occupant’s use and enjoyment of the applicable Phase of the Fit-Out Works (including the applicable Fit-Out Works Phase Contracting Authority Commissioning) or the performance of the Macdonald Block Activities and the Contracting Authority FM Services or the performance of the Project Co Services by Project Co.
- 1.278 “**Fit-Out Works Phase Minor Deficiencies List**” has the meaning given in Section 24A.8(a) of the Project Agreement.
- 1.279 “**Fit-Out Works Phase Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of a Phase of the Fit-Out Works in compliance with Applicable Law.
- 1.280 “**Fit-Out Works Phase Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of a Fit-Out Works Phase Completion Certificate in accordance with each Fit-Out Works Phase Commissioning Program.
- 1.281 “**Fit-Out Works Phase Project Co Commissioning Tests**” means all Commissioning Tests required to be performed by Project Co pursuant to each Fit-Out Works Phase Commissioning Program.
- 1.282 “**Five-Year Maintenance Plan**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.
- 1.283 “**FM Help Desk**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.284 “**FM Help Desk Services**” means those help desk services to be carried out pursuant to Section 8.0 of Part 6 of Schedule 15 – Output Specifications.

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- 1.285 “**Food Services**” means those food services to be carried out pursuant to Section 25.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.286 “**Force Majeure**” has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.287 “**Functional Area**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.288 “**Functional Part**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.289 “**Functional Program**” has the meaning given in Appendix A of Part 7 of Schedule 15 – Output Specifications.
- 1.290 “**Functional Unit**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.291 “**Gainshare Adjustment**” has the meaning given in Schedule 36 – Energy Matters.
- 1.292 “**General Management Services**” means those general management services to be carried out pursuant to Section 7.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.293 “**Geotechnical Reports**” has the meaning given in Schedule 38 – Reports.
- 1.294 “**Gigajoule**” has the meaning given in Schedule 36 – Energy Matters.
- 1.295 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.296 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over Contracting Authority, any aspect of the performance of the Project Agreement or the operation of the Facility, the Existing Facilities, the Macdonald Block Activities or the Contracting Authority FM Services, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.297 “**Government Sensitive Information**” means any information which is designated as such by the Province from time to time, or which a reasonable person, having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, (ii) all information that relates to the security systems of the Existing Facilities, the Facility or of other facilities of the Province generally, (iii) any record, the disclosure of which could be injurious to the interests of the Province; and (iv) any information that discloses the identity or whereabouts of a police informant or undercover officer.

- 1.298 “**Grounds**” means all external elements of the Existing Facilities and/or the Facility.
- 1.299 “**Group 1 Fit-Out FF&E**” has the meaning given in Part 7 of Schedule 15 – Output Specifications.
- 1.300 “**Group 2 Fit-Out FF&E**” has the meaning given in Part 7 of Schedule 15 – Output Specifications.
- 1.301 “**H&S Certification Default Event**” has the meaning given in Section 9.9(b) of the Project Agreement.
- 1.302 “**H&S Certification Maintenance Plan**” has the meaning given in Section 9.9(b)(vii)(B) of the Project Agreement.
- 1.303 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 9.9(b)(vi)(B) of the Project Agreement.
- 1.304 “**H&S Construction Inspection**” has the meaning given in Section 13.1(i) of the Project Agreement.
- 1.305 “**H&S Construction Inspection Report**” has the meaning given in Section 13.1(k) of the Project Agreement.
- 1.306 “**H&S Construction Re-Inspection**” has the meaning given in Section 13.1(l)(ii) of the Project Agreement.
- 1.307 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 13.1(l)(iii) of the Project Agreement.
- 1.308 “**H&S Conviction**” has the meaning given in Section 42.1(a)(xx) of the Project Agreement.
- 1.309 “**Hazardous Substances**” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.310 “**Hedge Provider**” means a person that has entered into a Hedging Agreement with Project Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.311 “**Hedging Agreement**” means an agreement relating to interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.312 “**Heritage Guidelines and Protocols**” means those heritage guidelines and protocols mandated by Applicable Laws.

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- 1.313 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.314 “**HVAC**” means heating, ventilation and air conditioning.
- 1.315 “**IC Construction Period Payment Authorization Certificate**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.316 “**IC Construction Period Payment Confirmation Certificate**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.317 “**IC Initial Capital Investment Certificate**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.318 “**IC’s Representatives**” has the meaning given in Section 23.8(a) of the Project Agreement.
- 1.319 “**IC Substantial Completion Deliverables Confirmation**” has the meaning given in Section 24.4(c)(i) of the Project Agreement.
- 1.320 “**IC Substantial Completion Deliverables Deficiencies List**” has the meaning given in Section 24.4(c)(ii) of the Project Agreement.
- 1.321 “**IHSA**” means Infrastructure Health and Safety Association, a not-for-profit occupational safety organization formed on January 1, 2010 that provides health and safety training material and services to Ontario construction, electrical utilities and transportation industries, and is accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing, or such other person so accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing.
- 1.322 “**Indemnifiable Taxes**” has the meaning given in Section 32.6(b) of the Project Agreement.
- 1.323 “**Indemnifier**” has the meaning given in Section 53.3(a) of the Project Agreement.
- 1.324 “**Independent Assessor**” has the meaning given in Schedule 33 – Existing Facilities Repairs and Independent Assessor.
- 1.325 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.326 “**Independent Certifier Agreement**” means the contract entered into between Project Co, Contracting Authority and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.

- 1.327 “**Independent Inspector**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.328 “**Indirect Losses**” has the meaning given in Section 54.1(a) of the Project Agreement.
- 1.329 “**Initial APAP Due Date**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.330 “**Initial Capital Investment Amount**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.331 “**Initial Capital Investment Date**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.332 “**Initial Capital Investment Date Notice**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.333 “**Initial Labour Adjustment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.334 “**Initial Period**” has the meaning given in Schedule 36 – Energy Matters.
- 1.335 “**Innovation Proposal**” has the meaning given in Section 36.2(b) of the Project Agreement.
- 1.336 “**Insurance Adjustment**” has the meaning given in Section 7.3 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.337 “**Insurance Cost Differential**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.338 “**Insurance Review Date**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.339 “**Insurance Review Period**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.340 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between Contracting Authority, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 – Insurance Trust Agreement.
- 1.341 “**Integrated Pest Management Services**” means those pest control services to be carried out pursuant to Section 19.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.342 “**Intellectual Property**” means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and

registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.

- 1.343 “**Intellectual Property Rights**” means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the date of the Project Agreement created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the Facility (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
 - (b) the Project Co Services, including the operation, maintenance, improvement and testing of the Facility;
 - (c) any other Project Operations; or
 - (d) the Project Agreement.
- 1.344 “**Interim Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.345 “**Invoice Date**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.346 “**IO**” means Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended and includes any successors thereto or persons exercising delegated power and the Minister’s authority, as agent for Her Majesty the Queen in Right of Ontario, as represented by the Minister of Government and Consumer Services.
- 1.347 “**IPFP Framework**” has the meaning given in the recitals to the Project Agreement.
- 1.348 “**Irrecoverable Tax**” has the meaning given in Section 32.3(b) of the Project Agreement.
- 1.349 “**Jointly Developed Materials**” has the meaning given in Section 48.4(a) of the Project Agreement.
- 1.350 “**Junior Debt Amount**” [Not applicable].
- 1.351 “**Junior Debt Makewhole**” [Not applicable].

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- 1.352 “**Junior Debt Service Amount**” [Not applicable].
- 1.353 “**Junior Lenders**” [There are no Junior Lenders under the Project Agreement and any reference to “Junior Lenders” in the Project Agreement shall have no force or effect].
- 1.354 “**Key Works Milestone**” has the meaning given in Schedule 12 - Works Scheduling Requirements.
- 1.355 “**Lands**” has the meaning given in Schedule 35 – Site.
- 1.356 “**LD Commencement Date**” has the meaning given in Section 54A(a) of the Project Agreement.
- 1.357 “**LEED**” means Leadership in Energy & Environmental Design.
- 1.358 “**LEED BD+C Rating System**” means the CaGBC’s Leadership in Energy and Environmental Design for Building Design and Construction (BD+C) v4 with Addenda.
- 1.359 “**LEED BD+C Silver Rating**” means the achievement of a “Silver” rating from the CaGBC with respect to the CaGBC’s Leadership in Energy and Environmental Design for Building Design and Construction (BD+C) v4 with Addenda.
- 1.360 “**Lenders**” means all or any of the persons acting at all times at arm’s length to Project Co and each Project Co Party who provide financing to Project Co in respect of the Project Operations under the Lending Agreements, including, without limitation, the Senior Lenders and, where the context so permits, prospective financiers or lenders, and for greater clarity, excludes any Affiliate of Project Co or of a Project Co Party.
- 1.361 “**Lenders’ Agent**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.362 “**Lenders’ Consultant**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.363 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between Contracting Authority, the Lenders’ Agent and Project Co in the form set out in Schedule 4 – Lenders’ Direct Agreement.
- 1.364 “**Lending Agreements**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.365 “**Letter of Credit Provider**” has the meaning given in the Request for Proposals.
- 1.366 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by ISHA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.

- 1.367 “**Lifecycle Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.368 “**Lifecycle Replacement and Refurbishment Services**” means those lifecycle replacement and refurbishment services to be carried out pursuant to Section 9.5 of Part 6 of Schedule 15 – Output Specifications.
- 1.369 “**Lifecycle Replacement Schedule**” means a program, updated or amended from time to time as required by the Project Agreement and as agreed to by Contracting Authority, for the planned or scheduled replacement, refreshment or refurbishment of the elements of the Facility for which Project Co is required to provide Lifecycle Replacement and Refurbishment Services that have reached the end of their useful service life during the Project Term, as set out in Appendix A to Schedule 24 – Expiry Transition Procedure (including, but not limited to, all elements of the Facility and all FF&E for which Project Co is required to provide Lifecycle Replacement and Refurbishment Services but excluding such elements of the Facility, including FF&E, that Contracting Authority is responsible for replacing, refreshing or refurbishing pursuant to the Project Agreement).
- 1.370 “**Liquid Market**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.371 “**Liquidated Damages**” means the liquidated damages to be paid pursuant to Section 54A of the Project Agreement, which shall be in the amount of \$[REDACTED] per Business Day.
- 1.372 “**Load-Path Diagram**” means a graphically illustrated diagram that indicates in all relevant detail (including by use of colour-coded arrows indicating the directions of forces caused by dead loads, live loads, vertical loads and lateral loads) how the structural loads are transferred throughout a building or structure that is to be the subject of a Demolition.
- 1.373 “**Longstop Date**” has the meaning given in Section 42.1(a)(ii) of the Project Agreement.
- 1.374 “**Look-ahead Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.375 “**Macdonald Block Activities**” includes the direct and/or indirect provision of governmental services and the conduct of all other activities by, for or on behalf of Contracting Authority, Macdonald Block Occupants and/or other Province Persons, at the Existing Facilities and, following Substantial Completion, the Facility during the Project Term, including all management and administrative operations in support thereof but excluding the Contracting Authority FM Services and, for clarity, the Project Co Services.
- 1.376 “**Macdonald Block Occupant**” means any person who, from time to time, while attending in an official capacity at the Facility or the Site provides Macdonald Block Activities or Contracting Authority FM Services at the Existing Facilities or, following Substantial Completion, at the Facility, and, for greater certainty, includes any person

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who is employed or engaged by Contracting Authority, the Province (including any Ministry of the Province), an agency of the Province or any contractor or subcontractor of the foregoing in connection with the conduct of the Macdonald Block Activities or the Contracting Authority FM Services, but excludes Project Co and the Project Co Parties; and “**Macdonald Block Occupants**” shall be construed accordingly.

- 1.377 “**Macdonald Block Property**” has the meaning given in Section 1.3.1 of Part 1 Schedule 15 – Output Specifications.
- 1.378 “**Macdonald Block Service User**” means any person other than a Province Person lawfully present at the Existing Facilities or, following Substantial Completion, the Facility in order to make use of the Macdonald Block Activities and/or, as applicable, the Existing Facilities or the Facility or any other services and activities provided or performed at the Facility by any Macdonald Block Occupant from time to time (and such term shall exclude Project Co, any Contracting Authority Party or any Project Co Party save where such person is present at the Facility or the Existing Facilities solely to make use of or be benefited by the Macdonald Block Activities) ; and “**Macdonald Block Service Users**” shall be construed accordingly.
- 1.379 “**Maintenance Activities**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.
- 1.380 “**Maintenance Work**” means any work performed or required to be performed after Substantial Completion for maintenance or repair of the Facility in accordance with the requirements of the Project Agreement.
- 1.381 “**Major Non-Conformance**” means any Non-Conformance, or combination of Minor Non-Conformances, that:
- (a) contains significant deficiencies or does not generally conform with the requirements of this Project Agreement; or
 - (b) the continued existence of which is reasonably expected to result in Project Co becoming unable to satisfy the requirements for Substantial Completion or any Fit-Out Works Phase Completion.
- 1.382 “**Major Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.383 “**Major Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.384 “**Major Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.385 “**Major Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.386 **“Make Good”, “Made Good”, “Making Good”** and derivatives thereof, means, as applicable, repairing, restoring, refurbishing, rehabilitating, replacing or performing filling operation on (a) the Works as required under the Project Agreement or (b) any existing components disturbed due to the Works, to at least the condition existing immediately prior to the disturbance occurring, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.
- 1.387 **“Management of Hazardous Substances, Waste and Recycling Services”** means those waste management and recycling services to be carried out pursuant to Section 16.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.388 **“Management Services Agreement”** ” means the management services agreement in respect of the Project dated the date of the Project Agreement entered into between Project Co and [REDACTED].
- 1.389 **“Mandatory Refinancing”** has the meaning given in Schedule 28 – Refinancing.
- 1.390 **“Market Value Availability Deduction Amount”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.391 **“Material Management Services”** means those material services to be carried out pursuant to Section 15.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.392 **“Maximum Eligible Construction Period Payment”** has the meaning given in Schedule 19 – Construction Period Payments.
- 1.393 **“Maximum Service Payment”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.394 **“Medical Contamination”** means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and the Project Agreement cannot substantially prevent or cannot substantially remove with the result that:
- (a) it is unsafe to admit Macdonald Block Service Users and/or Macdonald Block 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 Macdonald Block Service Users and/or Macdonald Block Occupants.
- 1.395 **“Medium Quality Failure”** has the meaning given in Schedule 20 – Payment Mechanism.

- 1.396 “**Medium Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.397 “**Medium Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.398 “**Medium Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.399 “**MGCS**” means the Minister of Government and Consumer Services.
- 1.400 “**Minimum Agreed Availability Conditions**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.401 “**Minimum Unavailability Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.402 “**Mini-Perm Financing**” has the meaning given in Schedule 28 – Refinancing.
- 1.403 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Substantial Completion and that would not materially impair Contracting Authority’s or any Macdonald Block Occupant’s use and enjoyment of the Facility (including the Contracting Authority Commissioning) or the performance of the Macdonald Block Activities and the Contracting Authority FM Services or the performance of the Project Co Services by Project Co.
- 1.404 “**Minor Deficiencies List**” has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.405 “**Minor Non-Conformance**” means any Non-Conformance that:
- (a) generally conforms to the requirements of the Project Agreement, but in which immaterial deficiencies have been found; or
 - (b) the continued existence of which is not reasonably expected to result in Project Co becoming unable to satisfy the requirements for Substantial Completion but may result in a Minor Deficiency or for Fit-Out Works Phase Completion but may result in a Fit-Out Works Phase Minor Deficiency.
- 1.406 “**Minor Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.407 “**Minor Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.408 “**Minor Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.409 “**Minor Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.410 “**Monitoring Notice**” has the meaning given in Section 29.4(a) of the Project Agreement.
- 1.411 “**Monitoring Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.412 “**Monthly Energy Report**” has the meaning given in Schedule 36 – Energy Matters.
- 1.413 “**Monthly Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.414 “**MSDS**” means the material safety data sheets prescribed by the applicable WHMIS legislation.
- 1.415 “**New Agreement**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.416 “**New Project Co**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.417 “**No Cost Measures**” means energy saving measures, including those related to good housekeeping, involving no material additional expenditure and/or no Capital Expenditure.
- 1.418 “**No Default Payment Compensation Amount**” means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such day quoted by [REDACTED] from time to time as its reference rate for 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 by it from time to time.
- 1.419 “**Non-Conformance**” means any failure by Project Co to perform any of its obligations under the Project Agreement in respect of any aspect of the Works or Project Co Services and which failure is not rectified by Project Co within the applicable time period, if any, stipulated in this Project Agreement.
- 1.420 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.421 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.422 “**Normal Wear and Tear**” means wear and tear that is reasonable given the use and age of the Facility (including all of the elements thereof) and consistent with wear and tear that could reasonably be expected to exist at a similar facility, operating in a similar

environment and similar circumstances but not including any degradation in the functionality or operability of the Facility that, subject to the exceptions specified in Section 2.2 of Schedule 24 – Expiry Transition Procedure, will result in the Facility failing to meet the Output Specifications or failing to comply with Applicable Law.

- 1.423 “**Notice**” has the meaning given in Section 58.1(a) of the Project Agreement
- 1.424 “**Notice of Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.425 “**Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of the Facility as a commercial office facility in compliance with Applicable Law.
- 1.426 “**OCPM**” has the meaning given in Section 20.6(b) of the Project Agreement.
- 1.427 “**OHSAS 18001**” means the international standard for occupational health and safety management systems developed by the Occupational Health and Safety Advisory Services Project Group, a British body formed to develop the standard.
- 1.428 “**OHSAS 18001 Accreditation**” means, in respect of a person, such person having received certification in respect of its health and safety management systems that such systems comply with the requirements of OHSAS 18001.
- 1.429 “**Open Data Directive**” means the Management Board of Cabinet’s Open Data Directive dated April 29, 2016, as may be amended from time to time.
- 1.430 “**Operational Start-Up Plan**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.
- 1.431 “**Operational Term**” means the period from the Substantial Completion Date until the end of the Project Term.
- 1.432 “**OPP**” means the Ontario Provincial Police.
- 1.433 “**Outline Commissioning Program**” means the schedule setting out the standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities of the Parties outlined in Schedule 14 – Outline Commissioning Program.
- 1.434 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.435 “**Painshare Adjustment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.436 “**PAR Meeting**” has the meaning given in Section 11.6(f) of the Project Agreement.

- 1.437 “**Parking Services**” means those parking services to be carried out pursuant Section 14.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.438 “**Party**” means either Contracting Authority or Project Co, and “**Parties**” means both Contracting Authority and Project Co, but, for greater certainty, such definitions do not include MGCS.
- 1.439 “**Party Representative**” and “**Party Representatives**” have the meanings given in Schedule 27 – Dispute Resolution Procedure.
- 1.440 “**Payment Adjustment Report**” has the meaning given in Section 31.6(i)(ii) of the Project Agreement.
- 1.441 “**Payment Calculation Date**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.442 “**Payment Certifier**” means the professional architect of record or the engineer of record for the Project.
- 1.443 “**Payment Commencement Date**” means the date that is 2 Business Days after the Substantial Completion Date.
- 1.444 “**Payment Compensation Amount**” means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such day equal to [REDACTED]% over the rate of interest per annum quoted by [REDACTED] from time to time as its reference rate for 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 by it from time to time.
- 1.445 “**Payment Mechanism**” means Schedule 20 – Payment Mechanism.
- 1.446 “**Payment Periods**” means the payment periods of one calendar month (as adjusted in this definition) established by Contracting Authority for each Contract Year, provided that the first Payment Period in the first Contract Year, and the last Payment Period in the last Contract Year may be a shorter period as a result of the timing of the Payment Commencement Date and the Expiry Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.447 “**Performance Audit**” has the meaning given in Section 26.8(a) of the Project Agreement.
- 1.448 “**Performance Guarantees**” means the guarantees to Project Co in respect of the Construction Contract and the Service Contract provided by the Construction Guarantor and the Service Guarantor, respectively.

- 1.449 “**Performance Indicators**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.450 “**Performance Monitoring and Reporting**” means those performance monitoring and reporting services to be carried out pursuant to Section 5.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.451 “**Performance Monitoring Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.452 “**Performance Monitoring Program**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.
- 1.453 “**Performance Monitoring Report**” means the report specified in Section 5.2.1 of Part 6 of Schedule 15 – Output Specifications prepared by Project Co in respect of its performance of the Project Co Services during the previous Contract Month.
- 1.454 “**Performance Requirements**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.455 “**Performance Security**” means the performance security required pursuant to Article 19 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.456 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.457 “**Periodic Labour Adjustment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.458 “**Permanent Repair**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.459 “**Permanent Repair Deadline**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.460 “**Permits, Licences, Approvals and Agreements**” means the Contracting Authority Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.461 “**Permitted Borrowing**” means:
- (a) any advance to Project Co under the Lending Agreements;
 - (b) any additional financing approved by Contracting Authority in accordance with Section 1.9 of Schedule 22 – Variation Procedure to the Project Agreement; and
 - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase Contracting Authority’s

liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.

- 1.462 “**Personal Information**” means all personal information (as the term “**personal information**” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or a Project Co Party other than personal information of the employees of Project Co or a Project Co Party and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from Contracting Authority in respect of the Project.
- 1.463 “**Phases of the Fit-Out Works**” means, collectively, each of the phases of the Works described in Section 7.1 of Part 7 of the Output Specifications, and “**Phase of the Fit-Out Works**” means any one of the Phases of the Fit-Out Works.
- 1.464 “**Phasing Requirements**” means the requirements for the phasing and sequencing of the Works set out in Section 1.3.2 of Part 1 of Schedule 15 – Output Specifications.
- 1.465 “**Plant**” means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of Contracting Authority as defined in Schedule 15 – Output Specifications.
- 1.466 “**Plant Services**” means those plant services to be carried out pursuant to Section 9.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.467 “**Police Service**” means the Royal Canadian Mounted Police, the OPP, the TPS and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.468 “**Post Termination Service Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.469 “**Pre-Existing Environmental Site Conditions**” means the environmental condition of the Site as set out in the Environmental Reports and Designated Substance Reports.
- 1.470 “**Prescribed Repair**” and “**Prescribed Repairs**” each has the meaning given in Schedule 33 – Existing Facilities Repairs and Independent Assessor.
- 1.471 “**Private Capital Advance Confirmations**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.472 “**Private Capital Funding Confirmations**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.473 “**Private Capital Invested**” has the meaning given in Schedule 19 – Construction Period Payments.

Macdonald Block Reconstruction Project

- 1.474 “**Proceeding at Risk**” means Project Co is proceedings with the Works in a manner determined by the Independent Certifier to constitute a valid Proceeding at Risk Matter in the Independent Certifier’s opinion, based on the Independent Certifier’s analysis of Critical Non-Conformance criteria, its review and analysis of Contracting Authority’s reasoning set out in the Proceeding at Risk Notice, Project Co’s response provided pursuant to Section 11.6(c) of the Project Agreement, and the additional information disclosed pursuant to the process set out in Section 14.6 of the Project Agreement.
- 1.475 “**Proceeding at Risk Matter**” has the meaning given in Section 11.6(a)(ii) of the Project Agreement.
- 1.476 “**Proceeding at Risk Notice**” has the meaning given in Section 11.6(a) of the Project Agreement.
- 1.477 “**Progress Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.478 “**Prohibited Act**” has the meaning given in Section 57.1(a) of the Project Agreement.
- 1.479 “**Project**” has the meaning given in Recital B of the Project Agreement.
- 1.480 “**Project Agreement**” has the meaning given in Recital C of the Project Agreement.
- 1.481 “**Project Agreement Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.482 “**Project Co**” means Fengate PCL Progress Partners MBR LP.
- 1.483 “**Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of the Substantial Completion Certificate in accordance with the Final Commissioning Program.
- 1.484 “**Project Co Commissioning Coordinator**” means the person appointed by Project Co as its commissioning agent.
- 1.485 “**Project Co Commissioning Tests**” means all Commissioning Tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.486 “**Project Co Community Benefits Lead**” has the meaning given in Schedule 39 – Community Benefits.
- 1.487 “**Project Co Event of Default**” has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.488 [REDACTED]

1.489 “**Project Co Group**” means Project Co and [REDACTED] together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co or [REDACTED].

1.490 [REDACTED].

1.491 “**Project Co Party**” means:

- (a) the Construction Contractor;
- (b) the Service Provider;
- (c) any person engaged by Project Co, the Construction Contractor, and/or the Service Provider from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them); and
- (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,

and “**Project Co Parties**” shall be construed accordingly.

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

1.493 “**Project Co Proposal Extracts**” means the documents attached as Schedule 13 – Project Co Proposal Extracts.

1.494 “**Project Co Representative**” means the person designated as such by Project Co on the date of the Project Agreement and any permitted replacement.

1.495 “**Project Co Services**” means the services to be performed by Project Co during and related to Operational Term, including those described in Part 6 of Schedule 15 – Output Specifications, as such services may from time to time be varied in accordance with the Project Agreement, but specifically excluding the Macdonald Block Activities and the Contracting Authority FM Services.

Macdonald Block Reconstruction Project

- 1.496 “**Project Co Staff**” means any and all persons who are employed or engaged by Project Co or any Project Co Party to work at or in relation to the Facility during the Project Term.
- 1.497 “**Project Co Variation Notice**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.498 “**Project Data**” means:
- (a) all Design Data;
 - (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Project Co Services; and
 - (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or the Project Agreement,
- other than the Jointly Developed Materials and Background Information and other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.499 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.500 “**Project Insurance Change**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.501 “**Project Operations**” means:
- (a) the performance of the Works;
 - (b) the delivery of the Project Co Services; and
 - (c) the performance of all other obligations of Project Co under the Project Agreement.
- 1.502 “**Project Schedules**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.503 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.
- 1.504 “**Projected Construction Period Payment**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.505 “**Projected Cumulative Construction Period Payment**” has the meaning given in Schedule 19 – Construction Period Payments.

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- 1.506 **“Proposal Part”** means a part of Project Co’s proposal submitted in response to the RFP, including any revisions to such part of the submission agreed upon by Contracting Authority and Project Co as part of the RFP process.
- 1.507 **“Proposed Works Schedule”** has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.508 **“Proprietor”** has the meaning given in Section 49.6(a) of the Project Agreement.
- 1.509 **“Protesters”** has the meaning given in Section 9.7(a) of the Project Agreement.
- 1.510 **“Province”** means Her Majesty the Queen in Right of Ontario.
- 1.511 **“Province Person Third Party Beneficiaries”** has the meaning given in Section 61.17(a) of the Project Agreement.
- 1.512 **“Province Persons”** means the Contracting Authority Parties, Macdonald Block Occupants, IO and MGCS and, while attending in their official capacity at the Facility or the Site, the following:
- (a) any entity to which authority is designated pursuant to Section 60.1 and any agents and employees of any such entity; and
 - (b) contractors of Contracting Authority or of any entity to which authority is delegated pursuant to Section 60.1 and subcontractors of any tier and its or their directors, officers and employees;
- but excluding Project Co and any Project Co Party.
- 1.513 **“Qualification Criteria”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.514 **“Qualifying Bank”** has the meaning in Schedule 28 – Refinancing.
- 1.515 **“Qualifying Bank Transaction”** has the meaning in Schedule 28 – Refinancing.
- 1.516 **“Qualifying Refinancing”** has the meaning given in Schedule 28 – Refinancing.
- 1.517 **“Qualifying Tender”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.518 **“Qualifying Tenderer”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.519 **“Quality Assurance and Service Management Plan”** has the meaning given in Part 6 of Schedule 15 – Output Specifications.
- 1.520 **“Quality Failure”** has the meaning given in Schedule 20 – Payment Mechanism.

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- 1.521 “**Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.522 “**Quality Plans**” has the meaning given in Section 13.1(a) of the Project Agreement.
- 1.523 “**Reconciliation Reports**” has the meaning given in Schedule 33 – Existing Facilities Repairs and Independent Assessor.
- 1.524 “**Recoverable Tax**” has the meaning given in Section 32.3(c) of the Project Agreement.
- 1.525 “**Recovery Amount**” has the meaning given in Section 53.3(g) of the Project Agreement.
- 1.526 “**Recovery Schedule**” has the meaning given in Section 20.4(a)(iv)(A) of the Project Agreement.
- 1.527 “**Recovery Schedule Report**” has the meaning given in Section 20.4(a)(iv)(C) of the Project Agreement.
- 1.528 “**Rectification**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.529 “**Rectification Costs**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.530 “**Rectification Time**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.531 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.532 “**Refinancing Financial Model**” has the meaning given in Schedule 28 – Refinancing.
- 1.533 “**Refinancing Gain**” has the meaning given in Schedule 28 – Refinancing.
- 1.534 “**Reimbursement Event**” has the meaning given in Section 30.5(a) of the Project Agreement.
- 1.535 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Specific Change in Law.
- 1.536 “**Relevant Conviction**” has the meaning given in Schedule 7 – Security Clearance Check Requirements.
- 1.537 “**Relevant Insurance**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.538 “**Relevant Insurance Inception Date**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.539 “**Relief Event**” has the meaning given in Section 40.1(a) of the Project Agreement.

- 1.540 “**Remedial Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.541 “**Replacement Lifecycle**” means the cycle, expressed in years, for which a material, system, item of equipment or other element of the Facility is expected to remain in good condition (Normal Wear and Tear excepted) and, if applicable, operating order, consistent with the performance requirements outlined in the Output Specifications (Normal Wear and Tear excepted) before requiring complete replacement, refreshment or refurbishment.
- 1.542 “**Request for Payment**” has the meaning given Schedule 19 – Construction Period Payments.
- 1.543 “**Request for Payment Approval**” has the meaning given in Section 18.12(d) of the Project Agreement.
- 1.544 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on February 22, 2018.
- 1.545 “**Rescue Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.546 “**Response**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.547 “**Response Time**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.548 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) in the case of an individual, (i) he or she has been convicted of any indictable offence, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the Highway Traffic Act (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (d) in the case of a person other than an individual, if it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made

hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner's) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the Highway Traffic Act (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a "Restricted Person" is made hereunder;

- (e) 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;
- (f) is subject to a material claim of Contracting Authority or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a "Restricted Person" is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in Contracting Authority's view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
- (g) has a material interest in the production of tobacco products.

1.549 "**Return Date**" has the meaning given in Schedule 20 – Payment Mechanism.

1.550 "**Review Procedure**" means the procedure set out in Schedule 10 – Review Procedure.

1.551 "**Revised Expiry Transition Facility Condition Report**" has the meaning given in Schedule 24 – Expiry Transition Procedure.

1.552 "**Roads and Grounds Maintenance Services**" means those roads and grounds maintenance and landscaping services to be carried out pursuant to Section 11.0 of Part 6 of Schedule 15 – Output Specifications.

1.553 "**Safety Condition**" has the meaning given in Schedule 20 – Payment Mechanism.

1.554 "**Schedule**" means a schedule to the Project Agreement.

1.555 "**Schedule Cushion**" means a schedule contingency added to the last activity on the critical path of the Works Schedule prior to the Substantial Completion Date and consisting of [REDACTED] days duration. The Schedule Cushion shall be included in the Works Schedule and, for greater certainty, the Schedule Cushion shall not extend the time for achieving Substantial Completion or any Fit-Out Works Phase Completion. Contracting Authority has ownership of the Schedule Cushion and can elect to use it at any time in respect of a Contracting Authority initiated Variation, or upon the occurrence of a Delay Event which would otherwise grant to Project Co an extension of the Scheduled Substantial Completion Date or any Scheduled Fit-Out Works Phase Completion Date, provided any portion of the Schedule Cushion which has not been used

by Contracting Authority prior to the Substantial Completion Date will be given to Project Co. Use of the Schedule Cushion by Contracting Authority shall not result in any right of Project Co to a claim against Contracting Authority or any Province Person for an increase in the costs and expenses incurred by Project Co or any Project Co Party in connection with the financing from the Lenders pursuant to the Lending Agreements, including, for greater certainty, all interest, fees, expense reimbursements and all other relevant costs and expenses set out in the Financial Model.

- 1.556 “**Scheduled Final Completion Date**” means [REDACTED].
- 1.557 “**Scheduled Fit-Out Works Final Completion Date**” has the meaning given in Section 7.1 of Part 7 of Schedule 15 – Output Specifications.
- 1.558 “**Scheduled Fit-Out Works Phase Completion Dates**” has the meaning given in Section 7.1 of Part 7 of Schedule 15 – Output Specifications, as any one or more of these dates may be extended pursuant to Section 37 of the Project Agreement; and “**Scheduled Fit-Out Works Phase Completion Date**” means any one of the Scheduled Fit-Out Works Phase Completion Dates.
- 1.559 “**Scheduled Initial Capital Investment Date**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.560 “**Scheduled Maintenance**” means all preventive, planned, scheduled and/or frequency-based maintenance and other work (other than Unscheduled Maintenance) which Project Co is required to perform in accordance with the Project Agreement (including, for clarity, Part 6 of Schedule 15 – Output Specifications) and the Scheduled Maintenance Plan along with the performance of any replacement, refreshment and/or refurbishment of building systems, equipment and fixtures in accordance with the Lifecycle Replacement Schedule, all to ensure that building components, equipment and fixtures will achieve their expected design or service life, and will provide reliable functionality within the defined performance parameters.
- 1.561 “**Scheduled Maintenance Plan**” means the plan to be prepared by or on behalf of Project Co for the maintenance of the Facility in accordance with Section 9.1.8 of Part 6 of Schedule 15 – Output Specifications and the other provisions of the Project Agreement during each Contract Year, which plan shall be based, in part, on the Project Co Proposal Extracts.
- 1.562 “**Scheduled Substantial Completion Date**” means [REDACTED], as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.563 “**Secure Areas**” has the meaning given in Section 59.2 of the Project Agreement.
- 1.564 “**Security**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.565 “**Security and Surveillance Services**” means those security and surveillance services to be carried out pursuant to Section 24.0 of Part 6 of Schedule 15 – Output Specifications.

- 1.566 “**Security Clearance Check**” has the meaning given in Schedule 7 – Security Clearance Check Requirements.
- 1.567 “**Security Clearance Check Requirements**” means the Security Clearance Check requirements set forth in Schedule 7 – Security Clearance Check Requirements.
- 1.568 “**Security Documents**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.569 “**Security Provider**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.
- 1.570 “**Senior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.571 “**Senior Debt Makewhole**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.572 “**Senior Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Senior Lenders in the normal course under the Lending Agreements, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to a Hedging Agreement between Project Co and a Hedge Provider, interest payable on account of such portion of interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under such Hedging Agreement without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider under the relevant Hedging Agreement and all references to interest payable to the Senior Lenders under this Project Agreement shall be construed accordingly.
- 1.573 “**Senior Lenders**” means, collectively, Fédération des caisses Desjardins du Québec, National Bank of Canada and the Bondholders, and each of their permitted successors and assigns, and for greater clarity, excludes (i) the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns; (ii) Junior Lenders and (ii) any Affiliate of Project Co or a Project Co Party.
- 1.574 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.575 “**Separate FF&E Services Fee**” means \$[REDACTED].
- 1.576 “**Service Contract**” means the facility maintenance and services agreement between Project Co and the Service Provider dated the date of the Project Agreement.
- 1.577 “**Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.578 “**Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.579 “**Service Failure Performance Indicator**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.580 “**Service Guarantor**” means Johnson Controls International plc.
- 1.581 “**Service Provider**” means Johnson Controls Canada LP, engaged by Project Co to perform the Project Co Services and any substitute service provider engaged by Project Co as may be permitted by the Project Agreement.
- 1.582 “**Service Provider’s Direct Agreement**” means the direct agreement between Contracting Authority, Project Co, the Service Provider and the Service Guarantor, in the form set out in Schedule 5-2 – Service Provider’s Direct Agreement.
- 1.583 “**Service Quality Plan**” means such plan to be developed pursuant to the Output Specifications, the Final Commissioning Program and each Fit-Out Works Phase Commissioning Program.
- 1.584 “**Service Standards**” means the performance standards for each Project Co Service set out in Part 6 of Schedule 15 – Output Specifications.
- 1.585 “**Service Submittal**” or “**Service Submittals**” has the meaning given in Section 11.1 of Schedule 10 – Review Procedure.
- 1.586 “**Service Request**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.
- 1.587 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada, which:
- (a) result in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affect access by Project Co to such markets.
- 1.588 “**Shop Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by Project Co to illustrate details of a portion of the Works, indicating materials, methods of construction and attachment or anchorage, erection diagrams, connections, explanatory notes and other information necessary for completion of the Works.
- 1.589 “**Site**” has the meaning given in Schedule 35 – Site.
- 1.590 “**Site Conditions**” means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.

- 1.591 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by Contracting Authority to be performed having an individual cost or aggregate cost with other linked works, including facilities and equipment, of a minor nature, not exceeding \$[REDACTED] (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of a Failure Event occurring, will increase the cost to Project Co of performing the Project Operations or will materially hinder Project Co in the performance of the Project Co Services. For clarity, Small Works generally requires no more than two (2) types of trades to implement the work.
- 1.592 “**Specific Change in Law**” means any Change in Law that principally affects or is principally related only to the construction or operation of facilities similar to the Facility in the Province of Ontario.
- 1.593 “**Stakeholders**” means, collectively, the community organization(s) and other persons identified in writing by Contracting Authority from time to time as “Stakeholders” to Project Co; and “**Stakeholder**” means any of them individually.
- 1.594 “**Standby Letter of Credit**” means the letter of credit delivered in accordance with Section 9.1(2) of the Request for Proposals.
- 1.595 “**Start-Up Meeting**” has the meaning given in Section 18.4(a) of the Project Agreement.
- 1.596 “**Step-In Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.597 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including the Construction Contractor, the Service Provider, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.598 “**Subcontractor Losses**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.599 “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor and the Service Provider, and any other Subcontractor at any tier in relation to any aspect of the Project Operations.
- 1.600 “**Submittal**” means either a Works Submittal or a Service Submittal.
- 1.601 “**Substantial Completion**” means the point at which (i) the Facility, including all of the Works, but other than the Fit-Out Works, has been completed in accordance with the Project Agreement; (ii) the Occupancy Permit has been issued; (iii) the Payment Certifier appointed pursuant to Section 15.3(e) of the Project Agreement has certified the substantial performance of the Construction Contract and the related certificate of substantial performance has been published, each in accordance with the Construction Act; and (iv) all requirements for Substantial Completion described in the Final

Commissioning Program, other than in respect of Minor Deficiencies, the Fit-Out Works and the Fit-Out Works Phase Minor Deficiencies, have been satisfied.

- 1.602 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d) of the Project Agreement.
- 1.603 “**Substantial Completion Date**” means the date on which Substantial Completion is achieved as evidenced by the Substantial Completion Certificate, as such date shall be stated therein.
- 1.604 “**Substantial Completion Deliverables**” has the meaning given in Section 24.7(d) of the Project Agreement.
- 1.605 “**Substantial Completion Deliverables List**” has the meaning given in Section 24.7(d) of the Project Agreement.
- 1.606 “**Substantial Completion Notice**” has the meaning given in Section 24.4(b) of the Project Agreement.
- 1.607 “**Substantial Completion Payment**” means \$[REDACTED].
- 1.608 “**Suitable Substitute**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.609 “**Supplemental Indenture**” has the meaning given in the Common Terms and Intercreditor Agreement.
- 1.610 “**Supplementary Payment Calculation Date**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.611 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.612 “**System Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.613 “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “**Taxes**” shall not include the Contracting Authority Taxes.
- 1.614 “**Technical Specifications**” has the meaning given in Schedule 15 – Output Specifications.
- 1.615 “**Technical Submission Deadline**” means [REDACTED].

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- 1.616 “**Technical Reports**” means the Environmental Reports and Designated Substance Reports and the Geotechnical Reports.
- 1.617 “**Temporary Alternative Accommodation**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.618 “**Temporary Repair**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.619 “**Tender Costs**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.620 “**Tender Process**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.621 “**Tender Process Monitor**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.622 “**Termination Date**” means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.623 “**Third Party Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.624 “**Third Party Litigation**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.625 “**Third Party Occupant Space Management Services**” means those third party occupant space management services to be carried out pursuant to Section 23.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.626 “**Threshold Equity Sale Amount**” means an Equity Sale Amount that would result in an Equity Sale IRR equal to the Base Case Equity IRR.
- 1.627 “**Title Encumbrances**” means the Encumbrances listed in Schedule 16 – Title Encumbrances and any other Encumbrance consented to by Contracting Authority and reasonably required in connection with the Existing Facilities and/or development of the Facility and the Project Operations.
- 1.628 “**TPS**” means the Toronto Police Service.
- 1.629 “**Trade-Marks**” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.630 “**Trespassers**” has the meaning given in Section 9.7(a) of the Project Agreement.
- 1.631 “**Unavailable**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.632 “**Uninsurable Risk**” has the meaning given in Section 8.1 of Schedule 25 – Insurance and Performance Security Requirements to the Project Agreement.

- 1.633 “**Unit of Energy**” has the meaning given in Schedule 36 – Energy Matters.
- 1.634 “**Unit Weighting Percentage**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.635 “**Unpaid Construction Period Payments**” has the meaning given in Schedule 19 – Construction Period Payments.
- 1.636 “**Unscheduled Maintenance**” means all Ad-Hoc Services, Emergency Maintenance, first response maintenance and/or other maintenance that is not scheduled (and excludes Scheduled Maintenance) to the Site, the Facility and the FF&E, which includes the response to malfunctions and provision of minor repairs, adjustments and general maintenance as follows:
- (a) first response to equipment malfunctions and assessment of the problem (e.g., operator error, utility problem, minor or major failure), and required response;
 - (b) performance of minor repairs and general maintenance, including filter changes, topping-up fluids, adjustments, resets, clearing blockages, minor carpentry and replacing minor parts such as rollers, wheels, pulley and hoses; and
 - (c) in the case of repairs that cannot be resolved under the immediately preceding subsection, arranging for and overseeing third party service representatives to make necessary repairs provided that Project Co has obtained approval from Contracting Authority, acting reasonably, for such third party repairs.
- 1.637 “**Unscheduled Maintenance Work**” has the meaning given in Section 26.4(a) of the Project Agreement.
- 1.638 “**Use Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.639 “**Use Parameters**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.640 “**Utilities**” means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste, storm water, heat, District Energy, and bulk medical gas compounds.
- 1.641 “**Utilities Cash Allowance Works**” means the Works described in Section 1.3.6.9 of Schedule 15 – Output Specifications.
- 1.642 “**Utilities Management Services**” means those utilities management services to be carried out pursuant to Section 10.0 of Part 6 of Schedule 15 – Output Specifications.
- 1.643 “**Utilities Management Subcommittee**” has the meaning given in Schedule 36 – Energy Matters.

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- 1.644 “**Utility Company**” means any company or companies designated by Project Co to provide Utilities, including, for greater certainty, a District Energy Provider.
- 1.645 “**Utility User(s)**” means those persons using Utilities at the Facility, the Existing Facilities or the Site.
- 1.646 “**Variation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.647 “**Variation Confirmation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.648 “**Variation Directive**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.649 “**Variation Enquiry**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.650 “**Variation Procedure**” means the procedure set out in Schedule 22 – Variation Procedure.
- 1.651 “**VOR**” has the meaning given in Section 21.6(a)(v) of the Project Agreement.
- 1.652 “**Warning Notice**” has the meaning given in Section 29.3(a) of the Project Agreement.
- 1.653 “**WHMIS**” means the system for the labelling and warning of Hazardous Substances used in the workplace, commonly referred to as a workplace hazardous materials information system, prescribed by Applicable Law over the delivery, storage and use of Hazardous Substances in the Province of Ontario.
- 1.654 “**Whitney Block**” has the meaning given in Schedule 35 – Site.
- 1.655 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Facility, the completion and rectification of any Minor Deficiencies and Fit-Out Works Phase Minor Deficiencies and any other activities required to enable or facilitate the commencement of the Project Co Services, including the performance of all background checks required pursuant to Schedule 7 – Security Clearance Check Requirements and all work under the Permits, Licences, Approvals and Agreements, save and except for (i) all work which is expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation as being the responsibility of Contracting Authority and (ii) the Contracting Authority Commissioning and the Fit-Out Works Phase Contracting Authority Commissioning.
- 1.656 “**Works Activities**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.657 “**Works Area Micro-Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.658 “**Works Change in Law**” means any Change in Law that:

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

2. Interpretation

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

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

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

- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of Contracting Authority or any Province Person shall be construed having regard to the interactive nature of the activities of Contracting Authority, the Province Persons and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications;
 - (b) acts or omissions in the ordinary course of the Macdonald Block Activities and Contracting Authority FM Services and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the Project Co Services; or
 - (c) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.

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- 2.19 Each of Project Co's and Contracting Authority's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
 - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.22 Where the Project Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.23 Where the Project Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of days before a stipulated date or event or "by" a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.24 Where the Project Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Toronto, Ontario.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms "will" or "shall" are used in the Project Agreement in relation to Project Co or Contracting Authority they shall be construed and interpreted as synonymous and to read "Project Co shall" or "Contracting Authority shall" as the case may be.

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- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to Contracting Authority shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the public service sector in Ontario will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

$$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_{\text{In}}}{\text{CPI}_{\text{O}}}$$

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information and of the Site, including the Existing Facilities, carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

APPENDIX 1

PERMITS, LICENCES, APPROVALS AND AGREEMENTS (“PLAA”)
CONTRACTING AND PROJECT CO PLAA RESPONSIBILITY TABLE

[REDACTED]

APPENDIX 2

CONTRACTING AUTHORITY SECURITY DEPOSITS

-None-

SCHEDULE 2

COMPLETION DOCUMENTS

In this Schedule 2, “certified” shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

1. Documents to be delivered by Project Co

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than Contracting Authority and in form and substance satisfactory to Contracting Authority, acting reasonably) is to be delivered by Project Co to Contracting Authority on or prior to the date of the Project Agreement:

- 1.1 an original of this Project Agreement;
- 1.2 an original of the Custody Agreement;
- 1.3 an original of the Lenders’ Direct Agreement;
- 1.4 an original of the Construction Contractor’s Direct Agreement;
- 1.5 an original of the Service Provider’s Direct Agreement;
- 1.6 an original of the Independent Certifier Agreement;
- 1.7 an original of the Insurance Trust Agreement;
- 1.8 an original notice of appointment of the Project Co Representative;
- 1.9 an original of the acknowledgement and undertaking in the form attached as Appendix A to this Schedule 2;
- 1.10 the Lending Agreements;
- 1.11 an original of the Construction Contract;
- 1.12 an original of the Service Contract;
- 1.13 an original of the Facility Co-ordination Agreement;
- 1.14 an original of the Management Services Agreement;

- 1.15 for insurances required to be taken out by the Construction Contractor prior to the commencement of any part of the Works pursuant to Article 13 of Schedule 25 – Insurance and Performance Security Requirements:
 - (a) certified copies of the policies of insurance required to be provided by Project Co pursuant to Section 1.1 of Schedule 25 – Insurance and Performance Security Requirements; and
 - (b) certificates of insurance required to be provided by Project Co pursuant to Section 1.2 of Schedule 25 – Insurance and Performance Security Requirements;
- 1.16 a copy of the certificate of insurance and endorsement evidencing the corporate policy of subcontractor default insurance maintained by the Construction Contractor, together with any endorsements and schedules or exhibits thereto, including naming Contracting Authority as a scheduled entity on the financial interest endorsement, required to be delivered pursuant to the Lending Agreements;
- 1.17 one (1) printed copy of the Financial Model (as revised pursuant to Section 2.3(d) of the Project Agreement, if applicable) and two (2) copies on USB keys;
- 1.18 a certificate of an officer of Project Co certifying:
 - (a) a true copy of the Financial Model audit report dated the date of the Project Agreement prepared by [REDACTED]; and
 - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.19 the Proposed Works Schedule and the Interim Works Schedule, both in form and substance satisfactory to Contracting Authority;
- 1.20 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.21 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;
- 1.22 a certificate of an officer of the Service Provider substantially in the form attached as Appendix B to this Schedule 2;
- 1.23 a certificate of an officer of the Construction Guarantor substantially in the form attached as Appendix B to this Schedule 2;
- 1.24 a certificate of an officer of the Service Guarantor substantially in the form attached as Appendix B to this Schedule 2;
- 1.25 an original of the opinion from counsel to Project Co, the Construction Contractor, the Service Provider, the Construction Guarantor, the Service Guarantor and such other Project

Co Parties as Contracting Authority may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to Contracting Authority and its counsel;

- 1.26 the Project Co constating documentation, including:
 - (a) **[REDACTED]**
- 1.27 copies of the Performance Guarantees;
- 1.28 a copy of the Substantial Completion Letter of Credit (as defined in the Construction Contract);
- 1.29 an original of the Final Energy Target Letter (as defined in Part 1 of Schedule 3 to the RFP);
- 1.30 evidence that the COR-Certified Construction Project Co Party has its COR Certification in good standing;
- 1.31 evidence that the COR-Qualified Construction Project Co Party has its COR Certification in good standing (or to the extent that the COR-Qualified Construction Project Co Party does not have its COR Certification by the date of the Project Agreement, evidence that the COR-Qualified Construction Project Co Party has its current OHSAS 18001 Accreditation in good standing and has made an application to IHSA for its COR Certification);
- 1.32 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a WSIB clearance certificate, or if a WSIB clearance certificate is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.33 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a CAD-7, or, if a CAD-7 is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.34 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a Workplace Injury Summary Report (WISR) or, if a WISR is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close; and
- 1.35 such other documents as the parties may agree, each acting reasonably.

2. Documents to be delivered by Contracting Authority

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, where Contracting Authority is a party to such document, executed by Contracting Authority and, if applicable, any Contracting Authority Party or Governmental Authority) is to be delivered by Contracting Authority to Project Co on or prior to the date of the Project Agreement:

- 2.1 an original of this Project Agreement;
- 2.2 an original of the Custody Agreement;
- 2.3 an original of the Lenders' Direct Agreement;
- 2.4 original of the Construction Contractor's Direct Agreement;
- 2.5 an original of the Service Provider's Direct Agreement;
- 2.6 an original of the Independent Certifier Agreement;
- 2.7 an original of the Insurance Trust Agreement;
- 2.8 an original notice of appointment of Contracting Authority Representative;
- 2.9 a certificate of an officer of Contracting Authority substantially in the form attached as Appendix D to this Schedule 2;
- 2.10 a certificate of an officer of IO and a declaration of management signed by an officer of Contracting Authority substantially in the forms attached as Appendix E to this Schedule 2; and
- 2.11 such other documents as the parties may agree, each acting reasonably.

APPENDIX A

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation (“**Contracting Authority**”)

RE: Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the _____ day of _____, 20__ between Contracting Authority and Fengate PCL Progress Partners MBR LP (“**Project Co**”)

1. The undersigned acknowledges that:
 - (a) The Project will proceed as an alternative financing and procurement project and complies with the principles set out in the IPFP Framework.
 - (b) The IPFP Framework establishes five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - (i) The public interest is paramount.
 - (ii) Value for money must be demonstrable.
 - (iii) Appropriate public control/ownership must be preserved.
 - (iv) Accountability must be maintained.
 - (v) All processes must be fair, transparent and efficient.
 - (c) Public ownership of the Facility will be preserved.
2. The undersigned undertakes to comply with all Applicable Law in any direction or order issued by Contracting Authority or IO to the extent that the direction or order affects the Project Operations.
3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

DATED this _____ day of _____, 2019.

**FENGATE PCL PROGRESS PARTNERS MBR LP
[REDACTED]**

Per: _____
[REDACTED]

I/We have authority to bind the corporation.

APPENDIX B

FORM OF PROJECT CO/PROJECT CO PARTY OFFICER’S CERTIFICATE

CERTIFICATE OF AN OFFICER OF

[•]

(THE “CORPORATION”)

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation (“Contracting Authority”)

AND TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

AND TO: McCARTHY TÉTRAULT LLP

AND TO: [COUNSEL TO PROJECT CO]

AND TO: [LENDERS’ AGENT]

AND TO: [COUNSEL TO LENDERS]

I, [•], being the [•] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Constating Documents
 - (a) The Corporation is a subsisting corporation duly incorporated under the laws of [the Province of Ontario].
 - (b) Attached hereto as **Schedule “A”** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the “**Articles**”). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
 - (c) Attached hereto as **Schedule “B”** are true and complete copies of the by-laws of the Corporation (the “**By-laws**”) enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-

laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.

- (d) Attached hereto as **Schedule “C”** is a true and complete copy of a unanimous shareholders’ agreement between the shareholders of the Corporation and the Corporation (the “**Unanimous Shareholders’ Agreement**”) executed on or before the date hereof. The Unanimous Shareholders’ Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [●] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders’ Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the [**Business Corporations Act (Ontario) (the “Act”)**], the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders’ Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders’ Agreement or in any other agreement binding on the Corporation which:

- (i) restrict or limit the powers of the Corporation to enter into:
 - (1) a certain project agreement with Contracting Authority made as of [●], 201[●] (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”) in respect of the design, construction, financing and maintenance of the Macdonald Block Reconstruction Project;
 - (2) a lenders’ direct agreement between the Corporation, Contracting Authority and the Lenders’ Agent;
 - (3) a direct agreement between [●] (the “**Construction Contractor**”), the Corporation, the Construction Guarantor and Contracting Authority
 - (4) a direct agreement between [●] (the “**Service Provider**”), the Corporation, the Service Guarantor and Contracting Authority; and
 - (5) **[NTD: List other documents delivered at as of the date hereof.]**(collectively, the “**Documents**”); or
- (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule “D”** are true and complete copies of the resolutions of the [directors/shareholders] of the Corporation (the “**Resolutions**”), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
 - (i) the Articles, By-laws or the Unanimous Shareholders’ Agreement;
 - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or Ontario governmental body by which it is bound;

Macdonald Block Reconstruction Project

- (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
 - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.
- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or Ontario governmental authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

3. No Breach or Default

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under the Articles, By-laws, Unanimous Shareholders’ Agreement or under any other agreement binding on the Corporation.

4. Specimen Signatures

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

NAME	POSITION	SIGNATURE
_____	_____	_____

5. Capital

Listed below are all of the issued and outstanding shares in the capital of the Corporation and the registered owner of such shares:

ISSUED SHARES

REGISTERED OWNER

Attached hereto as **Schedule “E”** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation) securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this ____ day of _____, 201__.

Name:

Title:

APPENDIX C

FORM OF PROJECT CO/PROJECT CO PARTY OPINION

[INSERT DATE]

Ontario Infrastructure and Lands Corporation

Suite 2000, 1 Dundas Street West
Toronto, Ontario
M5G 1Z3

McCarthy Tétrault LLP

Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Dear Sirs/Mesdames:

Re: Macdonald Block Reconstruction Project

We have acted as counsel to [●] (“**Project Co**”), [●] (the “**Construction Contractor**”) and [●] (the “**Service Provider**”) in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into an agreement in respect of the design, construction, financing and maintenance of the Macdonald Block Reconstruction Project. **[NTD: Additional parties to be added depending on consortium structure and/or the financing package.]**

This opinion is being delivered to Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation (“**Contracting Authority**”) and its counsel pursuant to Section 1.25 of Schedule 2 to the project agreement made as of [●], 201[●] between Contracting Authority and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as counsel to Project Co, the Construction Contractor and the Service Provider, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of [●], 201[●]):

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):

Macdonald Block Reconstruction Project

- (a) the Construction Contract;
- (b) the Service Contract;
- (c) the Lenders' Direct Agreement;
- (d) the Construction Contractor's Direct Agreement;
- (e) the Service Provider's Direct Agreement;
- (f) the Lending Agreements; and
- (g) the Performance Guarantees.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”. [NTD: **Additional documents to be added depending on consortium structure and/or the financing package.**]

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof.

We do not act as corporate counsel to [**Project Co, the Construction Contractor or the Service Provider**], nor have we participated in the general maintenance of their corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of each of Project Co, the Construction Contractor and the Service Provider dated as of the date hereof (the “**Officer's Certificates**”) as to certain factual matters.

Searches and Reliance

We have conducted, or have caused to be conducted, the searches identified in Schedule “A” (the “**Searches**”) for filings or registrations made in those offices of public record listed in Schedule “A”. The Searches were conducted against the current name and all former names of Project Co, the Construction Contractor and the Service Provider (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule “A”.

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer's Certificates.

We have relied exclusively, and without any independent investigation or enquiry, on the Officer's Certificates and the certificates of public officials with respect to certain factual matters.

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the Ministry of Government Services (Ontario) of even date, copies of which are attached as Schedule “B”.

In connection with the opinions set forth in paragraphs 5, 8, 11, 17 and 20 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 201[●] (the “**CC Opinion**”), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

In connection with the opinions set forth in paragraphs 6, 9, 12, 18 and 21 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 201[●] (the “**SP Opinion**”), a copy of which has been delivered to you. To the extent that the SP Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the SP Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

Assumptions

For the purposes of the opinions expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Project Co, the Construction Contractor and the Service Provider) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Project Co, the Construction Contractor and the Service Provider) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.
4. The completeness, truth and accuracy of all facts set forth in the Officer’s Certificates.

5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Project Co, the Construction Contractor and the Service Provider) to Project Co, the Construction Contractor and the Service Provider.

Opinions

Based upon and subject to the foregoing, and to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

Incorporation and Existence

1. Project Co is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
2. The Construction Contractor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
3. The Service Provider is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

Corporate Power and Capacity

4. Project Co has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Project Agreement, and to enter into and perform its obligations under each of the Documents to which it is a party.
5. The Construction Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.
6. The Service Provider has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

Corporate Authorization

7. Project Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

8. The Construction Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
9. The Service Provider has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

Execution and Delivery

10. Project Co has duly executed and delivered each of the Documents to which it is a party.
11. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.
12. The Service Provider has duly executed and delivered each of the Documents to which it is a party.

Enforceability

13. Each of the Documents to which Project Co is a party constitutes a legal, valid and binding obligation of Project Co, enforceable against it in accordance with its terms.
14. Each of the Documents to which the Construction Contractor is a party constitutes a legal, valid and binding obligation of the Construction Contractor, enforceable against it in accordance with its terms.
15. Each of the Documents to which the Service Provider is a party constitutes a legal, valid and binding obligation of the Service Provider, enforceable against it in accordance with its terms.

No Breach or Default

16. The execution and delivery by Project Co of the Documents to which it is a party does not, and the performance by Project Co of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which Project Co is subject.
17. The execution and delivery by the Construction Contractor of the Documents to which it is a party does not, and the performance by the Construction Contractor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Contractor is subject.

18. The execution and delivery by the Service Provider of the Documents to which it is a party does not, and the performance by the Service Provider of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Service Provider is subject.

Regulatory Approvals

19. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by Project Co of the Documents to which it is a party and the performance of its obligations thereunder.
20. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction Contractor of the Documents to which it is a party and the performance of its obligations thereunder.
21. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Service Provider of the Documents to which it is a party and the performance of its obligations thereunder.

Qualifications

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.
3. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.

4. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
5. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
6. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of Project Co notwithstanding any agreement to the contrary.
8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
9. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.
12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
14. Any award of costs is in the discretion of a Court of competent jurisdiction.

15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on Contracting Authority for which it would be contrary to public policy to require Project Co to indemnify Contracting Authority or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

[INSERT NAME OF LAW FIRM]

APPENDIX D

FORM OF
CERTIFICATE OF AN OFFICER OF
ONTARIO INFRASTRUCTURE AND LANDS CORPORATION
(the “Corporation”)

TO: [●] (“Project Co”)

AND TO: [COUNSEL TO PROJECT CO]

AND TO: [LENDERS’ AGENT]

AND TO: [COUNSEL TO LENDERS]

RE: Project Agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [●] day of [●], 20[●] between Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation and Project Co

I, [●], the [●] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Attached hereto as **Schedule “A”** is a true and complete copy of (i) the resolutions of the directors of the Corporation regarding the execution of public works projects undertaken by the Corporation and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the Corporation relating to delegation of signing authority (collectively, the “**Execution Resolutions**”), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
2. Attached hereto as **Schedule “B”** is a true and complete copy of the resolutions of the directors of the Corporation approving the selection of Project Co as the successful bidder for the Macdonald Block Reconstruction Project (the “**Project Resolutions**”). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
3. To the knowledge of the undersigned, after due inquiry as of the date hereof, the Minister of Government and Consumer Services (the “**Minister**”) has not given a direction pursuant to Subsection 4(3) of the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c.9, Schedule 32, as amended (the “**Act**”) that limits the scope of the objects of the Corporation as they are set out in Subsection 4(1) of the Act.

Macdonald Block Reconstruction Project

4. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver Project Documents (as such a term is defined in the Execution Resolutions referenced in Item 1(i) above) relating to the Macdonald Block Reconstruction Project on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>
[●]		
[●]		
[●]		
[●]		

DATED this _____ day of _____, 20[●].

By: _____
Name:
Title:

APPENDIX E

**FORM OF DECLARATION OF MANAGEMENT
ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**

(the “Corporation”)

DECLARATION OF MANAGEMENT

WHEREAS Her Majesty the Queen in Right Of Ontario as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation and [●] propose to enter into a Project Agreement relating to the Macdonald Block Reconstruction Project (the “**Project**”);

AND WHEREAS the Corporation will from time to time enter into agreements for the design, construction and/or facilities management of the Project assigned to the Corporation by the Minister of Government and Consumer Services and as well as ancillary agreements, instruments, certificates and other documents required to give effect to, or contemplated to be delivered in accordance with the Project (collectively, “**Project Documents**”);

NOW THEREFORE THE CORPORATION’S MANAGEMENT HEREBY DECLARES THAT:

1. by resolution of the board of directors of the Corporation passed on [●], 20[●], the board of directors of the Corporation has authorized the Corporation’s management (for and in the name of and on behalf of the Corporation) to execute and deliver the Project Documents and do all such other acts and things as the Corporation’s management may determine to be necessary or advisable to carry out the transactions contemplated by the applicable Project Documents;
2. the Corporation’s management may execute and deliver the Project Documents to which the Corporation may become a party and any other documents, instruments or agreements delivered in connection with the Project Documents from time to time (collectively, together with the Project Documents, the “**Documents**”) all in such form and on such terms as the management of the Corporation executing such Documents in accordance with this declaration may approve, such approval to be evidenced conclusively by the execution of such Documents by the Corporation’s management; and
3. the Project Documents to be executed and delivered by the Corporation in connection with the Project and the transactions and obligations contemplated thereunder are for the purpose of carrying out the objects of the Corporation and the Corporation shall not and will not assert the contrary against any person dealing with the Corporation or any person who has acquired an interest in the Project from the Corporation.

THIS DECLARATION may be signed in counterparts, and all such counterparts, when taken together, shall constitute one and the same declaration, effective on this date.

DATED this _____ day of _____, 20[●].

Name: [●]
Title: [REDACTED]

SCHEDULE 3

CUSTODY AGREEMENT

THIS AGREEMENT is made as of the 7th day of August, 2019

BETWEEN:

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

(“**Contracting Authority**”)

AND:

FENGATE PCL PROGRESS PARTNERS MBR LP, [REDACTED]

(“**Project Co**”)

AND:

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada

(the “**Custodian**”)

AND:

AST TRUST COMPANY (CANADA), a trust company incorporated under the laws of Canada, acting as agent for and on behalf of the Lenders

(the “**Lenders’ Agent**”)

WHEREAS:

- A. Contracting Authority and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Custodian, and the Custodian wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Custodian wish to enter into this Custody Agreement in order to record the terms by which the Custodian shall perform such services.

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

1. Definitions

In this Custody Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Custody Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Contracting Authority**” has the meaning given in the preamble.
- (b) “**Contracting Authority Signatory**” has the meaning given in Section 6(a)(i).
- (c) “**Custodian**” has the meaning given in the preamble.
- (d) “**Lenders’ Agent**” has the meaning given in the preamble.
- (e) “**Material**” means hard and electronic copies of the Financial Model.
- (f) “**PA Parties**” means both Contracting Authority and Project Co, and “**PA Party**” means either Contracting Authority or Project Co, as the context requires.
- (g) “**Party**” means Contracting Authority, the Custodian, Project Co or the Lenders’ Agent, and “**Parties**” means Contracting Authority, the Custodian, Project Co and the Lenders’ Agent.
- (h) “**Project Agreement**” means the project agreement between Contracting Authority and Project Co dated the same date as this Custody Agreement.
- (i) “**Project Co**” has the meaning given in the preamble.
- (j) “**Project Co Signatory**” has the meaning given in Section 6(a)(ii).
- (k) “**Step-Out Date**” has the meaning given in Section 14(e).

2. Interpretation

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

- (a) The headings in this Custody Agreement are for convenience of reference only, shall not constitute a part of this Custody Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Custody Agreement.

- (b) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Custody Agreement and the terms “Section” and “Section” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Custody Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Custody Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Custody Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Custody Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Custody Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Custody Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (j) Where this Custody Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Custody Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. Project Co’s Duties and Warranties

- (a) Contracting Authority will, together with Project Co, verify the identity and consistency of two copies of the Material, which shall be delivered by Project Co to the Custodian on the date of this Custody Agreement.
- (b) Project Co shall at all times ensure that the Material as delivered to the Custodian is capable of being used to generate the latest version of the Financial Model issued to Contracting Authority and shall deliver further copies of the Material to the Custodian as and when necessary.
- (c) Upon creation of any new versions of the Financial Model and within 30 days from receipt of a notice served upon it by the Custodian under the provisions of Section 4(a)(v), the replacement copy of the Material shall be verified by the PA Parties in accordance with Section 3(a) and delivered by Project Co to the Custodian.
- (d) Project Co warrants that:
 - (i) it owns the Intellectual Property Rights in the Material and has authority to enter into this Custody Agreement;
 - (ii) the use of the Materials by Contracting Authority under the terms of this Custody Agreement shall not infringe any Intellectual Property Rights of any person; and
 - (iii) the Material delivered under Section 3(a) shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Material without the assistance of any other person.

4. Custodian’s Duties

- (a) The Custodian shall:
 - (i) hold in safe custody all versions of the Financial Model delivered to it pursuant to the terms hereof, and the provisions of this Custody Agreement shall apply (with any necessary changes being made) to any revised Financial Model;

- (ii) hold the Material in a safe and secure environment;
 - (iii) inform Project Co and Contracting Authority of the receipt of any copy of the Material;
 - (iv) at all times retain a copy of the latest verified deposit of the Material; and
 - (v) promptly notify Project Co and Contracting Authority if it becomes aware at any time during the term of this Custody Agreement that any copy of the Material held by it has been lost, damaged or destroyed.
- (b) The Custodian shall not be responsible for procuring the delivery of the Material in the event of failure by Project Co to do so.
- (c) In accordance with Section 10, the Custodian shall allow the PA Parties, the Lenders' Agent, and the auditor retained by the Lenders' Agent to inspect and audit the Financial Model from time to time.

5. Payment

- (a) In consideration of the Custodian performing the services contemplated by this Custody Agreement, Project Co shall pay the Custodian's fees as agreed from time to time between the Custodian and Project Co.

6. Release Events

- (a) The Custodian shall hold the Material to the order of the PA Parties and shall honour the instructions and signatures of:
- (i) the President and CEO and designated signing officers of Contracting Authority or such other person nominated by it and notified to the Custodian and Project Co in writing (the "**Contracting Authority Signatory**"); and
 - (ii) the President and CEO and designated signing officers of Project Co or such other person nominated by it and notified to the Custodian and Contracting Authority in writing (the "**Project Co Signatory**");

and shall, subject to Section 6(b), upon receiving signed joint instructions from the Contracting Authority Signatory and the Project Co Signatory, release one copy of the Material to the person either named in such instructions or previously identified in writing by the Contracting Authority Signatory and the Project Co Signatory.

- (b) The PA Parties each agree that they shall give joint instructions to the Custodian for the release of the Material, in accordance with Section 6(a), on each occasion that the Material is required to be released pursuant to the Project Agreement or that the Material must be released to allow the Material to be maintained and/or corrected.

- (c) The Custodian shall release the Material to a duly authorized officer of Contracting Authority on any termination of the Project Agreement prior to the Expiry Date.

7. Records

- (a) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect any records kept by the Custodian in accordance with this Custody Agreement.

8. Confidentiality

- (a) The Material shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Material to Contracting Authority, Contracting Authority shall be permitted to use the Material only in accordance with the intellectual property and confidentiality obligations in the Project Agreement.
- (b) The Custodian agrees for itself, its directors, officers, employees, subcontractors and agents, to maintain all information and/or documentation in whatever form coming into its possession or to its knowledge under or in connection with this Custody Agreement in strictest confidence and secrecy. The Custodian further agrees not to make use of such information and/or documentation other than for the purposes of this Custody Agreement and will not disclose or release it other than in accordance with the terms of this Custody Agreement.
- (c) In the event that the Material is released under Section 6, Contracting Authority shall:
 - (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of Contracting Authority;
 - (ii) not use the Material for any other purpose nor disclose it to any person, save such of its employees or contractors who need to know the same in order to understand, maintain and correct the Financial Model exclusively on behalf of Contracting Authority;
 - (iii) hold all media containing the Material in a safe and secure environment when not in use; and
 - (iv) forthwith destroy the same should Contracting Authority cease to be entitled to use the Financial Model.

9. Intellectual Property Rights

- (a) The release of the Material to Contracting Authority and to the Custodian will not act as an assignment of any Intellectual Property Rights that Project Co possesses in the Material.

10. Inspection

- (a) Subject to the following provisions of this Section 10, the Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Financial Model.
- (b) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect and audit or to procure the inspection and audit of the Financial Model in accordance with this Section 10.
- (c) The Custodian shall, upon receiving duly signed instructions from both of the PA Parties (but only upon receiving such instructions), provide facilities for Contracting Authority and/or Project Co and/or such person identified in the duly signed written instructions to inspect and audit the Financial Model.
- (d) The Custodian shall maintain a record of any inspection and audit made pursuant to Section 10(b), including details of the person who made the inspection and/or audit and the date of the same.

11. Custodian's Liability

- (a) The Custodian shall not be liable for any loss or damage caused to Project Co or Contracting Authority either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors, and in such event, the Custodian's total liability in respect of all claims arising under or by virtue of this Custody Agreement shall not (except in the case of claims for personal injury or death) exceed the sum of \$[REDACTED] (index-linked).
- (b) The Custodian shall in no circumstances be liable to Project Co or Contracting Authority for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- (c) Subject to complying with the provisions of Section 6, and save in the case of manifest error, the Custodian shall be protected in acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Custody Agreement, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.
- (d) The duties, responsibilities and obligations of the Custodian shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Custodian shall not be subject to, nor required to comply with, any other agreement between or among any or all of the other Parties or to which any Party is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance herewith). The

Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder except ordinary corporate costs incurred in the performance of such duties.

- (e) If at any time the Custodian is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Material (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of property), the Custodian is authorized to comply therewith in any manner as it or its legal counsel deems appropriate, acting reasonably; provided that the Custodian, when so served, shall promptly notify Project Co and Contracting Authority, in writing, of such process and the Custodian's intended action in order to provide Project Co and Contracting Authority a reasonable opportunity to intervene or challenge such process in a court or tribunal of competent jurisdiction.
- (f) The Custodian may consult with legal counsel at the expense of Project Co and Contracting Authority as to any matter relating to this Custody Agreement, and the Custodian shall not incur any liability in acting in good faith in accordance with any advice from such counsel. All reasonable fees and disbursements incurred by the Custodian shall be added to the fees otherwise payable hereunder.
- (g) The Custodian shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Custodian (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (h) The Custodian shall not be responsible in any respect for the form or content of the Material delivered to it hereunder.
- (i) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Custodian hereunder, the Custodian shall notify Project Co and Contracting Authority in writing of such ambiguity or uncertainty and request instructions to eliminate such ambiguity or uncertainty. The Custodian may, acting reasonably, refrain from taking any action other than to retain possession of the Material, unless the Custodian receives written instructions, signed by Project Co and Contracting Authority, which eliminates such ambiguity or uncertainty.
- (j) In the event of any dispute between or conflicting claims by or among the PA Parties and/or any other person or entity with respect to the Material, the Custodian shall be entitled, acting reasonably, to refuse to comply with any and all claims, demands or instructions with respect to the Material so long as such dispute or conflict shall continue, and the Custodian shall promptly notify Project Co and Contracting Authority of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or Contracting Authority for failure or refusal to comply with such conflicting claims, demands or instructions. The Custodian shall be entitled to refuse to act until, acting

- reasonably, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in writing satisfactory to the Custodian or (ii) the Custodian shall have received security or an indemnity satisfactory to it acting reasonably sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Custodian may, in addition, elect, acting reasonably, to commence an interpleader action or seek other judicial relief or orders as it may deem, acting reasonably, necessary, including, without limiting the generality of the foregoing, depositing all or any part of the Material into court. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, Project Co and Contracting Authority.
- (k) Each of Project Co and Contracting Authority shall provide to the Custodian an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Custodian hereunder. The Custodian shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Custodian shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.
- (l) The Custodian shall be entitled to rely, and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission.
- (m) This Section 11 shall survive the termination of this Custody Agreement.

12. Indemnity

- (a) Save for any claim falling within the provisions of Section 11(a), Project Co and Contracting Authority, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors and employees, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) arising from or in connection with or related to this Custody Agreement or acting as Custodian hereunder (including, but not limited to, losses incurred by the Custodian in connection with its successful defense of any claim of negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Custodian to be indemnified for losses caused by its negligence or willful misconduct.
- (b) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix A – Conduct of Claims to this Custody Agreement.

13. Termination

- (a) The Custodian may terminate this Custody Agreement for failure by Project Co to pay any outstanding fee provided for herein within 30 days of receipt of written notice in respect thereof.
- (b) The Custodian may terminate this Custody Agreement by giving 120 days prior written notice to Project Co and Contracting Authority. In that event, Project Co and Contracting Authority shall appoint a mutually acceptable new custodian on terms similar to those contained in this Custody Agreement.
- (c) If the Custodian is not notified of the new custodian within the notice period given in Section 13(b), the Custodian will destroy the Material.
- (d) Contracting Authority may terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Project Co.
- (e) Project Co may, with the prior written consent of Contracting Authority, terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Contracting Authority.
- (f) This Custody Agreement shall terminate upon release of the Material to Contracting Authority in accordance with Section 6(c).
- (g) Upon termination under the provisions of Sections 13(d) or 13(e), the Custodian will deliver the Material to Project Co. If the Custodian is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian, the Custodian will destroy the Material.
- (h) Upon termination under the provisions of Section 13(a), the Material will be available for collection by Project Co from the Custodian for 60 days from the date of termination. After such 60-day period, the Custodian will destroy the Material.
- (i) The Custodian may forthwith terminate this Custody Agreement and destroy the Material if it is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian having used all reasonable endeavours to do so.
- (j) The provisions of Sections 8, 11 and 12 shall continue in full force and effect after termination of this Custody Agreement.
- (k) The Agreement shall terminate on the Expiry Date, at which time Project Co will write to the Custodian requesting the release of the Materials to it. The Custodian agrees that it will notify Contracting Authority of Project Co's request and, failing receipt of any notice of objection from Contracting Authority within 30 days of the receipt of the notice by Contracting Authority, it shall release the Materials to Project Co.

- (l) On termination of this Custody Agreement, Project Co shall remain liable to the Custodian for payment in full of any fee which has become due but which has not been paid as at the date of termination.

14. Step-In Rights

- (a) The Custodian shall, from time to time:
- (i) permit Contracting Authority to perform or discharge any obligation of Project Co under this Custody Agreement, where Project Co is in breach of the same;
 - (ii) permit Project Co to perform or discharge any obligation of Contracting Authority under this Custody Agreement, where Contracting Authority is in breach of the same; and
 - (iii) following notification by the Lenders' Agent (who at the same time shall provide a copy of any such notification to Contracting Authority), permit the Lenders' Agent or another person specified in such notice with effect from the date specified in the same to perform or discharge all the obligations of Project Co under this Custody Agreement, provided that the Lenders' Agent shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to Project Co under this Custody Agreement and the Custodian undertakes to perform such obligations in favour of the Lenders' Agent.
- (b) Project Co consents to the performance or discharge of its obligations by Contracting Authority pursuant to Section 14(a)(i).
- (c) Contracting Authority consent to the performance or discharge of their obligations by Project Co pursuant to Section 14(a)(ii).
- (d) The PA Parties consent to the performance or discharge of Project Co's obligations by the Lenders' Agent pursuant to Section 14(a)(iii).
- (e) Contracting Authority or the Lenders' Agent shall be entitled to terminate the Lenders' Agent's obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (Contracting Authority or the Lenders' Agent at the same time shall provide a copy of any such notification to the other Party) of at least 15 Business Days. On and from the date of expiry of such notice (the "**Step-Out Date**"), the Lenders' Agent shall be automatically released from all obligations pursuant to this Custody Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.
- (f) The occurrence of the Step-Out Date shall not affect the continuation of Project Co's obligations towards the Custodian under this Custody Agreement.
- (g) The Lenders' Agent is a Party to this Custody Agreement solely for the purposes of taking the benefit of its rights under Section 4(c) of this Custody Agreement and this Section 14

and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of Section 4(c) of this Custody Agreement and this Section 14.

15. Assignment

- (a) This Custody Agreement shall be binding on, and enure to the benefit of, the Custodian, Project Co and Contracting Authority and their respective successors and permitted transferees and assigns.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.1 of the Project Agreement.
- (c) Contracting Authority may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement.
- (d) The Custodian shall not, without the prior written consent of the PA Parties assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person.
- (e) The Custodian acknowledges that Project Co has granted a security interest over its rights under this Custody Agreement to the Lenders' Agent.

16. Notices

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Custody Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Custody Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Contracting Authority: [REDACTED]

If to Project Co: [REDACTED]

With a copy to: [REDACTED]

With a copy to: [REDACTED]

If to the Custodian: [REDACTED]

If to the Lenders' Agent: [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 16(b).
- (c) Any Party to this Custody Agreement may, from time to time, change any of its contact information set forth in Section 16(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 16(e), 16(f) and 16(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
- (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
- (iii) a notice given by 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 16.
- (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.

17. Right to Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Custody Agreement and Project Co, the Custodian and the Lenders' Agent may deal exclusively with the designated Person in respect of all such matters and are entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated Person from time to time, until the Crown has notified Project Co, the Custodian and the Lenders' Agent in writing that such designated Person is no longer the person designated by Contracting Authority hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Custodian and the Lenders' Agent in writing of

any designation hereunder. The rights and obligations of the Parties to this Custody Agreement shall be in no way affected by reason of any such designation. Project Co, the Custodian and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 17.

18. Amendments

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

19. Waiver

- (a) No waiver made or given by a Party under or in connection with this Custody Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

20. Relationship Between the Parties

- (a) The Parties are independent contractors. This Custody Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, trustee and beneficiary, employer and employee, master and servant, or principal and agent.

21. Entire Agreement

- (a) Except where provided otherwise in this Custody Agreement, this Custody Agreement and the Project Agreement constitute the entire agreement between the Parties in connection with the subject matter of this Custody Agreement and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Custody Agreement.

22. Severability

- (a) Each provision of this Custody Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Custody Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Custody Agreement.

If any such provision of this Custody Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Custody Agreement as near as possible to its original intent and effect.

23. Enurement

- (a) This Custody Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

24. Governing Law and Jurisdiction

- (a) This Custody Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Custody Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario), hereby irrevocably attorn to the exclusive jurisdiction of such courts.

25. Further Assurance

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

26. Language of Agreement

- (a) Each Party acknowledges having requested and being satisfied that this Custody Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ces documents soient rédigés en anglais et s'en declare satisfaite.

27. Proof of Authority

- (a) Contracting Authority reserves the right to require any person executing this Custody Agreement on behalf of Project Co or the Lenders' Agent to provide proof, in a form acceptable to Contracting Authority, that such person has the requisite authority to execute this Custody Agreement on behalf of and to bind Project Co or the Lenders' Agent, respectively.

28. Counterparts

- (a) This Custody Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all 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 Custody Agreement which was so faxed.

[Remainder of this Page Intentionally Left Blank]

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

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

Per: _____

Name: **[REDACTED]**

Title:

I have authority to bind the corporation.

**FENGATE PCL PROGRESS PARTNERS MBR
LP, [REDACTED]**

Per: _____
Name: [REDACTED]
Title:

I have authority to bind the corporation.

**COMPUTERSHARE TRUST COMPANY OF
CANADA**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

AST TRUST COMPANY (CANADA)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

APPENDIX A

CONDUCT OF CLAIMS

This Appendix A shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and Contracting Authority and Project Co are referred to, collectively, as the “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 12 of the Custody Agreement, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix A, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. In such case, Contracting Authority may, but shall not be obligated to, assume (on prior written notice to Project Co) control of any such defence for and on behalf of itself and Project Co, and Project Co hereby consents to such assumption. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim at its own cost and expense.
- (3) With respect to any claim conducted by the Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

- (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Custody Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section (2); or
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or the Indemnifier notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim.
- (5) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”), the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a

Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

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

SCHEDULE 4

LENDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the 7th day of August, 2019

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the **MINISTER OF GOVERNMENT AND CONSUMER SERVICES**, as represented by **ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**, a non-share capital corporation continued and amalgamated under the Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**Contracting Authority**”)

- AND -

AST TRUST COMPANY (CANADA), a trust company incorporated under the laws of Canada, acting as agent for and on behalf of the Lenders

(the “**Lenders' Agent**”)

- AND -

FENGATE PCL PROGRESS PARTNERS MBR LP, [REDACTED]

(“**Project Co**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. The overriding priorities of Contracting Authority in entering into and implementing the Project Agreement are the health and safety of all Macdonald Block Occupants, other Province Persons and Macdonald Block Service Users at the Existing Facilities and the Facility, and enabling Contracting Authority and other Macdonald Block Occupants and Province Persons to carry out first-rate Macdonald Block Activities in a secure, dignified and efficient manner.
- C. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Project Operations, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.

- D. The Lenders' Agent has agreed to enter into this lenders' direct agreement (the "**Lenders' Direct Agreement**") with Contracting Authority in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- E. With a view to ensuring that Contracting Authority is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with Contracting Authority throughout the Project Term.

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

1. DEFINITIONS

In this Lenders' Direct Agreement, unless the context otherwise requires:

- (a) "**Affiliate**" has the meaning given in the Project Agreement.
- (b) "**Appointed Representative**" means any of the following to the extent so identified in an Appointed Representative Notice:
- (i) the Lenders' Agent, any Lender or any of their Affiliates;
 - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
 - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
 - (iv) an administrator of Project Co;
 - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
 - (vi) any other person approved by Contracting Authority (such approval not to be unreasonably withheld or delayed).
- (c) "**Appointed Representative Notice**" has the meaning given in Section 8(b).
- (d) "**Business Day**" has the meaning given in the Project Agreement.
- (e) "**Change in Control**" has the meaning given in the Project Agreement.
- (f) "**Change in Ownership**" has the meaning given in the Project Agreement.
- (g) "**Construction Contract**" has the meaning given in the Project Agreement.

- (h) “**Construction Contractor**” has the meaning given in the Project Agreement.
- (i) “**Contracting Authority**” has the meaning given in the preamble.
- (j) “**Contracting Authority Project Documents**” means the Project Agreement and all other documents to which both Contracting Authority and Project Co are parties pursuant to or in connection with the Project Agreement.
- (k) “**Crown**” has the meaning given in the Project Agreement.
- (l) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (m) “**Direct Agreements**” has the meaning given in the Project Agreement.
- (n) “**Enforcement Action**” means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (o) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (p) “**Equity Capital**” has the meaning given in the Project Agreement.
- (q) “**Exercise Date**” has the meaning given in Section 12(b).
- (r) “**Existing Facilities**” has the meaning given in the Project Agreement.
- (s) “**Facility**” has the meaning given in the Project Agreement.
- (t) “**Failure Points**” has the meaning given in the Project Agreement.
- (u) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (v) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (w) “**Lender Representative**” means a representative (which may be the Lenders’ Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (x) “**Lenders**” has the meaning given in the Project Agreement.
- (y) “**Lenders’ Agent**” has the meaning given in the preamble.
- (z) “**Lenders’ Consultant**” means [REDACTED].
- (aa) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (bb) “**Lending Agreements**” has the meaning given in the Project Agreement.

- (cc) “**Longstop Date**” has the meaning given in the Project Agreement.
- (dd) “**Macdonald Block Activities**” has the meaning given in the Project Agreement.
- (ee) “**Macdonald Block Occupants**” has the meaning given in the Project Agreement.
- (ff) “**Macdonald Block Service Users**” has the meaning given in the Project Agreement.
- (gg) “**Monitoring Notice**” has the meaning given in the Project Agreement.
- (hh) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 90 days later.
- (ii) “**Novation Date**” has the meaning given in Section 10(a).
- (jj) “**Novation Notice**” has the meaning given in Section 10(a).
- (kk) “**Party**” means any of Contracting Authority, Project Co or the Lenders’ Agent, and “**Parties**” means all of Contracting Authority, Project Co and the Lenders’ Agent.
- (ll) “**Private Capital Advance Confirmations**” has the meaning given in the Project Agreement.
- (mm) “**Private Capital Funding Confirmations**” has the meaning given in the Project Agreement.
- (nn) “**Project**” has the meaning given in the Project Agreement.
- (oo) “**Project Agreement**” means the project agreement between Contracting Authority and Project Co dated the same date as this Lenders’ Direct Agreement.
- (pp) “**Project Co**” has the meaning given in the preamble.
- (qq) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (rr) “**Project Co Party**” has the meaning given in the Project Agreement.
- (ss) “**Project Documents**” has the meaning given in the Project Agreement.
- (tt) “**Project Operations**” has the meaning given in the Project Agreement.
- (uu) “**Province**” has the meaning given in the Project Agreement.
- (vv) “**Province Persons**” has the meaning given in the Project Agreement.
- (ww) “**Refinancing**” has the meaning given in the Project Agreement.

- (xx) “**Restricted Person**” has the meaning given in the Project Agreement.
- (yy) “**Scheduled Substantial Completion Date**” has the meaning given in the Project Agreement.
- (zz) “**Security**” means the security interests granted to the Lenders’ Agent pursuant to the Security Documents.
- (aaa) “**Security Documents**” means all documents pursuant to which security is granted to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
 - (i) [REDACTED].
- (bbb) “**Service Contract**” has the meaning given in the Project Agreement.
- (ccc) “**Service Provider**” has the meaning given in the Project Agreement.
- (ddd) “**Step-In Date**” means the date on which Contracting Authority receives a Step-In Notice from the Lenders’ Agent.
- (eee) “**Step-In Notice**” means the notice given by the Lenders’ Agent to Contracting Authority pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (fff) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:
 - (i) the Step-Out Date;
 - (ii) the Termination Date (provided that Contracting Authority has complied with its obligations in Section 7);
 - (iii) the date that a transfer of Project Co’s rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
 - (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
 - A. the date falling 180 days after the Longstop Date, or
 - B. the date falling two years after the Step-In Date.
- (ggg) “**Step-Out Date**” means the date falling 30 days after the date on which Contracting Authority receives a Step-Out Notice.

- (hhh) “**Step-Out Notice**” has the meaning given in Section 9(a).
- (iii) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (jjj) “**Substantial Completion Date**” has the meaning given in the Project Agreement.
- (kkk) “**Suitable Substitute**” means a person, approved in writing by Contracting Authority in accordance with Sections 10(b) and 10(c), which:
 - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Contracting Authority Project Documents; and
 - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the Contracting Authority Project Documents.
- (xx) “**Termination Date**” has the meaning given in the Project Agreement.
- (lll) “**Warning Notice**” has the meaning given in the Project Agreement.
- (mmm) “**Works**” has the meaning given in the Project Agreement.

2. INTERPRETATION

This Lenders’ Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Lenders’ Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders’ Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders’ Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders’ Direct Agreement.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Lenders’ Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Lenders’ Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Lenders’ Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Lenders’ Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders’ Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Lenders’ Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Lenders’ Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.

- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Lenders’ Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT OF DOCUMENTS

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

4. TERM

- (a) This Lenders’ Direct Agreement shall terminate automatically on the earliest of:
 - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
 - (ii) the Termination Date (provided that Contracting Authority has complied with its obligations in Section 7 of this Lenders’ Direct Agreement); and
 - (iii) the date that any transfer of Project Co’s rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within 30 days following its occurrence, the Lenders’ Agent shall provide notice to Contracting Authority of the date referred to in Section 4(a)(i).

5. AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders’ Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.
- (b) Project Co represents and warrants that the Lending Agreements have been entered into and negotiated on an arm’s length basis.
- (c) Project Co acknowledges and consents to the arrangements set out in this Lenders’ Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders’ Direct Agreement.
- (d) The Lenders’ Agent acknowledges having received a copy of the Project Agreement.

- (e) Contracting Authority acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to Contracting Authority as at the date of the Project Agreement.
- (f) Contracting Authority acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the Contracting Authority Project Documents.
- (g) Contracting Authority agrees that any enforcement by the Lenders' Agent of a security interest in the Equity Capital of Project Co granted in favour of the Lenders' Agent as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default under the Project Agreement.
- (h) Any agreement provided to Project Co pursuant to Section 14.6(a) of the Project Agreement shall be in a form satisfactory to the Lenders' Agent, acting reasonably.
- (i) Project Co and the Lenders' Agent hereby authorize and instruct Contracting Authority (and Contracting Authority agrees) to pay all sums payable to Project Co under the Project Agreement to the following account **[REDACTED]**

with the exception of the Substantial Completion Payment which shall be deposited to the following account: **[REDACTED]**

and Project Co and Contracting Authority agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, Contracting Authority shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.

- (j) Contracting Authority shall provide the Lenders' Agent with copies of any Warning Notice, Monitoring Notice or notice of default given to Project Co under the Project Agreement at the same time such notice is given to Project Co.
- (k) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, Contracting Authority shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.
- (l) The Lenders' Agent shall appoint the Lenders' Consultant who shall be responsible to advise the Lenders' Agent and the Lenders with respect to the amount of any Construction Period Payments or Unpaid Construction Period Payments in accordance with the Project Agreement and Schedule 19 – Construction Period Payments. The Lenders' Agent shall cause the Lenders' Consultant to provide Contracting Authority and the Independent Certifier with all Private Capital

Advance Confirmations and Private Capital Funding Confirmations pursuant to Section 3 of Schedule 19 – Construction Period Payments. The Lenders' Agent acknowledges and agrees that this Section 5(1) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, all Private Capital Advance Confirmations and Private Capital Funding Confirmations to Contracting Authority and the Independent Certifier.

6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify Contracting Authority of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
 - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 28 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
 - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities (i) are inconsistent with Contracting Authority's role (in its reasonable opinion) generally in the Province or with respect to the Macdonald Block Activities; (ii) may compromise the reputation of Contracting Authority, any Macdonald Block Occupants and/or the Province; (iii) may compromise the integrity of the Existing Facilities or the Facility; or (iv) are inconsistent with the nature of the Province's public services, so as to affect public confidence in such services.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7. TERMINATION OF PROJECT AGREEMENT BY CONTRACTING AUTHORITY

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, Contracting Authority may, at any time,

serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.

- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), Contracting Authority shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
 - (i) Contracting Authority promptly delivers written notice (a “**Default Notice**”) to the Lenders’ Agent setting out the Project Co Event of Default in reasonable detail;
 - (ii) not later than 30 days after the date of a Default Notice, Contracting Authority delivers written notice (an “**Indebtedness Notice**”) to the Lenders’ Agent setting out:
 - A. all amounts owed by Project Co to Contracting Authority and any other existing liabilities and unperformed obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, as of the date on which Contracting Authority sent the Default Notice; and
 - B. all amounts which will become owing by Project Co to Contracting Authority and any other liabilities and obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
 - (iii) the Notice Period has expired and the Lenders’ Agent has not delivered a Step-In Notice.
- (c) At any time after Contracting Authority sends an Indebtedness Notice but before Contracting Authority receives a Step-In Notice, if Contracting Authority discovers amounts that have become owing by Project Co to or any other liabilities or obligations of Project Co to Contracting Authority that have come due but which were not included in the Indebtedness Notice, Contracting Authority shall deliver written notice (a “**Subsequent Indebtedness Notice**”) to the Lenders’ Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, Contracting Authority shall not terminate the Project Agreement on grounds:
 - (i) that the Lenders’ Agent has served a Step-In Notice or enforced any Security Document; or

- (ii) arising prior to the Step-In Date of which Contracting Authority was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
 - A. the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 180 days after the Longstop Date; or
 - B. the grounds arose after the Substantial Completion Date, and neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:
 - a) arose prior to the Step-In Date;
 - b) is continuing and capable of being cured; and
 - c) would have entitled Contracting Authority to terminate the Project Agreement; or
 - C. the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
- (iii) arising solely in relation to Project Co.
- (e) Contracting Authority shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
 - (i) if any amount referred to in Section 7(b)(ii)A has not been paid to Contracting Authority on or before the Step-In Date;
 - (ii) if any amount referred to in Section 7(b)(ii)B has not been paid on or before the last day of the Notice Period;
 - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the later of:
 - A. the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; and
 - B. the Step-In Date; or
 - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that, except as otherwise provided in Section 10, Failure Points and/or Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but

such Failure Points and Warning Notices (to the extent applicable under the terms of the Project Agreement) shall be taken into account after the Step-Out Date.

8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give Contracting Authority a Step-In Notice at any time:
 - (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
 - (ii) during the Notice Period; or
 - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to Contracting Authority of:
 - (i) its intention to deliver a Step-In Notice; and
 - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the Contracting Authority Project Documents.
- (d) During the Step-In Period, Contracting Authority shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the Contracting Authority Project Documents. Project Co agrees to be bound by all such dealings between Contracting Authority and the Appointed Representative to the same extent as if they had been between Contracting Authority and Project Co.

9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to Contracting Authority to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
 - (i) the rights and obligations of the Appointed Representative in relation to Contracting Authority under the Contracting Authority Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;

- (ii) Contracting Authority will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the Contracting Authority Project Documents; and
 - (iii) the Appointed Representative and Contracting Authority shall be and hereby are released from all obligations and liabilities to one another under the Contracting Authority Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

10. NOVATION TO SUITABLE SUBSTITUTE

- (a) Subject to Section 10(b), at any time:
- (i) after an Enforcement Event has occurred;
 - (ii) during the Notice Period; or
 - (iii) during the Step-In Period,

the Lenders' Agent may deliver to Contracting Authority and any Appointed Representative written notice (a "**Novation Notice**") that it wishes to transfer Project Co's rights and obligations under the Contracting Authority Project Documents to a proposed transferee, together with all information reasonably necessary for Contracting Authority to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which Contracting Authority receives the Novation Notice ("**Novation Date**") for the transfer of Project Co's rights and obligations under the Contracting Authority Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) Contracting Authority shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. Contracting Authority shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the Contracting Authority Project Documents is approved by Contracting Authority as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by Contracting Authority of the Novation Notice and the date of receipt of any additional information requested by Contracting Authority. For greater certainty, if Contracting Authority fails to respond within such period, Contracting Authority shall be deemed not to have approved the proposed transferee.
- (c) Contracting Authority shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for Contracting Authority to withhold its approval if:

- (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to Contracting Authority, acting reasonably, in respect of such breaches;
 - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or
 - (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the Contracting Authority Project Documents or have the effect of increasing any liability of Contracting Authority, whether actual or potential.
- (d) If Contracting Authority withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to Contracting Authority, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
- (i) Project Co and Contracting Authority will be released from their obligations under the Contracting Authority Project Documents to each other, and the Suitable Substitute and Contracting Authority will assume those same obligations towards each other;
 - (ii) each of the rights of Project Co against Contracting Authority under the Contracting Authority Project Documents and the rights of Contracting Authority against Project Co under the Contracting Authority Project Documents will be cancelled, and the Suitable Substitute and Contracting Authority will acquire those same rights against each other;
 - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
 - A. an agreement between Contracting Authority and the Suitable Substitute, on substantially the same terms as the Project Agreement; and

- B. an agreement among Contracting Authority, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
- (iv) any Failure Points and Warning Notices that arose prior to the Novation Date shall be cancelled, provided that, where Contracting Authority was entitled to make Deductions under Schedule 20 - Payment Mechanism arising from such Failure Points and Warning Notices and those Deductions have not yet been made against any payments to Project Co preceding the Novation Date, those outstanding Deductions shall still apply; and
- (v) any subsisting ground for termination by Contracting Authority of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11. TRANSFERS

Contracting Authority shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

12. DIRECT AGREEMENTS

- (a) Notwithstanding any provision in the Direct Agreements, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Direct Agreements, except as provided in Sections 12(b) to 12(f) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, Contracting Authority shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Direct Agreements to step in to and/or novate the Construction Contract and/or the Service Contract in accordance with the Direct Agreements.
- (c) Following the Exercise Date, Contracting Authority shall not do anything to prejudice the rights which are not transferred to it pursuant to the Direct Agreements.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of any

Construction Contract or Service Contract assumed or novated by Contracting Authority pursuant to a Direct Agreement.

- (e) Notwithstanding the terms of the Direct Agreements and any other provisions of this Section 12, each of the Construction Contractor and the Service Provider (and any guarantors thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Construction Contract and/or the Service Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, Contracting Authority shall not, prior to the date on which this Lenders' Direct Agreement terminates:
 - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Direct Agreements (and/or the Construction Contract and/or the Service Contract) from the Construction Contractor or the Service Provider;
 - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor and/or the Service Provider or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor and/or the Service Provider; or
 - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor or the Service Provider, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

Contracting Authority agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

13. NOTICE OF PROJECT CO DELAY OR PROCEEDING AT RISK

- (a) The Parties acknowledge that, if the Independent Certifier determines that Project Co is Proceeding at Risk pursuant to Section 11.6(f) of the Project Agreement, Contracting Authority may, in its sole discretion, give notice to the Lenders' Agent that Project Co is Proceeding at Risk, together with a copy of the Independent Certifier's written opinion provided pursuant to such Section of the Project Agreement.
- (b) The Parties acknowledge that, if Contracting Authority delivers notice to Project Co pursuant to Section 20.3(a)(iii) of the Project Agreement, Contracting Authority

may, in its sole discretion, give notice to the Lenders' Agent that it has delivered such notice to Project Co, together with the relevant information supporting Contracting Authority's reasons for delivering such notice to Project Co.

14. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 14.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to Contracting Authority and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Contracting Authority and the Lenders' Agent, each acting reasonably. Contracting Authority and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) Contracting Authority may assign, transfer or otherwise dispose of the whole or part of this Lenders' Direct Agreement to any person to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and Contracting Authority of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lenders' Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and Contracting Authority on substantially the same terms as this Lenders' Direct Agreement and Project Co and Contracting Authority shall enter into such new agreement with the assignee. Project Co and Contracting Authority shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

15. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Lenders’ Direct Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Lenders’ Direct Agreement) and served by sending the same by registered mail or by hand, as follows:

If to Contracting Authority: [REDACTED]

If to Project Co: [REDACTED]

If to the Lenders’ Agent: [REDACTED]

- (b) Any Party to this Lenders’ Direct Agreement may, from time to time, change any of its contact information set forth in Section 15(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party’s receipt of such notice unless a later effective date is given in such notice.
- (c) Subject to Sections 15(d) and 15(e):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made by personal delivery in accordance with this Section 15.
- (e) 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. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Lenders’ Direct Agreement and Project Co and the Lenders’ Agent may deal exclusively with the designated

person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Lenders' Agent in writing that such designated person is no longer the person designated by Contracting Authority hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the parties to this Lenders' Direct Agreement shall be in no way affected by reason of any such designation. Project Co and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 16.

17. AMENDMENTS

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

18. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

19. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Lenders' Direct Agreement, of principal and agent.

20. ENTIRE AGREEMENT

Except where provided otherwise in this Lenders' Direct Agreement, this Lenders' Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings,

whether oral, written, express or implied, concerning the subject matter of this Lenders' Direct Agreement.

21. SEVERABILITY

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

22. ENUREMENT

This Lenders' Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

23. GOVERNING LAW AND JURISDICTION

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Lenders' Direct Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario), hereby irrevocably attorn to the exclusive jurisdiction of such courts.

24. DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

25. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

26. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Lenders' Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

27. COUNTERPARTS

This Lenders' Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all 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.

28. CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 49 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information as is necessary for the Lenders' Agent to comply with Applicable Law.

[Remainder of this Page Intentionally Left Blank]

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

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

Per: _____

Name: **[REDACTED]**

Title:

I have authority to bind the corporation.

**FENGATE PCL PROGRESS PARTNERS MBR LP,
[REDACTED]**

Per: _____

Name: **[REDACTED]**

Title:

I have authority to bind the corporation.

AST TRUST COMPANY (CANADA)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 5-1

CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 7th day of August, 2019

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the **MINISTER OF GOVERNMENT AND CONSUMER SERVICES**, as represented by **ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**, a non-share capital corporation continued and amalgamated under the Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**Contracting Authority**”)

- **AND** -

FENGATE PCL PROGRESS PARTNERS MBR LP, a [REDACTED]

(“**Project Co**”)

- **AND** -

PCL CONSTRUCTORS CANADA INC., a corporation incorporated under the laws of Alberta

(the “**Construction Contractor**”)

- **AND** -

PCL CONSTRUCTION GROUP INC., a corporation incorporated under the laws of Alberta

(the “**Construction Guarantor**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Construction Guarantor to enter into, this Construction Contractor’s Direct Agreement with Contracting Authority.
- B. Project Co and the Construction Contractor have entered into the Construction Contract, which requires the Construction Contractor and the Construction Guarantor to enter into this Construction Contractor’s Direct Agreement with Contracting Authority.

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

1. DEFINITIONS

In this Construction Contractor’s Direct Agreement, unless the context otherwise requires:

- (a) “**Business Day**” has the meaning given in the Project Agreement.
- (b) “**Construction Contract**” has the meaning given in the Project Agreement.
- (c) “**Construction Contractor**” has the meaning given in the preamble.
- (d) “**Construction Guarantor**” has the meaning given in the preamble.
- (e) “**Contracting Authority**” has the meaning given in the preamble.
- (f) “**Crown**” has the meaning given in the Project Agreement.
- (g) “**Default Notice**” has the meaning given in Section 5(a).
- (h) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (i) “**Lenders**” has the meaning given in the Project Agreement.
- (j) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.
- (k) “**Party**” means Contracting Authority, the Construction Contractor, the Construction Guarantor or Project Co, and “**Parties**” means Contracting Authority, the Construction Contractor, the Construction Guarantor and Project Co.
- (l) “**Project**” has the meaning given in the Project Agreement.
- (m) “**Project Agreement**” means the project agreement between Contracting Authority and Project Co dated the same date as this Construction Contractor’s Direct Agreement.
- (n) “**Project Co**” has the meaning given in the preamble.
- (o) “**Step-In Notice**” has the meaning given in Section 6(a).
- (p) “**Substitute**” has the meaning given in Section 6(a).
- (q) “**Works**” has the meaning given in the Project Agreement.

2. INTERPRETATION

This Construction Contractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Construction Contractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction Contractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Construction Contractor’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Construction Contractor’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Construction Contractor’s Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Construction Contractor’s Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the

specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

- (h) In construing this Construction Contractor’s Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Construction Contractor’s Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Construction Contractor’s Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Construction Contractor’s Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Construction Contractor’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor’s Direct Agreement, the Project Agreement and the Construction Contract, this Construction Contractor’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Construction Contract without the prior written consent of Contracting Authority, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor’s Direct Agreement and does not have the effect of increasing any liability of Contracting Authority, whether actual or potential. Project Co and the Construction Contractor shall provide to Contracting Authority a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Construction Contract that may give the Construction Contractor a right to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder, then the Construction Contractor shall concurrently provide Contracting Authority with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE

The Construction Contractor shall not exercise any right it may have to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder unless:

- (a) the Construction Contractor first delivers a written notice (a “**Default Notice**”) to Contracting Authority setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder; and
- (b) within a period of 5 Business Days of Contracting Authority receiving the Default Notice:
 - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder have not been remedied; and

- (ii) the Construction Contractor has not received a Step-In Notice from Contracting Authority,

provided that if, within such period of 5 Business Days, Contracting Authority agrees to pay the Construction Contractor’s reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

6. STEP-IN RIGHTS

- (a) Contracting Authority may at any time:
 - (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of Contracting Authority receiving a Default Notice; or
 - (ii) if Contracting Authority has not received a Default Notice and if Contracting Authority’s right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a “**Step-In Notice**”) electing to replace Project Co under the Construction Contract either with Contracting Authority or a third party designated by Contracting Authority in the Step-In Notice (the “**Substitute**”), provided that Contracting Authority can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Construction Contract.

- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:
 - (i) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of Project Co against the Construction Contractor under the Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except

in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to Contracting Authority if Contracting Authority pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;

- (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Construction Contract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
 - (iv) at Contracting Authority 's request, the Construction Contractor shall enter into, and shall cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond, covenant, letter of credit or similar performance security referred to in Section 6(b)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between Contracting Authority or the Substitute, as applicable, and the Construction Contractor, acceptable to Contracting Authority and the Construction Contractor, each acting reasonably, on substantially the same terms as the Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Construction Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Contract, ongoing supervisory activities and scheduling.
 - (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the

benefit of step-in rights relating to the Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.

- (e) If Contracting Authority gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. CONSTRUCTION CONTRACTOR LIABILITY

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
 - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Contracting Authority,

provided always that nothing in this Section 7 shall modify or affect any rights which the Construction Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Contracting Authority delivers a Step-In Notice, the Construction Contractor shall have no greater liability to Contracting Authority or any Substitute than it would have had to Project Co under the Construction Contract, and the Construction Contractor shall be entitled in any proceedings by Contracting

Authority or any Substitute to rely on any liability limitations in the Construction Contract.

8. PROJECT CO AS PARTY

Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Construction Contract by complying with its obligations hereunder.

9. CONSTRUCTION GUARANTOR AS PARTY

The Construction Guarantor agrees with Contracting Authority that the Construction Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of Contracting Authority, and agrees that the Construction Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Construction Guarantor enters into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except as may be permitted under the Construction Contract.

11. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Construction Contractor's Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Construction

Contractor’s Direct Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Contracting Authority: [REDACTED]

If to Project Co: [REDACTED]

If to the Construction Contractor: [REDACTED]

If to the Construction Guarantor: [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 Sections 11(e), 11(f) and 11(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by 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 right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Construction Contractor’s Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Construction Contractor’s Direct Agreement, of principal and agent.

15. ENTIRE AGREEMENT

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

16. SEVERABILITY

Each provision of this Construction Contractor’s Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Construction Contractor’s Direct Agreement is declared invalid, unenforceable or illegal by the courts of a

competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Construction Contractor's Direct Agreement. If any such provision of this Construction Contractor's Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Construction Contractor's Direct Agreement as near as possible to its original intent and effect.

17. ENUREMENT

This Construction Contractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

- (a) This Construction Contractor's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Construction Contractor's Direct Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario), hereby irrevocably attorn to the exclusive jurisdiction of such courts.

19. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Construction Contractor's Direct Agreement and Project Co, the Construction Contractor and the Construction Guarantor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Construction Contractor and the Construction Guarantor in writing that such designated person is no longer the person designated by Contracting Authority hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Construction Contractor and the Construction Guarantor in writing of any designation hereunder. The rights and obligations of the parties to this Construction Contractor's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and the Construction Guarantor acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 19.

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Construction Contractor’s Direct Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Construction Contractor’s Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s’en declare satisfaite.

22. COUNTERPARTS

This Construction Contractor’s Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all 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.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF the Parties have executed this Construction Contractor’s Direct Agreement as of the date first above written.

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

Per:

Name: [REDACTED]

Title:

I have authority to bind the corporation.

**FENGATE PCL PROGRESS PARTNERS MBR
LP, [REDACTED]**

Per: _____
Name: [REDACTED]
Title:

I have authority to bind the corporation.

PCL CONSTRUCTORS CANADA INC.

Per: _____
Name: [REDACTED]
Title:

Per: _____
Name: [REDACTED]
Title:

I/We have authority to bind the corporation.

PCL CONSTRUCTION GROUP INC.

Per: _____
Name: [REDACTED]
Title:

I have authority to bind the corporation.

SCHEDULE 5-2

SERVICE PROVIDER’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 7th day of August, 2019

BETWEEN:

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

(“**Contracting Authority**”)

- **AND** -

FENGATE PCL PROGRESS PARTNERS MBR LP, a [REDACTED]

(“**Project Co**”)

- **AND** -

JOHNSON CONTROLS CANADA LP, [REDACTED]

(the “**Service Provider**”)

- **AND** -

JOHNSON CONTROLS INTERNATIONAL PLC, a public limited company formed under the laws of Ireland

(the “**Service Guarantor**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Service Provider and the Service Guarantor to enter into, this Service Provider’s Direct Agreement with Contracting Authority.
- B. Project Co and the Service Provider have entered into the Service Contract, which requires the Service Provider and the Service Guarantor to enter into this Service Provider’s Direct Agreement with Contracting Authority.

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

1. DEFINITIONS

In this Service Provider’s Direct Agreement, unless the context otherwise requires:

- (a) “**Business Day**” has the meaning given in the Project Agreement.
- (b) “**Contracting Authority**” has the meaning given in the preamble.
- (c) “**Default Notice**” has the meaning given in Section 5(a).
- (d) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (e) “**Lenders**” has the meaning given in the Project Agreement.
- (f) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.
- (g) “**Party**” means Contracting Authority, the Service Provider, the Service Guarantor or Project Co, and “**Parties**” means Contracting Authority, the Service Provider, the Service Guarantor and Project Co.
- (h) “**Project**” has the meaning given in the Project Agreement.
- (i) “**Project Agreement**” means the project agreement between Contracting Authority and Project Co dated the same date as this Service Provider’s Direct Agreement.
- (j) “**Project Co**” has the meaning given in the preamble.
- (k) “**Project Co Services**” has the meaning given in the Project Agreement.
- (l) “**Service Contract**” has the meaning given in the Project Agreement.
- (m) “**Service Guarantor**” has the meaning given in the preamble.
- (n) “**Service Provider**” has the meaning given in the preamble.
- (o) “**Step-In Notice**” has the meaning given in Section 6(a).
- (p) “**Substitute**” has the meaning given in Section 6(a).

2. INTERPRETATION

This Service Provider’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Service Provider’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Service Provider’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Service Provider’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Service Provider’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Service Provider’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Service Provider’s Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Service Provider’s Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Service Provider’s Direct Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the

construction of this Service Provider’s Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (i) Where this Service Provider’s Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Service Provider’s Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Service Provider’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider’s Direct Agreement, the Project Agreement and the Service Contract, this Service Provider’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Project Co and the Service Provider shall not amend, modify, or depart from the terms of the Service Contract without the prior written consent of Contracting Authority, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Service Provider’s Direct Agreement and does not have the effect of increasing any liability of Contracting Authority, whether actual or potential. Project Co and the Service

Provider shall provide a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Service Contract.
- (c) If the Service Provider gives Project Co any notice of any default(s) under the Service Contract that may give the Service Provider a right to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder, then the Service Provider shall concurrently provide Contracting Authority with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY SERVICE PROVIDER WITHOUT DEFAULT NOTICE

The Service Provider shall not exercise any right it may have to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder unless:

- (a) the Service Provider first delivers a written notice (a "**Default Notice**") to Contracting Authority setting out in reasonable detail the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder; and
- (b) within the period ending 30 days after the Service Provider notifies Contracting Authority of the expiry of any relevant period for the exercise of step-in or similar rights by the Lenders, or, if the Lenders have no such step-in or similar rights, then 30 days after the later of Contracting Authority receiving Default Notice or the expiry of the applicable cure period under the Service Contract:
 - (i) the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder have not been remedied; and
 - (ii) the Service Provider has not received a Step-In Notice from Contracting Authority,

provided that, until such time as Contracting Authority gives the Service Provider a notice that Contracting Authority will not be exercising its step-in rights, Contracting Authority shall pay the Service Provider's reasonable costs of continued performance.

6. STEP-IN RIGHTS

- (a) Contracting Authority may at any time:
- (i) within the period referred to in Section 5(b); or
 - (ii) if Contracting Authority has not received a Default Notice and if Contracting Authority's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Service Contract either with Contracting Authority or a third party designated by Contracting Authority in the Step-In Notice (the "**Substitute**"), provided that Contracting Authority can demonstrate to the Service Provider, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Service Contract.

- (b) Subject to Section 6(d), upon receipt by the Service Provider of a Step-In Notice:
- (i) Project Co and the Service Provider will be deemed to be released from their existing and future obligations under the Service Contract to each other (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Service Provider will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of Project Co against the Service Provider under the Service Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Service Provider will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Service Provider to Contracting Authority if Contracting Authority pays for the Service Provider's reasonable costs of continued performance pursuant to Section 5;
 - (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Service Provider to be performed, observed or carried out by the Service Provider as contained in, referred to, or inferred from the Service Contract

shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Service Provider shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Service Provider, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and

- (iv) at Contracting Authority's request, the Service Provider shall enter into, and shall cause the Service Guarantor and any other guarantor, covenantor or surety under any guarantee, bond, covenant, letter of credit or similar performance security referred to in Section 6(b)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between Contracting Authority or the Substitute, as applicable, and the Service Provider, acceptable to Contracting Authority and the Service Provider, each acting reasonably, on substantially the same terms as the Service Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Service Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Service Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Service Provider receives a Step-In Notice, the Service Provider has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Service Contract that it is or has validly exercised those step-in rights. If the Service Provider receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If Contracting Authority gives a Step-In Notice within the time provided hereunder at any time after the Service Provider has terminated the Service Contract or treated it as having been repudiated by Project Co or discontinued the Service Provider's performance thereunder in accordance with the terms of this Service Provider's

Direct Agreement, the Service Provider agrees that the Service Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Service Provider's reasonable costs for re-commencing the obligations it has under the Service Contract and the Service Provider shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Service Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. SERVICE PROVIDER LIABILITY

- (a) The liability of the Service Provider hereunder shall not be modified, released, diminished or in any way affected by:
 - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry;
 - (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Contracting Authority,

provided always that nothing in this Section 7 shall modify or affect any rights which the Service Provider might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Contracting Authority delivers a Step-In Notice, the Service Provider shall have no greater liability to Contracting Authority or any Substitute than it would have had to Project Co under the Service Contract, and the Service Provider shall be entitled in any proceedings by Contracting Authority or any Substitute to rely on any liability limitations in the Service Contract.

8. PROJECT CO AS PARTY

Project Co acknowledges and agrees that the Service Provider shall not be in breach of the Service Contract by complying with its obligations hereunder.

9. SERVICE GUARANTOR AS PARTY

The Service Guarantor agrees with Contracting Authority that the Service Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as

provided herein immediately upon receipt by the Service Provider of a Step-In Notice and without the requirement of any further action on the part of Contracting Authority, and agrees that the Service Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Service Guarantor enters into this Service Provider's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Service Provider's Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Service Provider of such assignment or disposition.
- (c) The Service Provider shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider's Direct Agreement, except as may be permitted under the Service Contract.

11. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Service Provider's Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Service Provider's Direct Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Contracting Authority: [REDACTED]

If to Project Co: [REDACTED]

If to the Service Provider: [REDACTED]

If to the Service Guarantor: [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 Service Provider's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by 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 Service Provider's Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Service Provider's Direct Agreement.

13. WAIVER

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

right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

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

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Service Provider’s Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Service Provider’s Direct Agreement, of principal and agent.

15. ENTIRE AGREEMENT

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

16. SEVERABILITY

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

17. ENUREMENT

This Service Provider’s Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

- (a) This Service Provider’s Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and

shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.

- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Service Provider's Direct Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario) hereby irrevocably attorn to the exclusive jurisdiction of such courts.

19. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Service Provider's Direct Agreement and Project Co, the Service Provider and the Service Guarantor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Service Provider and the Service Guarantor in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Service Provider and the Service Guarantor in writing of any designation hereunder. The rights and obligations of the parties to Service Provider's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Service Provider and the Service Guarantor acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 19.

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Service Provider's Direct Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Service Provider's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

22. COUNTERPARTS

This Service Provider's Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all 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.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF the Parties have executed this Service Provider’s Direct Agreement as of the date first above written.

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

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

I have authority to bind the corporation.

**FENGATE PCL PROGRESS PARTNERS MBR
LP, [REDACTED]**

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

I have authority to bind the corporation.

**JOHNSON CONTROLS CANADA LP,
[REDACTED]**

Per: _____
Name: [REDACTED]
Title:

I have authority to bind the corporation.

JOHNSON CONTROLS INTERNATIONAL plc

Per: _____
Name: [REDACTED]
Title:

Per: _____
Name: [REDACTED]
Title:

I/We have authority to bind the corporation.

SCHEDULE 6

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the 7th day of August, 2019

BETWEEN:

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

(“**Contracting Authority**”)

AND:

FENGATE PCL PROGRESS PARTNERS MBR LP, [REDACTED]

(“**Project Co**”)

AND:

ALTUS GROUP LIMITED, a corporation incorporated under the laws of Ontario

(the “**Independent Certifier**”)

WHEREAS:

- A. Contracting Authority and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

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

1. DEFINITIONS

1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
 - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
 - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
 - (ii) **“Certification Services Variation”** means any change to the Certification Services.
 - (iii) **“Contract Material”** means all material:
 - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,
 including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
 - (iv) **“Fee”** means the fees payable by Contracting Authority and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
 - (v) **“Hourly Rate”** means the rate charged by each of the Independent Certifier personnel per hour as listed in Appendix B to this Independent Certifier Agreement for the Certification Services identified in item (v) of Appendix A to this Independent Certifier Agreement, including any services required to provide additional work.

- (vi) “**Independent Certifier**” has the meaning given to it in the preamble.
- (vii) “**Intellectual Property**” means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.
- (viii) “**PA Parties**” means both Contracting Authority and Project Co, and “**PA Party**” means either Contracting Authority or Project Co, as the context requires.
- (ix) “**Project Agreement**” means that certain project agreement made on or about the date hereof between Contracting Authority and Project Co with respect to the design, construction, financing and maintenance of the Facility.
- (x) “**Total Fixed Fee**” means the Fee for all Certification Services other than those identified in item (v) of Appendix A to this Independent Certifier Agreement, which shall not exceed the amount specified in Appendix B to this Independent Certifier Agreement.

2. INTERPRETATION

2.1 Interpretation

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
 - (i) words denoting the singular number include the plural and vice versa;
 - (ii) words denoting individuals include corporations and vice versa;
 - (iii) headings are for convenience only and do not affect interpretation;
 - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
 - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
 - (vii) words denoting any gender include all genders;
 - (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted

for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;

- (ix) a reference to “\$” is to Canadian currency;
- (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
- (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
- (xii) unless otherwise indicated, all time periods will be strictly construed.

2.2 Obligations and Exercise of Rights by PA Parties

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.
- (d) The Independent Certifier hereby agrees to cause each IC Representative to submit to a Security Clearance Check from time to time in accordance with Schedule 7 – Security Clearance Check Requirements to the Project Agreement.
- (e) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a

Certification Services Variation Order pursuant to Sections 9.4 and 9.5 of this Independent Certifier Agreement.

3.2 Acknowledgement of Independent Certifier

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

3.4 Duty of Independent Judgment

- (a) In exercising its Certification Services, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
 - (ii) act reasonably and professionally;
 - (iii) act in a timely manner:
 - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
 - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
 - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.

- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.

3.5 Authority to Act

- (a) The Independent Certifier:
- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
 - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

3.6 Knowledge of the PA Parties' Requirements

- (a) The Independent Certifier warrants that:
- (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
 - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
 - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
 - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at the Facility, the Existing Facilities and the Site including restrictions on any such access or protocols that are required; and
 - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

3.7 Co-ordination and Information by Independent Certifier

- (a) The Independent Certifier must:
- (i) fully cooperate with the PA Parties;
 - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
 - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
 - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
- (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as a technical advisor to the Lenders or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
 - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program, the Final Commissioning Program and each Fit-Out Works Phase Commissioning Program shall:

- (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
 - (ii) have demonstrated competence in the commissioning of comparable facilities and in having completed or monitored the commissioning of a comparable facility of more than [REDACTED] square feet;
 - (iii) have an understanding of the appropriate CSA standards related to commissioning for facilities similar to the Facility, as well as other applicable standards such as ASHRAE and NACBB; and
 - (iv) have an understanding of the commissioning process and the reports to be provided pursuant to this Agreement and the Project Agreement, including not only the start-up procedures but also the pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish Contracting Authority with evidence satisfactory to Contracting Authority of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program, the Final Commissioning Program and each Fit-Out Works Phase Commissioning Program.

3.10 Minimize Interference

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

4. ROLE OF THE PA PARTIES

4.1 Assistance

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

4.2 Instructions in Writing

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

4.3 Information and Services

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to certify Construction Period Payments and to determine whether Substantial Completion, Final Completion, each Fit-Out Works Phase Completion and Fit-Out Works Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
- (i) the Independent Certifier must give notice in writing to the Project Co Representative or the Contracting Authority Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
 - (ii) Project Co or Contracting Authority, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, the Facility, the Existing Facilities or Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
- (i) observance of the reasonable rules of Project Co as to safety and security for the Site, the Facility, the Existing Facilities and the Works;
 - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site, the Facility, the Existing Facilities and the Works; and
 - (iii) not causing any damage to the Site, the Facility, the Existing Facilities or the Works.

4.6 PA Parties Not Relieved

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. CERTIFICATION QUALITY PLAN**5.1 Certification Quality Plan**

- (a) The Independent Certifier must:
- (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the Contracting Authority Representative and the Project Co Representative;
 - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the Contracting Authority Representative and the Project Co Representative;
 - (iii) if satisfactory to each of the Contracting Authority Representative and the Project Co Representative, implement such certification quality plan; and
 - (iv) if not satisfactory to each of the Contracting Authority Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the Contracting Authority Representative and the Project Co Representative, and implement it if satisfactory to each of the Contracting Authority Representative and the Project Co Representative.

5.2 Certification Quality Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
- (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
 - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the Contracting Authority Representative or the Project Co Representative.

6. SUSPENSION

6.1 Notice

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
- (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier;
 - (ii) where any of the events specified in paragraphs 12(c) through and including 12(f) of Schedule 7 - Security Clearance Check Requirements of the Project Agreement have occurred in respect of any IC Representative unless (i) any such IC Representative's employment or engagement by the Independent Certifier is immediately terminated, and evidence of termination thereof has been provided to Contracting Authority in writing within five Business Days of the occurrence of any of the events described in paragraphs 12(c) through and including 12(f) of Schedule 7 - Security Clearance Check Requirements of the Project Agreement in respect of such IC Representative; or (ii) the Independent Certifier has satisfied Contracting Authority, acting reasonably, that such IC Representative is no longer involved in the Project and is no longer involved or engaged in providing any of the Certification Services; or
 - (iii) in any other case, by the PA Parties giving seven days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:
- (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(iii) valued as a Certification Services Variation under Section 9; and
 - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Sections 6.1(a)(i) or 6.1(a)(ii).

6.3 Recommencement

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

7. INSURANCE AND LIABILITY

7.1 Independent Certifier's Professional Indemnity Insurance

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
- (i) professional liability insurance:
 - (A) in the amount of \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
 - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
 - (ii) comprehensive general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

7.2 Workers' Compensation Insurance

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

8. PAYMENT FOR SERVICES

8.1 Payment of Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.

- (b) The obligation of each PA Party to pay one-half of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overhead and profit, all labour and materials, insurance costs, travel, hospitality, and incidental expenses (except for food expenses which are to be excluded), and all other overhead including any fees or other charges required by law to perform the Certification Services.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$[REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

9. CERTIFICATION SERVICES VARIATIONS

9.1 Notice of Certification Services Variation

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
 - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
 - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the Contracting Authority Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

9.2 No Adjustment

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

9.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the

PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

9.4 Certification Services Variation Procedure

- (a) The Contracting Authority Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the Contracting Authority Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the Contracting Authority Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

9.5 Cost of Certification Services Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(iii) carried out by the Independent Certifier by:
 - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
 - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Contracting Authority Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION

10.1 Term

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
- (i) the completion of the Works and the performance of the Certification Services set forth herein; or
 - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

10.3 Termination for Breach

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

10.4 Termination for Failure to Satisfy Security Clearance Check Requirements

- (a) Contracting Authority may, in its sole discretion, terminate this Independent Certifier Agreement and the appointment of the Independent Certifier for the Project Agreement where any of the events specified in paragraphs 12(c) through and including 12(f) of Schedule 7 - Security Clearance Check Requirements of the Project Agreement have occurred in respect of any of IC's Representatives unless (i) any such IC's Representative's employment or engagement by the Independent Certifier is immediately terminated, and evidence of termination thereof has been provided to Contracting Authority in writing within five Business Days of the occurrence of any of the events described in paragraphs 12(c) through and including 12(f) of Schedule 7 – Security Clearance Check Requirements of the Project Agreement; or (ii) the Independent Certifier has satisfied Contracting Authority, acting reasonably, that such IC Representative is no longer involved in the Project and is no longer involved or engaged in providing any of the Certification Services.

10.5 Termination for Financial Difficulty or Change in Control

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
- (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
 - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

10.6 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

10.7 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 10.6, the Independent Certifier will:
- (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
 - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

10.8 Procedure upon Termination

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4, 10.5 or 10.6 or otherwise), the Independent Certifier must:

- (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
- (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
- (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

10.9 Effect of Termination

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

10.10 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.7, 10.8, 10.9, 11, 12.7, 12.8 and this Section 10.10 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
 - (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);

- (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
 - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.2 Independent Certifier to Save PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
- (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
 - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.
- (d) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix E – Conduct of Claims to this Independent Certifier Agreement.

12. GENERAL

12.1 Entire Agreement

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

12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

- (a) No waiver made or given by a party under or in connection with this Independent Certifier Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

12.4 Notices

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Independent Certifier Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Independent Certifier Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Contracting Authority: **[REDACTED]**

If to Project Co: **[REDACTED]**

If to the Independent Certifier: **[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 12.4(b).

- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by 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 12.4.
- (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.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.

- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

12.6 Governing Laws and Jurisdictions

- (a) This Independent Certifier Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The PA Parties and the Independent Certifier agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Independent Certifier Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario) hereby irrevocably attorn to the exclusive jurisdiction of such courts.

12.7 Contracting Authority Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Independent Certifier Agreement and Project Co and the Independent Certifier may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by Contracting Authority hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this Independent Certifier Agreement shall be in no way affected by reason of any such designation. Project Co and the Independent Certifier acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

12.8 Confidentiality

- (a) The Independent Certifier must ensure that:
- (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and

- (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non-disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

12.9 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

12.10 Amendment

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

12.11 Severability

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

12.12 Enurement

- (a) This Independent Certifier Agreement shall enure to the benefit of, and be binding on, each of the parties and their respective successors and permitted transferees and assigns.

12.13 Counterparts

- (a) This Independent Certifier Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all 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 Independent Certifier Agreement which was so faxed.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF the parties have executed this Independent Certifier Agreement as of the date first above written.

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

Per: _____

Name: **[REDACTED]**

Title:

I have authority to bind the corporation.

**FENGATE PCL PROGRESS PARTNERS
MBR LP [REDACTED]**

Per: _____

Name: [REDACTED]

Title:

I have authority to bind the corporation.

ALTUS GROUP LIMITED

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

APPENDIX A**CERTIFICATION SERVICES**

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall do the following:

- (a) Receive and monitor the progress of drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a Dispute related to the development of the design.
- (b) Review relevant documentation, including floor area schedules, certificates and approvals, Permits, Licences, Approvals and Agreements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profiles provided to the Independent Certifier pursuant to the Project Agreement.
- (c) Receive, monitor and assess progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works.
- (d) Review information relating to Delay Events and Compensation Events.
- (e) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consultation with the relevant party.
- (f) In accordance with Section 11.1(b) of the Project Agreement, attend all meetings of, and participate, as necessary, in the activities of, the Works Committee.
- (g) Conduct regular inspections of the Works, at a minimum, on a monthly basis or more regularly as deemed necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement, including the Works Schedule. Report on the observations, findings and potential risks to certification as a result of such regular inspections.
- (h) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions, and to report any risks. Review each draft Fit-Out Works Phase Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of each Fit-Out Works Phase Commissioning Program, to identify any errors or omissions, and to report any risks.
- (i) Attend all Commissioning Team meetings and monitor the Commissioning Tests (as indicatively described in Schedule 14 – Outline Commissioning Program to the Project

Agreement) and other tests, including re-tests, to be performed (A) as set out in the Final Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion; and (B) as set out in each Fit-Out Works Phase Commissioning Program or as otherwise required for Project Co to achieve each Fit-Out Works Phase Completion and Fit-Out Works Final Completion.

- (j) Monitor and regularly report on the requirements, progress and results of all Project Co Commissioning, Contracting Authority Commissioning, Fit-Out Works Phase Project Co Commissioning and Fit-Out Works Phase Contracting Authority Commissioning.
- (k) Review and monitor the process of installation of all FF&E and Fit-Out FF&E in accordance with the Project Agreement, and provide a report to the PA Parties identifying any damage to the Facility which has been caused as a result of such installation of FF&E and Fit-Out FF&E.
- (l) In implementing the Certification Services, identify any risks that may impede the issuance of the applicable certificate and, accordingly immediately inform the PA Parties of such risks. Following the identification of any risks, monitor and report to the PA Parties on the progress until such risks are fully resolved.
- (m) Upon receipt of notice from Project Co requesting the issuance of the Substantial Completion Certificate or the Final Completion Certificate, as applicable, (A) with respect to the Substantial Completion Certificate, perform the activities set out in Section 24.4(c) of the Project Agreement, and (B) with respect to each of the Substantial Completion Certificate and the Final Completion Certificate, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate,including, if applicable, with respect to the Substantial Completion Certificate, during the Easter long weekend in 2024 to allow Substantial Completion to be achieved on the Scheduled Substantial Completion Date.
- (n) Upon receipt of notice from Project Co requesting the issuance of a Fit-Out Works Phase Completion Certificate or the Fit-Out Works Final Completion Certificate consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.

- (o) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (l) of this Appendix A until the issuance of the applicable certificate.
- (p) In consultation with and being informed by the respective views of Project Co and Contracting Authority:
 - (i) prepare, based on the Independent Certifier’s review of the Works, the Minor Deficiencies List and each Fit-Out Works Phase Minor Deficiencies List in accordance with, as applicable, Sections 24.8(a) to (c) and Sections 24.8A(a) to (c) of the Project Agreement, which will include:
 - (A) an estimate of the cost for Contracting Authority to complete and rectify, as applicable, the Minor Deficiencies and the Fit-Out Works Phase Minor Deficiencies;
 - (B) the time for Project Co to complete and rectify, as applicable, the Minor Deficiencies and the Fit-Out Works Phase Minor Deficiencies; and
 - (C) a schedule for the completion and rectification of, as applicable, the Minor Deficiencies and the Fit-Out Works Phase Minor Deficiencies; and
 - (ii) amend the Minor Deficiencies List and each Fit-Out Works Phase Minor Deficiencies List in accordance with Sections 24.8(d) and (e) and Sections 24.8A(d) and (e) of the Project Agreement, which will specify a rectification time for, as applicable, each newly added Minor Deficiency and Fit-Out Works Phase Minor Deficiency that is no greater than 10 Business Days.
- (q) Prior to any certification, consider the views and comments of both Project Co and Contracting Authority in relation to the satisfaction of the conditions for certification.
- (r) Prior to Substantial Completion, review and monitor Project Co cash allowance expenditures against the installations in respect of the Cash Allowance Items and the Cash Allowance Amounts.
- (s) After Substantial Completion, reconcile Project Co invoices for expenditure recovery against Contracting Authority budgets and the Cash Allowance Amounts.
- (t) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement.
- (u) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses

- for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services.
- (v) Provide periodic reports to the PA Parties, copying Infrastructure Ontario, as follows:
 - (i) a progress report within fifteen Business Days after each month's end or as otherwise agreed by the PA Parties (the "Monthly Report"), which shall be based on the Independent Certifier's review of the Works and shall include an assessment of the progress of the Works compared against the Works Schedule; and,
 - (ii) accompanying the Monthly Reports delivered for the months of May, August, November and December, a quarterly report (the "Quarterly Report") for the quarters ending June 30th, September 30th, December 31st and March 31st respectively, in substantially the form as that in Appendix D and that contains the following information confirmed to the best of the Independent Certifier's professional knowledge and judgment:
 - (A) the extent (expressed as a percentage) of completion of the Works as of the date of the Quarterly Report;
 - (B) the value of the Works completed as of the date of the Quarterly Report;
 - (C) the forecasted extent (expressed as a percentage) of completion of the Works as of the end of the applicable quarter and for the next four quarters; and
 - (D) the forecasted value of the Works anticipated to be completed as of the end of the applicable quarter and for the next four quarters.
 - (w) Provide advice on other matters that may arise that both PA Parties may jointly require.
 - (x) Provide the Certification Services with respect to Construction Period Payments as set out in Schedule 19 – Construction Period Payments.
 - (y) In accordance with Section 11.6(b) of the Project Agreement, attend all meetings and deliberations of the Works Committee with respect to Proceeding at Risk Matters.
 - (z) Provide its written opinion and supporting analysis as to whether Project Co is Proceeding at Risk pursuant to Section 11.6(f) of the Project Agreement.
 - (aa) Prepare the Substantial Completion Deliverables List pursuant to Section 24.7(d) of the Project Agreement and, if applicable, amend such list pursuant to Section 24.7(e) of the Project Agreement.

APPENDIX B

INDEPENDENT CERTIFIER FEE

[REDACTED]

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

[REDACTED]

APPENDIX D

FORM OF QUARTERLY REPORT

[ON THE INDEPENDENT CERTIFIER’S LETTERHEAD]

[date]

[REDACTED]

and to:

[REDACTED]

Dear [●] and [●]:

This report, for the quarter ending ●, is delivered to you pursuant to Section (t)(ii) of Appendix A of the Independent Certifier Agreement between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Government and Consumer Services as represented by Ontario Infrastructure and Lands Corporation (“**Contracting Authority**”), [Project Co] and us dated [●] (the “**Agreement**”). Terms not otherwise defined herein have the meaning ascribed to them in the Agreement.

All values stated herein are based on the construction cost of the Works and are exclusive of HST. This report has taken into account the following information: **[insert particulars of sources of information (e.g., works reports, site visits) used to prepare the report].**

Based on our analysis of the foregoing, we confirm the following to the best of our professional knowledge and judgment:

- As of the date hereof, the value of the Works is \$[●] and the Works are [●]% complete.
- At the end of this quarter, the estimated value of the Works will be \$[●] and the Works are forecasted to be [●]% complete.

We estimate that the value of the Works and the extent of their completion will be as follows for the next four quarters (not including the present quarter):

	[quarter end date]	[quarter end date]	[quarter end date]	[quarter end date]
\$	%			

We have prepared this report for the specific use of Contracting Authority, [Project Co] and the Province, as represented by its agent, the Ontario Infrastructure and Lands Corporation.

This letter is not intended for general circulation, publication or reproduction for any other person or purpose without express written permission to each specific instance.

Yours truly,

[Name and Signature of Independent Certifier]

APPENDIX E

CONDUCT OF CLAIMS

This Appendix E shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix E, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim the Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both Contracting Authority and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;

- (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2);
 - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) none of the Indemnifiers complies in any material respect with Section (3).
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. For greater certainty, the Independent Certifier acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the

claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:

- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,

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

- (7) Any person taking any of the steps contemplated by this Appendix E shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Independent Certifier Agreement.

SCHEDULE 7

SECURITY CLEARANCE CHECK REQUIREMENTS

1. For the purposes of the Project Agreement, the following terms shall have the following meanings:
 - (a) **“Company Security Officer”** means the “Company Security Officer” described in Schedule 9 – Key Individuals.
 - (b) **“Complete Application Date”** has the meaning given in Section 5.
 - (c) **“Complete Security Clearance Check Application”** means a fully completed application for a Security Clearance Check in respect of a Designated Project Co Individual that has been received by the Relevant Security Clearance Check Authority and for which confirmation of receipt of such application has been provided by the Relevant Security Clearance Check Authority. For the purposes of the Project Agreement, (i) to be a Complete Security Clearance Check Application, such application must include all of the information requested by the Relevant Security Clearance Check Authority in the Security Clearance Check application; and (ii) a fully completed application for a Security Clearance Check in respect of a Designated Project Co Individual that has been received by the Relevant Security Clearance Check Authority and for which confirmation of receipt of such application has been provided by the Relevant Security Clearance Check Authority shall be deemed not to be a Complete Security Clearance Check Application if it contains inaccurate information or requires follow-up by the Relevant Security Clearance Check Authority with Contracting Authority, Project Co, any Project Co Party or such Designated Project Co Individual and such inaccurate information or follow-up by the Relevant Security Clearance Check Authority adversely affects the Relevant Security Clearance Check Authority’s ability or its schedule to complete the applicable Security Clearance Check.
 - (d) **“CRJMC”** means a Criminal Records and Judicial Matters Check.
 - (e) **“Designated Project Co Individual”** means:
 - (i) each individual employed, engaged, hired or retained:
 - A. by Project Co or a Project Co Party who is to carry out any of the responsibilities of Project Co under this Project Agreement during the period from Commercial Close to the earlier of the Expiry Date or the Termination Date, including each Project Co Staff individual and any other individual who is to perform any of the Works or the Project Co Services for or on behalf of Project Co or any Project Co Party; or
 - B. by any other person identified in Appendix “A” hereto, identified by name in any proposal submitted by Project Co (other than, subject to Section 1(e)(ii), any individual employed, engaged, hired or retained by

the Lenders or by the Equity Providers), or who is employed, engaged, hired or retained in replacement of any person so identified or named; or

- (ii) each and every additional individual identified as a Designated Project Co Individual by Contracting Authority from time to time in its sole discretion, including any individual employed, engaged, hired or retained by any of the Lenders or by the Equity Providers identified as a Designated Project Co Individual by Contracting Authority from time to time in its sole discretion,

and “**Designated Project Co Individuals**” shall be construed accordingly. For greater certainty, subject to Section 1(e)(ii), no individual employed, engaged, hired or retained by the Lenders or by the Equity Providers shall be required to submit to a Security Clearance Check.

- (f) “**Designated Project Co Demolition Individual**” means each Designated Project Co Individual employed, engaged, hired or retained by a Subcontractor to the Construction Contractor to primarily prepare for or perform Works in respect of the Demolition or other removal or dismantling of any part or parts of the Existing Facilities, including any materials or temporary structures; and “**Designated Project Co Demolition Individuals**” shall be construed accordingly. For greater certainty, no Designated Project Co Demolition Individual shall be required to submit to a Security Clearance Check.
- (g) “**General Designated Project Co Individuals**” all Designated Project Co Individuals that are not High Risk Designated Project Co Individuals.
- (h) “**High Risk Designated Project Co Individuals**” means those Designated Project Co Individuals involved in the design, installation, testing, maintenance or repair of:
 - (i) computer, phone or other communications or information technology wiring, cables or equipment; or
 - (ii) security related equipment or devices, locks, monitors, listening mechanisms, motion detectors, cameras, or alarms.
- (i) “**Relevant Conviction**” has the meaning given in Section 12(e).
- (j) “**Relevant Security Clearance Check Authority**” has the meaning given in Section 2.
- (k) “**Security Clearance Check**” means any and all security clearance or background checks and investigations required by this Schedule 7, and any and all renewals thereof.

- 2. In order to prevent persons who pose a security risk from gaining access to sensitive information or otherwise compromising the public services in the Province or the security or integrity of the Facility and/or the Existing Facilities, except as otherwise agreed by the Parties, Project Co shall cause each Designated Project Co Individual to submit to the applicable Security Clearance Check described in Appendix “A” hereto, which may be carried out on Contracting Authority’s behalf by the Ministry of Government and Consumer Services, the OPP or any other entity selected by Contracting Authority in its sole discretion (each is a “**Relevant Security Clearance Check Authority**”), prior to such Designated Project Co Individual performing any Project

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Operations for or on behalf of Project Co or any Project Co Party. Project Co shall cause the Company Security Officer to be the first person to be subject to a Security Clearance Check. The cost of each Security Clearance Check will be borne by Contracting Authority.

3. Contracting Authority may, from time to time and in its sole discretion, prescribe additional or alternative Security Clearance Checks than the Security Clearance Checks described in Appendix “A” hereto that are to be conducted with respect to any Designated Project Co Individual.
4. Contracting Authority shall direct Project Co to submit the information relating to the Designated Project Co Individuals required in order for the Security Clearance Checks to be carried out. Project Co shall, and shall cause all Designated Project Co Individuals, to cooperate with the Relevant Security Clearance Check Authority for the purposes of carrying out the Security Clearance Checks and obtaining all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to the Relevant Security Clearance Check Authority.
5. Project Co shall allow for a period of not less than 10 Business Days from the date the Relevant Security Clearance Check Authority has confirmed receipt of a Complete Security Clearance Check Application (the “**Complete Application Date**”) to receive the final results of the Security Clearance Check from the Relevant Security Clearance Check Authority.
6. In the event that the final results of a Complete Security Clearance Check Application are not received from the Relevant Security Clearance Check Authority within 20 Business Days following the Complete Application Date and the delay in receiving such final results
 - (a) delays Project Co’s performance of the Works, then such delay shall, subject to and in accordance with Section 37 of the Project Agreement, be treated as a Delay Event, and, subject to and in accordance with Section 38, be treated as a Compensation Event; and
 - (b) interferes with or causes a failure to perform the Project Co Services, then such interference or failure shall, subject to and in accordance with Section 39, be treated as an Excusing Cause,

save and except in the circumstance where (i) the applicable Security Clearance Check involves a country other than Canada; or (ii) the Relevant Security Clearance Check Authority has received and, at such time and in its reasonable opinion, is processing a significantly high volume of Security Clearance Check applications in respect of Designated Project Co Individuals, and, in such an event, Project Co shall not be entitled to, as applicable, a Delay Event, a Compensation Event or an Excusing Cause.

7. Notwithstanding Sections 2 and 3, in an Emergency situation only, where a Security Clearance Check has been submitted for a Designated Project Co Individual but confirmation of such person’s security clearance has not yet been received from the Relevant Security Clearance Check Authority, Project Co may apply to Contracting Authority for an exception to allow such Designated Project Co Individual to perform Project Operations for or on behalf of Project Co or any Project Co Party prior to and pending the receipt of such security clearance. Contracting Authority, may, in its sole discretion, grant such exception and may, in its sole discretion, impose conditions on the Designated Project Co Individual’s access and performance.

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8. Contracting Authority may require the renewal of the Security Clearance Check(s) with respect to any Designated Project Co Individual, any class of Designated Project Co Individuals, or all Designated Project Co Individuals, at such times and/or intervals as Contracting Authority or the Relevant Security Clearance Check Authority may reasonably direct. The cost of renewed Security Clearance Checks shall be borne by Contracting Authority.
9. Except as required by this Schedule 7, no Security Clearance Check shall be required with respect to any other person employed or engaged by Project Co or a Project Co Party.
10. Project Co shall, at its cost and expense, obtain, maintain and renew, as applicable, written consent, on a prescribed form, authorizing the conduct of a Security Clearance Check pursuant to Sections 2, 3 and 8 from each Designated Project Co Individual liable to a check under each of those Sections.
11. Every person who is employed or engaged by Project Co or a Project Co Party with respect to:
 - (a) the movement of staff or equipment into, out of, or within the Facility and/or the Existing 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 Facility and/or the Existing Facilities, including all security related equipment or devices, locks, monitors, listening mechanisms, motion detectors, cameras, or alarms,shall be bonded.
12. Subject to Applicable Law, Contracting Authority may, in its sole discretion direct that any person shall not be:
 - (a) employed by Project Co or any Project Co Party with respect to the performance of any of Project Co's responsibilities under this Agreement; or
 - (b) otherwise have access to the Site, the Existing Facilities or the Facility at any time, where that person,
 - (c) refuses to submit to a Security Clearance Check under Section 2, 3 or 8, or fails to provide the required consent to permit such a check to be conducted;
 - (d) has been refused a security clearance;
 - (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

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- (iii) otherwise designated as a Relevant Conviction by Contracting Authority 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 Contracting Authority, including with respect to the proper and impartial performance of the Project Co Operations, the safety and welfare of persons located in or at the Site, the Existing Facilities and/or the Facility, the reputation of, and public confidence in the Province, the public service in the Province, the security of revenue, equipment or any other property of the Province and the Government of Ontario, and the confidentiality and integrity of government records and information, Confidential Information and/or Personal Information.

For greater certainty Contracting Authority’s discretion under this Section 12 shall be interpreted to be absolute and unrestricted except as provided by Applicable Law.

- 13. Where a person has been rejected on the basis of his or her criminal record under Section 12, 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 the applicable Governmental Authority; or

- (b) that the alleged record be verified by way of a follow up CRJMC,

and Contracting Authority shall withdraw its objection with respect to any such person who is exonerated or vindicated as a result of that inquiry or verification.

APPENDIX “A”

SECURITY AND BACKGROUND CHECK LEVELS

	MGCS General Screening Access Level*	OPP Access Level 2*	OPP Access Level 3*	OPP Access Level 4*
Screening Requirements	<ul style="list-style-type: none"> • Criminal Record Check • Driver History (if applicable) • Local Police Record Check • Credit Check (if applicable) • Out of Country Check (if the individual has been out of Canada for six months or longer) 	<p>plus:</p> <ul style="list-style-type: none"> • Local Police Databases Search • Other Law Enforcement Databases Search 	<p>plus:</p> <ul style="list-style-type: none"> • Social Networking Search • Credit History Check 	<p>plus:</p> <ul style="list-style-type: none"> • Finger print based CRJMC • Canadian Border Services Check
Project Co, Design Team, Construction Contractor, Service Provider, Lenders Consultant, and the Independent Certifier	<ul style="list-style-type: none"> • All Designated Project Co Individuals 	/	<ul style="list-style-type: none"> • All Designated Project Co Individuals who are directors or officers who are directly engaged in the performance of the Project Operations • Company Security Officer 	<ul style="list-style-type: none"> • All Designated Project Co Individuals with access to final design documents in respect of the Facility’s: <ul style="list-style-type: none"> • computer, phone or other communications or information technology wiring, cables or equipment; or

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				<ul style="list-style-type: none"> • security related equipment or devices, locks, monitors, listening mechanisms, motion detectors, cameras, or alarms • All IC's Representatives
During and with respect to the Works, Subcontractors working in non-OPP spaces	<ul style="list-style-type: none"> • General Designated Project Co Individuals other than Designated Project Co Demolition Individuals 	/	/	<ul style="list-style-type: none"> • High Risk Designated Project Co Individuals
During and with respect to the Works, Subcontractors working in OPP spaces	/	<ul style="list-style-type: none"> • General Designated Project Co Individuals other than Designated Project Co Demolition Individuals 	/	<ul style="list-style-type: none"> • Subcontractors' Designated Project Co Individuals who are directors or officers who are directly engaged in the performance of the Project Operations, other than Designated Project Co Demolition Individuals • High Risk Designated Project Co Individuals
Subcontractors working in the Facility during and in respect of the Fit-Out Works	<ul style="list-style-type: none"> • General Designated Project Co Individuals other than Designated Project Co Demolition Individuals 	/	/	<ul style="list-style-type: none"> • Subcontractors' Designated Project Co Individuals who are directors or officers who are directly engaged in the performance of the Project

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				<p>Operations, other than Designated Project Co Demolition Individuals</p> <ul style="list-style-type: none"> • General Designated Project Co Individuals with access to final Fit-Out Works furniture layouts. • High Risk Designated Project Co Individuals
<p>Subcontractors working in the Facility during the Operational Term and in respect of Project Operations other than the Fit-Out Works</p>	<ul style="list-style-type: none"> • General Designated Project Co Individuals 	/	/	<ul style="list-style-type: none"> • Subcontractors’ Designated Project Co Individuals who are directors or officers who are directly engaged in the performance of the Project Operations • High Risk Designated Project Co Individuals

* Note: Project Co shall assume that the electronic system for the MGCS General Screening Access Level will be available commencing on June 30, 2019 and the electronic system for the OPP Access Levels will commence on November 30, 2019.

SCHEDULE 8

[Intentionally Deleted]

SCHEDULE 9

KEY INDIVIDUALS

A. Key Individuals – Works

Project Co Party	Position/Function	Name and Contact Information
Design Team	Lead Architect	[REDACTED]
Design Team	Interior Designer	[REDACTED]
Design Team	Lead Mechanical Engineer	[REDACTED]
Design Team	Lead Electrical Engineer	[REDACTED]
Design Team	Lead Structural Engineer	[REDACTED]
Design Team	Sustainability/LEED Coordinator	[REDACTED]
Service Provider	Energy Modeller	[REDACTED]
Design Team	Civil Engineer	[REDACTED]
Construction Contractor	Systems Integrator	[REDACTED]
Design Team	Heritage Consultant	[REDACTED]
Design Team	Accessibility Consultant	[REDACTED]
Design Team	Art Conservator	[REDACTED]
Design Team	Technology Integrator Consultant	[REDACTED]
Design Team	Electronic Security Designer	[REDACTED]
Design Team	Audio Visual Consultant and Integrator	[REDACTED]

Project Co Party	Position/Function	Name and Contact Information
Design Team	Information & Communication Technology Designer	[REDACTED]
Construction Contractor	Design Process Manager	[REDACTED]
Construction Contractor	Site Superintendent	[REDACTED]
Construction Contractor	Abatement Manager	[REDACTED]
Construction Contractor	Construction Manager	[REDACTED]
Construction Contractor	Health and Safety Officer	[REDACTED]
Project Co	Project Co Project Manager	[REDACTED]
Project Co	Project Co Representative	[REDACTED]
Construction Contractor	FF&E Coordinator	[REDACTED]
Construction Contractor	Project Co Commissioning Coordinator	[REDACTED]
Construction Contractor	Procurement Coordinator	[REDACTED]
Project Co	Deputy Project Co Representative	[REDACTED]
Construction Contractor	Project Scheduler	[REDACTED]
Service Provider	FM Operating Representative (in accordance with Part 6 of Schedule 15 – Output Specifications)	[REDACTED]
Project Co	Company Security Officer	[REDACTED]
Project Co	Communications Director	[REDACTED]

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Project Co Party	Position/Function	Name and Contact Information
Construction Contractor	Community Benefits Lead	[REDACTED]
Independent Assessor	Independent Assessor Lead	[REDACTED]

B. Key Individuals – Services

Project Co Party	Position/Function	Name and Contact Information
Service Provider	Site General Manager	[REDACTED]
Service Provider	Building Services Manager	[REDACTED]
Service Provider	Health and Safety Officer	[REDACTED]
Service Provider	Performance and Quality Manager	[REDACTED]
Service Provider	Energy Management Manager	[REDACTED]
Service Provider	Operational Start Up and Mobilization Manager	[REDACTED]
Service Provider	Service Provider Representative	[REDACTED]
Project Co	Communications Director	[REDACTED]
Service Provider	Heritage Advisor	[REDACTED]
Service Provider	FF&E and Moves, Adds and Changes Services Lead	[REDACTED]
Independent Assessor	Independent Assessor Lead	[REDACTED]
Project Co	Company Security Officer	[REDACTED]
Service Provider	FM Operating Representative (in accordance with Part 6 of Schedule 15 – Output Specifications)	[REDACTED]

SCHEDULE 10

REVIEW PROCEDURE

PART A – WORKS PHASE

1. WORKS SUBMITTALS

1.1 The provisions of Part A of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by this Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the Review Procedure prior to Substantial Completion or after Substantial Completion in respect of the completion of the Fit-Out Works, Minor Deficiencies and Fit-Out Works Phase Minor Deficiencies and the rectification of any Works, the Facility or any part thereof as required pursuant to Section 18.1(b) of the Project Agreement, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in Part A of this Schedule 10).

2. SCHEDULE FOR WORKS SUBMITTALS

2.1 Project Co shall provide for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Representative to allow for a sufficient Contracting Authority Review Period for each Works Submittal taking into account both the resources necessary to be available to the Contracting Authority Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule or current Recovery Schedule, as applicable.

2.2 In scheduling Review Procedure Activities and in the performance of the Works, Project Co shall allow adequate time prior to performing the Works that are the subject of the Review Procedure Activities, for the Review Procedure Activities and for Project Co to make changes to Works Submittals that may be required if comments are received on the Works Submittals, such review and required changes to be in accordance with this Schedule 10. Project Co shall schedule all Review Procedure Activities to maintain a buffer period between a Contracting Authority Review Period and the subsequent Works Activity.

2.3 Project Co shall include in the Project Schedules the Contracting Authority Review Period duration and sequencing logic as defined in the Project Agreement.

2.4 Project Co shall allow for a minimum Contracting Authority Review Period of:

- (a) 15 Business Days following receipt thereof for all Design Development Submittals, unless otherwise indicated in this list;
- (b) 15 Business Days following receipt thereof for all Construction Document Submittals, unless otherwise indicated in this list;
- (c) 15 Business Days following receipt thereof for the first Draft Works Schedules;
- (d) 5 Business Days following receipt thereof for any subsequent Draft Works Schedule;
- (e) 15 Business Days following receipt thereof for any other Project Schedules or related reports; and
- (f) 15 Business Days following receipt thereof for Quality Plans, and 10 Business Days following receipt thereof for all other Works Submittals,

or such longer period as the Parties may agree, provided that if Project Co has made major changes to the content, grouping or quantity of Works Submittals, or the Works Submittal was not submitted to Contracting Authority on the date indicated in Current Look-ahead Schedule, such period of time shall be increased by Project Co, acting reasonably, taking into account the factors set forth in this Section 2.

- 2.5 Project Co shall include the relevant activity relationships in the Project Schedules to indicate the Works Activities dependent on the specific Contracting Authority Review Period for a specific Works Submittal.
- 2.6 Project Co shall submit all Works Submittals to Contracting Authority in accordance the Current Look-ahead Schedule, and the Contracting Authority Representative or the Contracting Authority Design Team, as applicable, shall review and respond to each Works Submittal in accordance with the Contracting Authority review time periods specified on the Current Look-ahead Schedule or as otherwise agreed to between the Parties.
- 2.7 If, at any time, any or all of:
 - (a) the Current Look-ahead Schedule is deemed null and void pursuant to Section 12.1 of Schedule 12 – Works Scheduling Requirements;
 - (b) Project Co submits an unusually large number or volume of Works Submittals not contemplated by the Works Schedule and the Current Look-ahead Schedule; or
 - (c) a Works Submittal was, or Works Submittals were, received for review later than indicated in the Current Look-ahead Schedule, such that the Contracting Authority Representative or the Contracting Authority Design Team, as applicable, cannot review the Works Submittals or Works Submittals within the time permitted in the Current Look-ahead Schedule;

then the Contracting Authority Representative shall, within 5 Business Days of receipt of such Works Submittal or Works Submittals, provide Project Co with an estimate of the time necessary for processing such Works Submittal or Works Submittals.

3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

- 3.1 Unless otherwise specified by the Contracting Authority Representative, Project Co shall issue 3 printed copies of all Works Submittals to Contracting Authority, together with an electronic copy uploaded to the on-line (web-based) project management software system specified by Contracting Authority, in a format agreed by the Parties, acting reasonably, and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Works Submittals and the date of receipt and content of all returned Works Submittals and comments thereon.
- 3.3 All Works Submittals shall be in English.
- 3.4 All Works Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional architects or engineers) shall, where applicable, be so signed and sealed.
- 3.5 All Works Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Works Submittal and Project Co's proposed course of action relating to the Works Submittal and the Project Operations that are the subject of the Works Submittal.
- 3.6 All Works Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications, and to any Design Data that has previously been subject to review.
- 3.7 When Project Co submits a Design Acceptability Report, Project Co shall specifically identify all elements of Design Acceptability, including where applicable, references to the Output Specifications.
- 3.8 All Works Submittals shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Works Submittals and for each Works Submittal:
 - (a) the document number(s) or drawing number(s);
 - (b) revision numbers (if applicable);
 - (c) document or drawing title(s);
 - (d) name of entity that prepared the Works Submittal;

- (e) the Works Submittal history showing date, delivery information, log number of all previous submissions, previous assigned comments by Contracting Authority and Project Co’s response to such comments to that Works Submittal; and
 - (f) identification of any previous Works Submittal superseded by the current Works Submittal.
- 3.9 No fewer than ten (10) Business Days prior to the scheduled date of submission of each Works Submittal, the Project Co Representative shall meet with the Contracting Authority Representative and the Contracting Authority Design Team to review the progress and validate the content of the Works Submittal scheduled to be submitted. The Contracting Authority Representative, acting reasonably, may adjust the scheduled date of the submission of the Works Submittal if, in the reasonable opinion of the Contracting Authority Representative, such Works Submittal does not or is unlikely to meet the requirements of the Project Agreement by the date it is scheduled to be submitted.
- 3.10 If a Proposal Part corresponds to a Works Submittal, then Project Co shall ensure that its initial submission of such Works Submittal, in accordance with this Schedule 10, is substantially the same content and level of detail as the corresponding Proposal Part. For clarity, this requirement shall not:
- (a) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review each Works Submittal in accordance with this Schedule 10; or
 - (b) constitute acceptance or comment by Contracting Authority of any Proposal Part or any Works Submittal in accordance with this Schedule 10.

4. COMMENTS

- 4.1 The Contracting Authority Design Team shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.6 of this Schedule 10. The Contracting Authority Design Team shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 4 comments:
- (a) “NO COMMENT”;
 - (b) “MINOR NON-CONFORMANCE”;
 - (c) “MAJOR NON-CONFORMANCE”; or
 - (d) “CRITICAL NON-CONFORMANCE”.
- 4.2 The comment “NO COMMENT” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Design Team, generally conforms to the requirements

- of this Project Agreement. Project Co shall comply with and implement such Works Submittal.
- 4.3 The comment “MINOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Design Team, contains any Minor Non-Conformance but does not contain any Major Non-Conformance or Critical Non-Conformance. Project Co shall correct such Works Submittal and shall comply with and implement such Works Submittal after correction, including in accordance with the comments. If the Contracting Authority Design Team assigns to a Works Submittal the additional comment “RE-SUBMIT”, Project Co shall correct and re-submit such Works Submittal to the Contracting Authority Design Team no later than twenty (20) Business Days after the comment has been provided to Project Co, or such longer time period as determined by the Contracting Authority Design Team, acting reasonably and as set out in writing. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “MINOR NON-CONFORMANCE”, then Project Co will be required to modify the Works Submittals and Works, as required to ensure that the Works comply with the Output Specifications and Project Co may be required, at the Contracting Authority Design Team’s discretion, to resubmit the relevant Works Submittals. In such circumstances the Contracting Authority Design Team shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.4 The comment “MAJOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Design Team, contains any Major Non-Conformance but does not contain any Critical Non-Conformance. The comment “CRITICAL NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Design Team, contains any Critical Non-Conformance. Project Co shall correct and re-submit such Works Submittal within 10 Business Days after the comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” has been provided to Project Co, or such longer time period, as determined by the Contracting Authority Design Team, acting reasonably and as set out in writing. The Contracting Authority Design Team will then review such re-submitted Works Submittal and assign a comment to the corrected Works Submittal. The Works Submittal shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Works Submittal with a “CRITICAL NON-CONFORMANCE” comment will be a Proceeding at Risk Matter in accordance with Section 11.6(a)(ii) of the Project Agreement.
- 4.5 Where the Contracting Authority Design Team issues the comment “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the Contracting Authority Design Team shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the

Contracting Authority Design Team shall meet with the Project Co Representative to discuss the reasons for the comment.

- 4.6 If, at any time after assigning any comment to a Works Submittal, the Contracting Authority Design Team or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the Contracting Authority Design Team may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.7 For the purpose of facilitating and expediting the review and correction of Works Submittals, the Contracting Authority Design Team and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8 Where a Works Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by Contracting Authority.
- 4.9 In lieu of returning a Works Submittal, the Contracting Authority Representative may by letter notify Project Co of the comment assigned to the Works Submittal and if such comment is “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

5. DISPUTES

- 5.1 If Project Co disputes any comment assigned by the Contracting Authority Design Team to a Works Submittal under this Part A, Project Co shall promptly notify the Contracting Authority Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Contracting Authority Design Team shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the Contracting Authority Design Team confirms the original comment, Project Co may request the Independent Certifier to resolve the Dispute and render a decision within 5 Business Days of such request.
- 5.2 If either Party is not satisfied, acting reasonably, with the decision of the Independent Certifier rendered pursuant to Section 5.1, subject to Section 10.2, either Party may refer

the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

- 5.3 Notwithstanding the provisions of Sections 5.1 and 5.2, the Contracting Authority Design Team may direct that Project Co revise the Works Submittal in accordance with the comment of the Contracting Authority Design Team and proceed to perform and complete the Works on the basis of such revised Works Submittal. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with Section 55 and Schedule 27 - Dispute Resolution Procedure of the Project Agreement.

6. EFFECT OF REVIEW

- 6.1 Subject to Section 18.6 of this Project Agreement, any review and comment by Contracting Authority or the Contracting Authority Design Team of any Works Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities in respect of the Works under this Project Agreement or exclude or limit Contracting Authority's rights in respect of the Works under this Project Agreement.

7. WORKS SUBMITTAL EXPLANATION

- 7.1 At any time, the Contracting Authority Design Team may, acting reasonably, require Project Co, the Project Co Parties and any other relevant personnel, at no additional cost to Contracting Authority, to explain to the Contracting Authority Design Team and its other advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications. Project Co shall provide the explanation to the Contracting Authority Design Team within 5 Business Days (or such longer period as the Parties may agree) from the date of receipt of the request from the Contracting Authority Design Team.

8. REVISIONS

- 8.1 Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.
- 8.2 Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions

struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.

- 8.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the As Built Drawings.
- 8.4 Project Co shall keep all Design Data current, including a complete set of the most recently issued submittal documents available on site in the construction trailer for use by Contracting Authority and Contracting Authority representatives. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

9. AUDIT BY THE CONTRACTING AUTHORITY REPRESENTATIVE

- 9.1 Without limiting any other right under this Project Agreement, the Contracting Authority Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2 If during an audit or at any other time it is discovered by Contracting Authority or Project Co (or resolved pursuant to Section 9.3) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Project Operations to which they relate and shall advise the Contracting Authority Design Team of all such corrections and modifications.
- 9.3 Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1, shall be referred in the first instance to the Independent Certifier for resolution.

10. VARIATIONS

- 10.1 No alteration or modification to the design, quality and quantity of the Project Operations arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.
- 10.2 If, having received comments from the Contracting Authority Design Team on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to Contracting Authority of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with,

Contracting Authority may, at its election, (a) issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or (b) amend its comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with either Party may proceed to resolve the matter in accordance with Section 5, including for clarity, the exercise by Contracting Authority of its right under Section 5.3. Subject to the foregoing sentence, any failure by Project Co to notify Contracting Authority in accordance with this Section 10.2 that Project Co considers compliance with any comments of the Contracting Authority Design Team would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Contracting Authority Design Team's comments shall be without cost to Contracting Authority and without any extension of time.

SCHEDULE 10

REVIEW PROCEDURE

PART B – SERVICES PHASE

11. SERVICE SUBMITTALS

- 11.1 The provisions of Part B of this Schedule 10 shall apply to any and all items, documents and anything else required or specified by this Project Agreement, other than the Design Development Submittals, the Construction Document Submittals and the Design Data, to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the Review Procedure after Substantial Completion except in respect of the completion of the Fit-Out Works, Minor Deficiencies and Fit-Out Works Phase Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Service Submittal**” or “**Service Submittals**” as applicable in Part B of this Schedule 10).
- 11.2 Project Co shall allow a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Service Submittal.
- 11.3 Project Co shall, in scheduling Service Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Service Submittals, for review of the Service Submittals and for Project Co to make changes to Service Submittals that may be required if comments are received on the Service Submittals, such review and required changes to be in accordance with Part B of this Schedule 10.

12. GENERAL REQUIREMENTS FOR SERVICE SUBMITTALS

- 12.1 Unless otherwise specified by the Contracting Authority Representative, Project Co shall issue 3 printed copies of all Service Submittals to Contracting Authority in a format agreed by the Parties, acting reasonably.
- 12.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Service Submittals and the date of receipt and content of all returned Service Submittals and comments thereon.
- 12.3 All Service Submittals shall be in English.
- 12.4 All Service Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional architects or engineers) shall, where applicable, be so signed and sealed.

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- 12.5 All Service Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Service Submittal and Project Co’s proposed course of action relating to the Service Submittal and the Project Operations that are the subject of the Service Submittal.
- 12.6 All Service Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications.
- 12.7 All Service Submittals shall be clearly identified as a Service Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Service Submittals and for each Service Submittal:
- (a) the document number(s) or drawing number(s);
 - (b) revision numbers (if applicable);
 - (c) document or drawing title(s);
 - (d) name of entity that prepared the Service Submittal;
 - (e) the Service Submittal history showing date and delivery information and/or log number of all previous submissions of that Service Submittal; and
 - (f) identification of any previous Service Submittal superseded by the current Service Submittal.
- 12.8 If a Proposal Part corresponds to a Service Submittal, then Project Co shall ensure that its initial submission of such Service Submittal, in accordance with this Schedule 10, is substantially the same content and level of detail as the corresponding Proposal Part. For clarity, this requirement shall not:
- (a) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review each Service Submittal in accordance with this Schedule 10; or
 - (b) constitute acceptance or comment by Contracting Authority of any Proposal Part or any Service Submittal in accordance with this Schedule 10.

13. COMMENTS

- 13.1 The Contracting Authority Representative shall review and respond to each Service Submittal in accordance with the time periods specified in Section 11.2 of this Schedule 10. The Contracting Authority Representative shall return Service Submittals to Project Co and assign one of the following 4 comments:
- (a) “NO COMMENT”;

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- (b) “MINOR NON-CONFORMANCE”;
 - (c) “MAJOR NON-CONFORMANCE”; or
 - (d) “CRITICAL NON-CONFORMANCE”.
- 13.2 The comment “NO COMMENT” will be assigned to those Service Submittals that, in the opinion of the Contracting Authority Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Service Submittals.
- 13.3 The comment “MINOR NON-CONFORMANCE” will be assigned to those Service Submittals that, in the opinion of the Contracting Authority Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the Contracting Authority Representative’s review. Project Co shall correct these Service Submittals and shall comply with and implement such Service Submittals after correction, including in accordance with the comments. If the Contracting Authority Representative assigns to a Service Submittal the additional comment “RE-SUBMIT”, Project Co shall correct and re-submit such Service Submittal to the Contracting Authority Representative no later than 20 Business Days after the comments have been provided to Project Co, or such longer time period as determined by the Contracting Authority Representative, acting reasonably, and as set out in writing. If at any time it is discovered that Project Co has not corrected the deficiencies on Service Submittals stamped “MINOR NON-CONFORMANCE”, then Project Co will be required to modify the Service Submittals and Project Operations as required to ensure that the Project Operations comply with the Output Specifications and Project Co may be required, at the Contracting Authority Representative’s discretion, to resubmit the relevant Service Submittals. In such circumstances the Contracting Authority Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.4 The comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” will be assigned to those Service Submittals that, in the opinion of the Contracting Authority Representative, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Service Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer time period as determined by the Contracting Authority Representative, acting reasonably, and as set out in writing. The Contracting Authority Representative will then review such re-submitted Service Submittals and assign a comment to the corrected Service Submittal. The Service Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Service Submittal with a “CRITICAL NON-CONFORMANCE” shall be escalated to the Facilities Management Committee.

- 13.5 Where the Contracting Authority Representative issues the comment “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the Contracting Authority Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Service Submittal fails to satisfy, and, if requested by the Project Co Representative, the Contracting Authority Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 13.6 If, at any time after assigning any comment to a Service Submittal, the Contracting Authority Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the Contracting Authority Representative may revise the comment assigned to any Service Submittal. If the Parties agree or it is determined in accordance with Section 14 that the revised comment is correct, Project Co shall make all such corrections to the Service Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.7 For the purpose of facilitating and expediting the review and correction of Service Submittals, the Contracting Authority Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Service Submittals and any comments thereon.
- 13.8 Where a Service Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Service Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by Contracting Authority.
- 13.9 In lieu of returning a Service Submittal, the Contracting Authority Representative may by letter notify Project Co of the comment assigned to the Service Submittal and if such comment is “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

14. DISPUTES

- 14.1 If Project Co disputes any act of Contracting Authority or the Contracting Authority Representative in respect of a Service Submittal under this Part B, Project Co shall promptly notify the Contracting Authority Representative of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Contracting Authority Representative shall review the Service Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment.

14.2 If after such review by the Contracting Authority Representative Project Co disputes the comment on a Service Submittal, subject to Section 19.1, Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

15. EFFECT OF REVIEW

15.1 Any review and comment by Contracting Authority or the Contracting Authority Representative of any Service Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority. Without limiting the generality of the foregoing any and all errors or omissions in Service Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities under this Project Agreement in respect of matters related to the Service Submittal or exclude or limit Contracting Authority's rights under this Project Agreement in respect of matters related to the Service Submittal.

16. SERVICE SUBMITTAL EXPLANATION

16.1 At any time, the Contracting Authority Representative may, acting reasonably, require Project Co, the Project Co Parties and any other relevant personnel, at no additional cost to Contracting Authority, to explain to the Contracting Authority Representative and Contracting Authority's advisors the intent of Project Co's Service Submittals, including as to its satisfaction of the Output Specifications.

17. REVISIONS

17.1 Project Co shall ensure that Service Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Service Submittal are identified by a sequential revision number. Correspondence related to such Service Submittal shall reference the reference number and revision number.

17.2 Re-submittals shall clearly show all revisions from the previous Service Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.

17.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Service Submittal. Electronic versions of the Service

Submittal shall identify the persons who initialled the revisions to the printed version of the Service Submittal.

18. AUDIT BY THE CONTRACTING AUTHORITY REPRESENTATIVE

18.1 Without limiting any other right under this Project Agreement, the Contracting Authority Representative shall have the right to audit all Service Submittals, including comparing all Service Submittals to previous Service Submittals.

18.2 If during an audit or at any other time it is discovered by Contracting Authority or Project Co that any Service Submittals were not correctly implemented, Project Co shall at its sole cost, immediately take all necessary steps to correct and modify the applicable Service Submittals and the Project Operations to which they relate and shall advise the Contracting Authority Representative of all such corrections and modifications.

19. VARIATIONS

19.1 If, having received comments from the Contracting Authority Representative on any Service Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to Contracting Authority of the same and, if it is agreed by the Parties, or is determined pursuant to Schedule 27 - Dispute Resolution Procedure, that a Variation would arise if the comments were complied with, Contracting Authority may at its election, either issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or amend its comment on the Service Submittal. Any failure by Project Co to notify Contracting Authority in accordance with this Section 19.1 that Project Co considers compliance with any comments of the Contracting Authority Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Contracting Authority Representative's comments shall be without cost to Contracting Authority and without any extension of time.

APPENDIX A

MINIMUM DESIGN AND CONSTRUCTION SUBMITTAL REQUIREMENTS

- This Schedule 10 has the following major milestones Submittals categories described below:
 - 50% Design Development Submittals
 - 75% Design Development Submittals
 - 100% Design Development Submittals
 - 50% Construction Document Submittals
 - 75% Construction Document Submittals
 - 100% Construction Document Submittals
 - Other Submittals, including, without limitation, Submittals with respect to the Fit-Out Works
- The mock-up review procedure has the following major milestones:
 - List of all mock-ups required for the Project
 - 50% Design Development Submittals – Preliminary complete design packages for all mock-ups
 - 75% Design Development Submittals – Updated complete design packages including complete detailed mock-up shop drawings for all mock-ups
 - 100% Design Development Submittals – Report on review and adjustments of design packages and shop drawings for all mock-ups

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- 50% Construction Document Submittals – All mock-ups built and reviewed by the Contracting Authority Representative.
- **Format for Works Submittals:**
 - All Works Submittals are to be submitted in 3 hole ring binders. Large format drawings (A0 or A1 size) are to be provided separately (bound) as well as reduced format (11" x 17") and included in a 3 hole ring binder. Unless otherwise noted, all drawings are also to be provided in half size format. All other Works Submittals which are not drawings are to be submitted in 8.5" x 11" black and white format, unless otherwise specifically noted. In addition to hard copies all Works Submittals are to be included in electronic format (PDF and CAD file) on a CD.
 - All digital files for the document and /or drawings subject of the design development and construction documents stages Submittals shall be submitted in Autodesk AutoCAD. Submission of Autodesk Revit format is optional. For the purposes of As Built Drawings, digital format submission shall be submitted in Autodesk AutoCAD drawings (all external references flattened and bound into each drawing file), as well as Autodesk Revit format as a BIM.

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DESIGN DEVELOPMENT SUBMITTALS AND CONSTRUCTION DOCUMENT SUBMITTALS

The Design Development Submittals must demonstrate the Proponent’s understanding of and design response to the Works required for Substantial Completion. Project Co shall also demonstrate how the Works required for Substantial Completion anticipate the Fit-Out Works that follow (refer to Items 5.26 Fit-Out Sub Plans and 5.27 Fit-Out Design, which are related to the Fit-Out Works that follow Substantial Completion).

1. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 50% DESIGN DEVELOPMENT SUBMITTALS STAGE

Project Co shall provide the following Design Development Submittals to the Contracting Authority Design Team for review in accordance with this Schedule 10:

Item #	Title	Description	Sheet Set
1.1	Project Co Design Statement	Updated Project Co’s design statement to be issued at 50%, 75% and 100% Design Development Submittals stage. Design statement to include a detailed table of contents with tabs provided for all sections (i.e. architectural, heritage, landscape, civil, wayfinding, interiors, structural, mechanical, electrical, physical security, audio-visual, LEED, etc.). Include a design statement for the entire scope of work and all disciplines included in the Project.	
1.2	Pre-Construction Reports	Pre-construction reports to be issued at 50%, 75% and 100% Design Development Submittals stage including:	
	(a) Existing Condition Reports	In accordance with the requirements of Schedule 15 - Output Specifications, prior to the start of construction, submit the Existing Condition Reports for the following components of the Works: (A) Heritage per Part 3, Section 3.2.1 of Schedule 15 - Output Specifications;	

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Item #	Title	Description	Sheet Set
		<p>(B) Artwork per Part 3, Section 3.2.11 of Schedule 15 - Output Specifications; and</p> <p>(C) Vertical Transportation per Part 3, Section 3.2.15 of Schedule 15 - Output Specifications.</p> <p>Such reports can be provided for review prior to the 50% Design Development Submittals (only if submitted with items 1.2 (b), (c), (d), (e), (f) and 1.3(g)).</p>	
	<p>(b) Condition Assessment Plan</p>	<p>Provide a plan describing the approach to, methodology of and schedule for all of the work of the Independent Assessor required during the Works, including in respect of the performance of each of the Condition Assessments and the submittal of each of the Condition Assessment Reports required by Part 3, Sections 3.1.1, 3.1.2, 3.2.4 and 3.2.5 of Schedule 15 - Output Specifications and Schedule 33 – Existing Facilities Repairs and Independent Assessor.</p> <p>Such plan can be provided for review prior to the 50% Design Development Submittals (only if submitted with items 1.2 (a), (c), (d), (e), (f) and 1.3(g)).</p>	
	<p>(c) Protection Plans</p>	<p>Provide protection plans including drawings and phasing details for existing Project elements including:</p> <p>(A) Requirements identified in Part 3, Section 3.2.1 of Schedule 15 - Output Specifications related to Heritage Attributes;</p> <p>(B) Requirements identified in Part 3, Section 3.2.11 of Schedule 15 - Output Specifications; and</p> <p>(C) Requirements identified in Part 3, Section 3.1.2 of Schedule 15 - Output Specifications related to tree protection.</p> <p>Such plans can be provided for review prior to the 50% Design Development Submittals (only if submitted with items 1.2 (a), (b), (d), (e), (f) and 1.3 (g)).</p>	

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Item #	Title	Description	Sheet Set
	(d) Abatement Plan	Provide abatement plan as described in Part 3, Section 3.2.18 of Schedule 15 - Output Specifications. Such plan can be provided for review prior to the 50% Design Development Submittals (only if submitted with items 1.2 (a), (b), (c), (e), (f) and 1.3(g)).	
	(e) Removal Plans	(i) Prepare detailed removal plans indicating all building elements to be removed due to Project Co's approach to selective demolition. (ii) Include details related to heritage elements including plans, elevations, details and schedules as required to describe heritage elements to be removed and salvaged. Such plans can be provided for review prior to the 50% Design Development Submittals (only if submitted with items 1.2 (a), (b), (c), (d), (f) and 1.3(g)).	
	(f) Heritage Submittals	In accordance with the requirements identified in Part 3, Section 3.2.1 of Schedule 15 - Output Specifications, submit the following heritage submittals: (A) Prior to the start of construction, submit a Heritage Impact Assessment; and (B) Heritage Interpretation Plan. Such submittals can be provided for review prior to the 50% Design Development Submittals (only if submitted with items 1.2 (a), (b), (c), (d), (e) and 1.3(g)).	
1.3	Design Development Submittals	Submit Design Development Submittals in accordance with the requirements set forth in Section 18.3 of the Project Agreement, including:	

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Item #	Title	Description	Sheet Set
(a)	<p>Site Plans (prepared at 1:500 scale) showing:</p>	<p>Full ground floor plan</p> <ul style="list-style-type: none"> (A) A summary of site statistics, including the site area, total NRGFA, site density (FSI), parking provided and building heights; (B) Delineation of the Project Site and the boundary accepted by the City of Toronto for the purpose of zoning review and building permit; (C) Clear indication of the existing and proposed conditions; (D) Full hard/soft landscape plan showing integration of landscaping features/areas with floor plan elements and entrances (including security elements); (E) Treatment of approach to entrances, including treatment of safety features, lighting, etc.; (F) Vehicular drop-off and street right-of-way improvements; (G) Additional Site features, including natural features, storm water management structures and design of outdoor spaces, location of Artworks, bicycle parking areas, ceremonial garden, future daycare area, coordination with CPTED report, etc.; (H) Line of deterrence and physical security elements; (I) Vehicle access/egress driveways to and from Site, including parking entrance ramps; (J) All existing trees on Site; and (K) Extent and layout of construction staging area. 	

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Item #	Title	Description	Sheet Set
(b)	Landscape Plan (prepared at 1:500 scale)	<ul style="list-style-type: none"> (i) Integration of landscaping features/areas with floor plan elements and entrances with a clear indication of existing, modified and new conditions; (ii) Separate hardscape and planting plans shall be provided; (iii) Types and maturity of plants; (iv) Types and extent of hard landscaping; (v) Extent of irrigation; (vi) Extent of snow melting system under walkways within the outdoor program spaces; (vii) Treatment of main approach to public entrance from the plaza; (viii) Fountain design; (ix) Exterior site furnishings (including but not limited to benches, bicycle racks, waste receptacles, seat walls, and site physical security elements; (x) Green roofs in conformance with Schedule 15 – Output Specifications; and (xi) Prepare and submit a Tree Conservation and Compensation Strategy. 	
(c)	Heritage Interpretation Design Plan	Heritage interpretation schemes both interior and exterior	
(d)	Site Servicing Plan Site design features, also as related to sustainable design requirements.	<ul style="list-style-type: none"> (i) Storm water management/storm sewer; (ii) Sanitary sewer system; (iii) Water mains - domestic use; (iv) Water mains - firefighting; (v) Gas utilities; (vi) Back-up fuel system; 	

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Item #	Title	Description	Sheet Set
	(prepared at 1:500) showing:	(vii) Hydro utilities; (viii) District Energy, if used; (ix) Communication systems incoming services; and (x) Electrical supply for public Art feature lighting.	
(e)	Site Grading Plan (prepared at 1:500)	(i) Property line elevations; (ii) Finished floor elevations; (iii) Road centreline elevations (proposed and existing); (iv) Top/bottom of curb elevations (proposed); (v) Top/bottom of wall elevations; (vi) Drainage directions and slopes including catch basin elevations; (vii) Overland flow routes; (viii) Spot elevations tied to geodetic datum; (ix) Slopes indicated in percentage (%); and (x) Spot elevations at exterior Artwork.	
(f)	Erosion and Sediment Control Plans (prepared at 1:500)	(i) Perimeter sediment control; (ii) Erosion control measures for disturbed surfaces; (iii) Sediment control for interim drainage; (iv) Construction entrance mud mat; (v) Truck washing areas; (vi) Concrete wash-out; (vii) Temporary fuel storage; (viii) Street washing extents; (ix) Dust control; and (x) Fill stockpile location(s).	
(g)	Construction Management Plan	(i) Phasing strategy in the existing condition (existing site, existing ramps,);	

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Item #	Title	Description	Sheet Set
	(prepared at 1:500)	<ul style="list-style-type: none"> (ii) Traffic Management During Construction Plan per Part 1, Section 1.3.4 of Schedule 15 - Output Specifications; (iii) Communications and Stakeholder Relations Plan per Part 1, Section 1.3.4 of Schedule 15 - Output Specifications; (iv) Perimeter hoarding plan; (v) Protection hoarding and planning during all stages of construction including tree, heritage and Artwork protection; (vi) Methodology for construction permits; (vii) Access to construction site; (viii) On-street parking impact; (ix) Construction trailers area; (x) Crane pickup areas; (xi) Exterior elevator locations; (xii) Life safety plans including fire routes to the Facility and the Existing Facilities during all stages; (xiii) Temporary access requirements (ie. Whitney Block access to loading); and (xiv) Occupancy. <p>Such plan can be provided for review prior to 50% Design Development Submittals (only if submitted with items 1.2 (a), (b), (c), (d), (e) and (f)).</p>	
(h)	Drainage Plan (prepared at 1:500)	<ul style="list-style-type: none"> (i) Site Plan showing grading with geodetic elevations at all locations where gradient change is proposed; and (ii) Show all area drains, catchbasins, manholes, etc., with percentage notations indicating drainage slopes proposed conforming to Schedule 15 - Output Specifications requirements and City of Toronto standards. 	

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Item #	Title	Description	Sheet Set
(i)	Typical Site and Landscape Details (prepared at 1:10 scale or as appropriate)	(i) Planting section details; (ii) Planter plan details, and sections; (iii) Preliminary curb and paving details; (iv) Bollard and security barrier section details; and (v) Exterior art infrastructure details.	
(j)	Architectural Graphic Floor Plans (Prepared 1:200) of every level, including penthouse(s) and roof(s), for the Facility, showing:	(i) All architectural plans with room layouts, color coded with predetermined components colours; (ii) Heritage zones per requirements of Heritage Attributes; and (iii) Component circulation flows (Public Zone, Private Zone), and important adjacencies.	
(k)	Octant and Podium Octant Graphic Floor Plans (Prepared 1:200) of every level of the Facility that includes A1.01 Tenant Office Area space, showing:	(i) All Octant and Podium Octant boundaries (ii) The square footage of each defined Octant and Podium Octant	
(l)	Architectural Composite Floor Plans (prepared at 1:200 scale) of every level, including penthouse(s) and roof(s), for the Facility, showing:	(i) All grids, walls, doors, stairs, shafts, and envelope, with detail reference bubbles and tags indicating the plan breaks for 1:100 scale drawings; (ii) Egress diagrams; (iii) Fire separation plans with zoning and fire compartment indicated; and (iv) Security plans indicating different security zones.	

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Item #	Title	Description	Sheet Set
(m)	<p>Architectural Floor Plans (prepared at 1:100 scale) of every level, including below grade, parking areas, penthouse(s) and roof(s), for the Facility, showing:</p>	<ul style="list-style-type: none"> (i) All walls and partitions in actual thicknesses; (ii) All program and non-program rooms/areas, developing preliminary room number system with a matrix to translate accommodation schedule, lists and space data sheets numbering; (iii) Parking plans showing the dimensioned layout for all types of parking, loading spaces and driving aisles clearly identified. Include turning radii at all areas to demonstrate functionality; (iv) List of additional rooms not previously identified with additional sequential room codes as required; (v) Program components color coded and named with legend on each page; (vi) Indication of all existing, modified and new building elements, coordinated with removals plan; (vii) Doors, screens, glazing and windows layout; (viii) Floor finish type and location in all areas; (ix) All millwork/casework and FF&E layouts (including filing storage units, shelving) for all areas; (x) All loose furniture and accessories; (xi) Elevator and stair reference numbers; (xii) All Part 04 FF&E (furniture, workstations, etc.); (xiii) All accessibility clearances and maneuvering areas; (xiv) Integration of structural, mechanical, electrical, IT, AV and security systems/devices in terms of rooms, columns, service shafts, risers, etc., in sufficient detail to demonstrate that functional layout and accommodation schedule net area requirements are compliant; and (xv) Location and dimension of all existing interior walls being retained. Existing walls to be shown graphically distinct from new wall construction. 	

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Item #	Title	Description	Sheet Set
(n)	<p>Space Development Drawings (floor plans, reflected ceiling plans, and elevations prepared at 1:50 scale for key areas listed)</p>	<p>(i) Key areas showing all new work, modifications, and repair, including but not limited to :</p> <p>(A) Heritage spaces including:</p> <ul style="list-style-type: none"> - Ferguson Level 3 Minister’s Suite; - Elevator cabs at Mowat and Hepburn towers; - Internal feature stair; - Entrance vestibule/lobbies; and - Circulation corridors; <p>(B) All building cores (all levels);</p> <p>(C) OPP Detachment including Security Control Room;</p> <p>(D) All Conference Rooms, Tenant Shared Meeting Rooms, Working Lounges, and Staff Lounge;</p> <p>(E) Service counters;</p> <p>(F) Washroom types;</p> <p>(G) Service incoming rooms;</p> <p>(H) IT/AV rooms; and</p> <p>(I) Parking access and control spaces.</p>	
(o)	<p>Heritage Drawings (elevations, floor plans, reflected ceiling plans, and interior elevations prepared at the appropriate scale for key areas listed, with conservation notes and hatches to indicate all</p>	<p>(i) All exterior faces of the existing building, including all towers.</p> <p>(ii) All interior areas which contain Heritage Attributes, including:</p> <p>(A) Ferguson Level 3 Minister’s Suite;</p> <p>(B) A5.01 Tenant Shared Meeting Rooms showing incorporation of salvaged materials;</p> <p>(C) Elevator cabs at Mowat and Hepburn towers;</p> <p>(D) Internal feature stair;</p> <p>(E) Entrance vestibule;</p>	

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Item #	Title	Description	Sheet Set
	proposed work to heritage attributes) including:	(F) Entrance lobbies; and (G) Main double loaded corridors.	
(p)	Architectural Reflected Ceiling Composite Plans (prepared at 1:200 scale) of every level, for the Facility, showing:	(i) All grids, walls, ceiling types, services , shafts, and envelope, with detail reference bubbles and tags indicating the plan breaks for 1:100 scale drawings. (ii) Include reflective ceiling plans with light fixtures identifying all finishes as designated.	
(q)	Architectural Reflected Ceiling Plans (prepared at 1:100 scale) of every level, for the Facility, showing:	(i) All walls and partitions in actual thicknesses; (ii) All program and non-program room/areas with room numbering codes; (iii) Ceiling finishes – type and extent; (iv) Integration of all devices including mechanical, electrical, IT, AV, security, etc.; and (v) Device schedule of all devices including mechanical, electrical, IT, AV, security etc. with quantities provided per plan.	
(r)	Structural Composite Floor Plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:	(i) Areas of work as set out in Schedule 15 – Output Specifications and areas of work proposed by Project Co; and (ii) Phasing of structural work as related to the overall phasing and schedule.	

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Item #	Title	Description	Sheet Set
(s)	Structural Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	<ul style="list-style-type: none"> (i) Foundation plan showing preliminary below grade work structural work related to new building systems; (ii) Demolition, removal, replacement, rehabilitation, strengthening and modification of the existing structural system. (iii) New structural systems if required; (iv) Interface with heritage elements; (v) Implementation of traffic bearing waterproof system; (vi) Summary of preliminary structural loads; and (vii) Preliminary shoring design. 	
(t)	Mechanical Composite Floor Plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:	<ul style="list-style-type: none"> (i) Indicating Air Handling Units zoning; and (ii) Other mechanical systems zoning. 	
(u)	Mechanical Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	<ul style="list-style-type: none"> (i) Location and basic layout of major equipment; (ii) Preliminary routing of main feeds and associated shafts and risers; (iii) Single-line schematic of services riser drawings for all services; (iv) Preliminary sizing of equipment; (v) Provisions for adaptability and flexibility; (vi) Preliminary load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants; (vii) Preliminary flow estimates for heating and cooling systems, air supply, return and exhaust systems; (viii) Typical room servicing; (ix) Preliminary plumbing fixture schedules; (x) Preliminary estimate of annual energy use; 	

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Item #	Title	Description	Sheet Set
		(xi) Climate/wind study results as it pertains to air patterns through air intake and exhaust openings; and (xii) Any protrusions through the roof structure.	
(v)	Electrical Composite Floor Plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:	Main and satellite electrical rooms.	
(w)	Electrical Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	(i) Location and basic layout of major power distribution equipment; (ii) Routing of main feeds and associated shafts and risers; (iii) Single-line drawings for all electrical services; (iv) Preliminary sizing of major equipment; (v) Preliminary provisions for adaptability and flexibility; (vi) Preliminary lighting loads for typical rooms and areas for which architectural plan details have been prepared; (vii) Lightning protection and grounds systems; and (viii) Preliminary luminaire schedule of all building luminaires to be used.	
(x)	IT Composite Floor Plans Preliminary plans (prepared at 1:200 scale) of every level, including penthouse(s) and roof(s), for the Facility, showing:	(i) Indicate zoning; and (ii) All communications systems main and satellite rooms.	

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Item #	Title	Description	Sheet Set
(y)	IT Cabling Infrastructure Floor Plans Preliminary plans (prepared at 1:100 scale) of every level showing:	<ul style="list-style-type: none"> (i) Cabling riser locations and riser diagrams; and (ii) Equipment layout of all main and satellite communications rooms. 	
(z)	Preliminary Riser Diagram (NTS)	<ul style="list-style-type: none"> (i) Fiber and copper backbone provision to meet Schedule 15 – Output Specifications and Government of Ontario-IT Standards; and (ii) Life safety riser diagram including sequence operations. 	
(aa)	Preliminary Security Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	<ul style="list-style-type: none"> (i) Location and basic layout of integrated security systems equipment including, but not limited to, building exterior, building entrances/lobbies, holding area video surveillance, video surveillance of all other areas, door control systems, access control, duress/distress alert and intercom system; (ii) Riser block diagrams for the access control, duress, distress, intercom and video surveillance systems depicting point-to-point connections. Multiple systems can be shown on a single drawing; however at a minimum access control, video surveillance and auxiliary systems drawings shall be provided; (iii) Detail drawing of the security command centre and other workstation locations; (iv) Details of security equipment; (v) Floor plans showing security systems layouts, locations of all security systems equipment, connection points and control points; and (vi) Single line schematic diagrams for integrated security systems. 	

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Item #	Title	Description	Sheet Set
(bb)	Preliminary Composite Building Sections (prepared at 1:200 scale or as appropriate for sheet size), including penthouse(s) and Roof(s), for the Facility, showing:	<ul style="list-style-type: none"> (i) All grids floor elevations, and envelope, with detail bubbles and tags indicating the breaks for 1:100 scale drawings; (ii) Major room names and ceiling locations; and (iii) Fire separations. 	
(cc)	Typical Building Sections (prepared at 1:100 scale) showing:	<ul style="list-style-type: none"> (i) Relative thickness of floors/walls, including differentiation between opaque and transparent walls, with fire separations; (ii) Major floor elevations, including those below grade, with fire separations; (iii) Show all heritage spaces; (iv) Finish grades, dotted lines through building section; (v) Relationship to Site contours and other important Site elements as shown in building elevation drawings; (vi) Elevations beyond; (vii) Room names; and (viii) Indication of all existing, modified and new conditions, coordinated with removals plan. 	
(dd)	Stair and Elevator Plans, Sections and Details (prepared at 1:50 scale).	<ul style="list-style-type: none"> (i) Indicate fire separations; (ii) Integration of accessibility requirements; and (iii) Indication of all existing, modified and new conditions. 	

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Item #	Title	Description	Sheet Set
(ee)	Space Development Schematic Sections with ceiling space (prepared at 1:50 scale)	<ul style="list-style-type: none"> (i) Take sections at major rooms/spaces including ceilings indicating ceiling heights, room configurations, and services within ceiling space; (ii) Indication of all existing, modified and new conditions; and (iii) Include as a minimum the following key spaces: <ul style="list-style-type: none"> (A) Key heritage spaces; (B) Building cores; (C) Typical office space on tower floors; (D) Tenant shared meeting room; and (E) Conference rooms. 	
(ff)	Composite Building Elevations (prepared at 1:200 scale or as appropriate for the sheet size), including penthouse(s) and Roof(s), for the Facility, showing:	All grids, floor elevations, and envelope, with detail bubbles and tags indicating the breaks for 1:100 scale drawings.	
(gg)	Exterior Elevations (prepared at 1:100) showing:	<ul style="list-style-type: none"> (i) Along all four sides showing line of street; (ii) Indication of surface materials for all areas, with legend and notations identifying extent and type of all proposed glazing and cladding materials; (iii) Indication of all existing, modified and new conditions; (iv) Different vertical planes differentiated with line weights or shadows; (v) Finish grades; 	

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Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (vi) Major floor elevations, including those below grade; (vii) Sections when elevation is shown by taking vertical cut-through another space; (viii) Significant plantings/Site elements when important in defining space and volume, such as bodies of water, hills, earth berms; (ix) Identification of locations for exterior building signage; and (x) Exterior Artwork. 	
(hh)	Exterior Design Detailed Drawings (prepared at 1:50 scale)	<ul style="list-style-type: none"> (i) Provide plans, sections and elevations of selected site and exterior elements, indicating development of exterior design intent and showing architectural features and construction assemblies of exterior spaces such as entries, waiting areas, canopies and landscape elements, including such elements as Artwork, fountain, parking entrance canopy, etc.; and (ii) Provide plans, sections and elevations of any revision to an exterior Heritage Attribute to suit Project Co design including such items as: <ul style="list-style-type: none"> (A) Entrance vestibules; (B) Exterior doors; (C) Exterior wall modifications (D) Glazing and framing; and (E) Soffits. 	
(ii)	Exterior Wall Sections (prepared at 1:20 scale or as appropriate)	Describe typical wall assemblies and indicate relationship of materials. Include annotation describing proposed wall assembly types Describe elements to be retained and those to be provided new.	

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Item #	Title	Description	Sheet Set
(jj)	Typical Envelope / Cladding Details (prepared at 1:10 scale)	Provide representative section and plan details of exterior wall, roof, soffit and floor slab assemblies. Show features such as glazing, parapets, colonnade soffits, etc. Details will indicate proposed components of assemblies and will be referenced to other drawings. Clearly describe components to be retained and those to be provided new.	
(kk)	Preliminary Interior Elevations (prepared at 1:50) for public entrances and all other major public spaces.	Interior elevations of all conference rooms and all heritage spaces, including corridors, entrance lobbies and other areas as requested by the Contracting Authority Representative.	
(ll)	Interior Finishes Colour and Materials Selection Boards	Include a minimum of three complete options for interior finishes.	
(mm)	Preliminary Door, Window/Glazing and Hardware Submittals	Provide door, window/glazing and hardware schedules and hardware cut sheets.	
(nn)	Preliminary Plumbing Submittals	Provide plumbing fixtures schedules and plumbing fixtures cut sheets.	
(oo)	Preliminary Lighting Design Submittals	Provide lighting fixture cut sheets and illumination level analysis for interior and exterior spaces.	
(pp)	Preliminary Audio/Visual Submittals	(i) Single line diagrams for each system type; (ii) Equipment room layouts; (iii) Typical device layouts for each room type;	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		(iv) Provide audio visual equipment cut sheets; (v) High level network topology including VLANs and communication paths for each RAPS system; and (vi) Preliminary GUI's for each system type.	
(qq)	Preliminary Single Line Information Technology Distribution Diagrams	Showing cable management and equipment rooms, coordinated with the updated equipment lists.	
1.4	Construction Specifications	Construction specifications identifying all systems, materials, and construction execution methods proposed to be used in the Project. Specifications to be submitted in Master Format (current addition).	
1.5	Materials Sample Boards of Exterior Finishes	Provide sample boards indicating all exterior finishes (both existing and proposed). Samples shall be labelled such that the proposed product can be referenced in specifications as well as on drawings.	
1.6	Mock-ups	Design packages for proposed full scale mock-ups with all specified finishes and equipment, in accordance with Contracting Authority's design requirements, including fully resolved construction details and methods. Full scale mock-ups shall be prepared in accordance with Part 3, Section 3.2.3.22 of Schedule 15 - Output Specifications.	
(a)	Typical Office Floor – Mock-up Requirements	Mock-up of typical office floor demonstrating all finishes and integrated services in accordance with Part 3, Section 3.2.3.22 of Schedule 15 - Output Specifications.	

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Item #	Title	Description	Sheet Set
1.7	Construction Quality Plan	Updated Construction Quality Plan.	
1.8	Acoustics and Vibrations Report	<ul style="list-style-type: none"> (i) Comprehensive acoustical and vibration control report reviewing all proposed assemblies, acoustical conditions, and noise and vibration control measures. Identify any revisions to the report at each submittal. (ii) Provide a strategy for acoustical testing and detailed explanation of testing criteria to be employed. (iii) Provide an acoustical test plan to describe the proposed methodology and testing criteria to determine reverberation time (RT), background noise criterion (NC) levels, apparent sound transmission class (ASTC) and apparent impact isolation class (AIIC) ratings. (iv) Refer to in situ testing requirements for acoustics, noise and vibration as described in Part 3, Section 3.2.14 of Schedule 15 - Output Specifications. 	
1.9	Vertical Transportation Analysis	Vertical transportation analysis, reviewing vertical transportation strategy with reference to service volumes, flow, and security considerations. Various circulation types and transportation means to be detailed separately. Confirm approach of rehabilitation versus providing new equipment.	
1.10	Code Analysis	Ontario Building Code analysis and conformance strategy report. Including but not limited to description and approach to the code, approach to Part 11, building classifications, fire ratings, exit locations, travel distances,	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		exit widths, number of exits, washroom requirements, connections to Whitney Block and how the design deals with Public Zone and Private Zone circulation routes. Provide summary building code matrix within drawing package submission.	
1.11	Accessibility Diagrams and Analysis	<p>Accessibility report identifying features of the Facility design including those demonstrated on the drawings based on accessibility requirements from Part 3, Section 3.2.2 of Schedule 15 - Output Specifications, including:</p> <ul style="list-style-type: none"> (i) Key design features; (ii) Modifications to the existing building to achieve accessibility requirements; (iii) Integration of accessibility features including lighting, building systems, signage/wayfinding, etc. (iv) Detailed drawings showing typical accessibility requirements for clear door width, mounting heights, typical accessible and washroom stall, typical universal washroom, typical shower, handrails, stairs, ramps, parking spaces, service counters, TAI and TWSI, area of refuge, meeting rooms, etc.; and (v) Detailed drawings of typical accessible signage and wayfinding for entry. 	
1.12	Area Summary Analysis	<ul style="list-style-type: none"> (i) Updated program space (per Space Allocation Table) analysis and variance report including: <ul style="list-style-type: none"> (A) Identify net area of each room and department, listed by floor levels; (B) Identify net area of each Octant, listed by floor level, and listing % variance from equal division of A1.01 Tenant Office Area for that floor level; 	

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Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (C) Identify net area of each Podium Octant, listed by floor level, and listing % variance from 1,600 sq. ft.; (D) List line by line area variance, Component / element area variance in comparison with the Space Allocation Table in Schedule 15 - Output Specifications; (E) List line by line area variance comparison with previous submission; (F) List mechanical and electrical spaces outside of components areas; (G) Identify all unassigned space per floor; (H) List identify final room numbering and the alphanumeric room codes used in the Space Allocation Table and space data sheets in Part 2 of Schedule 15 - Output Specifications; and (I) List additional rooms not previously identified with additional sequential room numbers as required, and with identified applicable space data and space layout numbers. (ii) Total BOMA area calculations indicating: <ul style="list-style-type: none"> (A) Building areas on a floor by floor and totalized basis using BOMA Method A for Office Areas and Gross Areas of a building; (B) Variance from previously submitted area calculations; and (C) Total of Component A – Government of Ontario Office Space. (iii) Non-Residential Gross Floor Area, net floor area, and total floor area per City of Toronto Zoning By-law 438-86. 	
1.13	LEED Report	Provide proof of LEED registration, and LEED credits tracking documentation. Also provide documentation that supports achievement of all	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		Targeted LEED Credits and Additional Sustainable Requirements described in Part 1, Section 1.2.4. of Schedule 15 – Output Specifications (e.g. all LEED credits that are requirements of the Output Specifications).	
1.14	Energy Model Report	Preliminary energy model report with narrative and inputs including a digital copy of the entire energy model.	
1.15	Building Envelope Report	<ul style="list-style-type: none"> (i) Provide a building science envelope report that describes building envelope design and details. Identify: <ul style="list-style-type: none"> (A) Overall approach to building envelope design and performance objectives as per Part 3, Section 3.2.4.2 of Schedule 15 - Output Specifications; and (B) Exterior glazing approach in accordance with Part 3, Section 3.2.4.4 of Schedule 15 - Output Specifications. 	
1.16	Signage and Wayfinding	<ul style="list-style-type: none"> (i) Preliminary layout plan of Signage and Wayfinding program (interior and exterior), denoting proposed locations and quantities of all signs, and identifying which signs will require either power or data. (ii) Preliminary design of each sign type defined in Part 3, Section 3.2.16.3 and Part 3, Section 3.2.16.4 of Schedule 15 - Output Specifications, including font, colour, materials, finish selections, and dimension. (iii) Descriptions of functionality and expected use of each sign type, and demonstration of how the proposed design of the Signage and Wayfinding program reflects a Distinct Layer of Change or Distinct Layer of New Design, as appropriate. 	

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Item #	Title	Description	Sheet Set
1.17	CPTED Report	Perform and submit a Crime Prevention Through Environmental Design (CPTED) report for the Site.	
1.18	Software Development	Software development preliminary reports on Audio Visual (“AV”), Integrated Security System (“ISS”) and IT software.	
1.19	Design Acceptability Report	In accordance with Section 18.6 of the Project Agreement: (i) with each of the Design Development Submittals, Project Co shall submit a draft Design Acceptability Report; and (ii) with the Construction Document Submittals, Project Co shall submit a final Design Acceptability Report.	
1.20	FF&E Procurement, Design and Coordination Sub-Plan	Shall include, for certainty, an updated FF&E Procurement Sub-Plan and an updated FF&E Design and Construction Coordination Sub-Plan.	
1.21	Operational Start-Up Plan	An Operational Start-Up Plan pursuant to Section 4.4 of Part 6 of Schedule 15 – Output Specifications.	
1.22		Any other Submittals Contracting Authority reasonably requires to understand the Works.	

Macdonald Block Reconstruction Project

2. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 75% DESIGN DEVELOPMENT SUBMITTALS STAGE

Project Co shall provide the following updated Design Development Submittals to the Contracting Authority Design Team for review in accordance with this Schedule 10:

- 2.1 Updated and augmented submissions for all Design Development Submittals and requirements as listed in Section 1. Minimum Submittals requirements for 50% Design Development Submittals stage in accordance with the requirements set forth in Section 18.3 of this Project Agreement; Updated mock-up design packages with full and complete set of detailed Shop Drawings. Full working mock-ups are required and shall include all power, lighting, utilities, materials and components as described in Schedule 15 – Output Specifications; and
- 2.2 Project Co shall prepare the Commissioning Plan and submit with the 75% Design Development Submittals.

Macdonald Block Reconstruction Project

3. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 100% DESIGN DEVELOPMENT SUBMITTALS STAGE

Project Co shall provide the following updated Design Development Submittals to the Contracting Authority Design Team for review in accordance with this Schedule 10:

3.1 Updated and augmented submissions for all Design Development Submittals and requirements as listed in Section 2. All revisions to previous Submittals are to be tracked and noted. Minimum Submittals requirements for 75% Design Development Submittals stage; and in accordance with the requirements set forth in Section 18.3 of this Project Agreement including:

Item #	Title	Description	Sheet Set
3.2	Design Development Submittals	(i) Additional Design Development Submittals including the following for each title:	
(a)	Architectural Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), for the Facility, showing:	(i) Updated architectural floor plans showing all previously listed requirements and: (A) Overall dimensions; (B) Indication of fire areas, fire walls, and smoke zones; (C) All millwork/furniture, systems furniture and workstation layouts; (D) All equipment; (E) Floor elevations; and (F) Capacity information (number of seats, etc.).	
(b)	Heritage Drawings (prepared at appropriate scale)	(i) Updated heritage drawings showing all previously listed requirements; (ii) Provide detail plans, sections or elevations, or annotated photos where appropriate to illustrate: (A) All reinstated Salvaged Heritage Attributes; and (iii) All proposed materials and components designed to match existing Heritage Attributes.	

Item #	Title	Description	Sheet Set
(c)	Interior Design (prepared at 1: 50 scale)	(i) Provide plans sections and elevations, indicating development of interior design intent and showing architectural features and construction assemblies, including: <ul style="list-style-type: none"> (A) Approach and design details related to a Distinct Layer of Change specific to New Work in heritage areas; (B) Approach and design details related to a Distinct Layer of New Design for the Facility; (C) Specific solutions for all key program spaces including heritage spaces, conference rooms, meeting rooms, staff lounge, elevator lobbies, entrance lobbies, etc.; (D) Any other spaces required and directed by Contracting Authority; and (E) Clear indication of all existing, modified and new conditions. 	
(d)	Interior Plan and Section Details (prepared at 1:10 scale)	(i) Provide detail plans, sections and elevations of feature elements, including: <ul style="list-style-type: none"> (A) Details as required to illustrate the design of key spaces; (B) Representative wall sections at and adjacent to heritage spaces, including locations of Artwork; (C) Representative plan and section details on typical floors at exterior walls and at building cores; (D) Representative exterior wall sections within the podium indicating the joining and finishing of all associated component interior surfaces; and (E) Typical intersections between Heritage Attributes and new work. 	

Item #	Title	Description	Sheet Set
(e)	FF&E Plans (1:100)	Facility FF&E and FF&E category plans, indicated layout and respective category of complete FF&E scope for all rooms and spaces.	
(f)	Architectural Reflected Ceiling Composite Plans (prepared at 1:200 scale) of every level, for the Facility, showing:	(i) Update architectural reflected ceiling composite plans showing previous requirements as well as the following: (A) Show and coordinate all services, lights, diffusers, exit signs, security and AV equipment, access panel types and locations, etc. (B) Device schedule of all devices including mechanical, electrical, IT, AV, security, etc., with quantities provided per plan.	
(g)	Architectural Reflected Ceiling Plans (prepared at 1:100 scale) of every level for the Facility, except parking, loading and mechanical penthouse, showing:	(i) Update architectural reflected ceiling composite plans showing previous requirements as well as the following: (A) All typical rooms and special interest areas with location of major components shown; and (B) All heritage spaces with all components, system devices, types and colours indicated.	
(h)	3D Massing diagrams and Digital Renderings	(i) Updated building perspectives/renderings. (ii) 3D diagrams/renderings of the following: (A) Any new and/or significant modification to a Heritage Attribute (ie. new internal stair, new elevator, entrance canopy, feature stair revisions, shading devices at exterior lobby windows, etc.); and (B) Addition of new building components or modifications to exterior mechanical penthouses.	

Item #	Title	Description	Sheet Set
(i)	Structural Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	Updated structural floor plans showing all previously listed requirements in previous structural submissions and provide preliminary details for all items listed.	
(j)	Mechanical Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	(i) Updated mechanical floor plans showing all previously listed requirements as well as the following: <ul style="list-style-type: none"> (A) Detailed floor layouts showing locations of all major mechanical equipment items, pipe mains, risers and branch mains, duct mains including supply return and exhaust, hot water systems and distribution; (B) Mechanical floor plans prepared at 1:50 scale for penthouses and all equipment rooms; (C) Interior building section details coordinating and confirming preliminary fit of structural/electrical/mechanical); (D) Provisions for any equipment requirements; (E) Finalized load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants; (F) Finalized flow estimates for heating and cooling systems, air supply, return and exhaust systems; (G) Air flow schematic for air handling, makeup air units, exhaust fans and energy recovery units for all zoning. Indicate CFM and pressure relationship (positive, negative, neutral); (H) Updated plumbing fixture schedules; (I) Updated estimate of annual energy use; 	

Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (J) Ground heat exchanger model for 30 years, inputs and outputs, if applicable; (K) Floor plans for mechanical penthouses and equipment rooms to identify proposed path for major equipment removal and replacement; (L) Schematic layout for smudging equipment and systems; and (M) Schematic layout for ecology equipment and systems. 	
(k)	<p>Electrical Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:</p>	<ul style="list-style-type: none"> (i) Updated electrical floor plans showing all previously listed requirements as well as the following: <ul style="list-style-type: none"> (A) Detailed floor layouts showing locations of electrical equipment items, normal and emergency, major feeders and branch feeders, and locations of major pathways for all systems, including exterior public art; (B) Interior building section details coordinating and confirming preliminary fit of structural/electrical/mechanical; (C) Preliminary summary of lighting loads for all rooms; (D) Preliminary finalized load estimates for normal power distribution centres, life safety emergency power distribution centres, non-life safety emergency power distribution centres, and heating and cooling plants; (E) Floor plans for electrical and equipment rooms to identify proposed path for major equipment removal and replacement; and (F) Include consolidated floor layouts showing electrical power, voice and data outlets and audio visual equipment locations, power outlets required for equipment supplied by Contracting 	

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Item #	Title	Description	Sheet Set
		Authority and Macdonald Block Occupants, and other cabled systems.	
(l)	Riser floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	(i) Updated riser floor plans showing all previously listed requirements as well as the following: (A) Indicating riser rooms and equipment.	
(m)	Security Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	(i) Updated security floor plans showing all previously listed requirements as well as the following: (A) Detail drawings of the security command centre and other monitoring locations; and (B) Equipment details, locations of all security systems equipment, connection points and control points.	
(n)	Typical Building Sections (prepared at 1:100 scale) showing:	(i) Updated building sections showing all previously listed requirements as well as the following: (A) Preliminary ceiling space coordination diagram(s).	
(o)	Exterior Elevations (prepared at 1:100) showing:	(i) Updated exterior elevations showing all previously listed requirements as well as the following: (A) Significant mechanical and electrical equipment such as roof-top units, chimneys, louvers, transformers, pole lines etc.	
(p)	Typical Envelope / Cladding Details	(i) Updated typical building envelope and cladding details. (ii) Details related to any modifications to Heritage Attributes to suit Project Co design including:	

Item #	Title	Description	Sheet Set
	(prepared at 1: 50 or 1:10 scale),	(A) Exterior doors; (iii) Typical tower window section; (iv) Typical podium curtain wall; (v) Tower parapets; (vi) Podium parapets; (vii) Ledge conditions (including bird deterrent systems); (viii) Details of all elements mounted to exterior wall surfaces; and (ix) Details of exterior signage.	
(q)	Interior Finishes Colour and Materials Selection Boards	(i) Finalized interior finishes colour and materials selection boards; and (ii) preliminary room finishes schedule.	
(r)	Millwork / Accessories / Casegoods / Systems Furniture / Furniture Drawings (prepared at 1:50 or as otherwise noted)	(i) Drawings of all millwork / accessories / casegoods / furniture/ Facility FF&E identified in the room data sheets and shown in the space layouts in Schedule 15 - Output Specifications, including all dimensions, key elevations, and all fixed and moving elements; (ii) Millwork details (1:10 or 1:20 scale, as appropriate); and (iii) Cutsheets of proposed accessories, furniture solutions, etc.	
3.3	Wayfinding	(i) Finalized location plans (interior and exterior) denoting proposed locations and quantities of all signs, and identifying which signs will require either power or data; (ii) Finalized design of each sign type defined in Part 3, Section 3.2.16.3 and Part 3, Section 3.2.16.4 of Schedule 15 - Output Specifications, including	

Item #	Title	Description	Sheet Set
		<p>proposed font, colour, materials, finish selection, dimensions, and details regarding maintenance;</p> <p>(ii) Description of wayfinding strategy and how the proposed Signage and Wayfinding program effectively meets the wayfinding needs of the Project;</p> <p>(iv) Description of interaction with interactive digital displays and preliminary design of proposed digital interface;</p> <p>(v) Descriptions of functionality and expected use of each sign type, and demonstration of how the proposed design of the Signage and Wayfinding program presents as a Distinct Layer of Change or Distinct Layer of New Design, as appropriate; and</p> <p>(vi) French and Braille translation of signage to be completed, reviewed and approved by Contracting Authority prior to signage order.</p>	
3.4		Any other Submittals Contracting Authority reasonably requires to understand the Works.	

Macdonald Block Reconstruction Project

4. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 50%, 75% & 100% CONSTRUCTION DOCUMENT SUBMITTALS STAGE

Project Co shall provide the following Construction Document Submittals to the Contracting Authority Design Team for review in accordance with this Schedule 10:

Item #	Title	Description	Sheet Set
4.1	Construction Phasing Plan (prepared at 1:500 scale)	Updated construction phasing plans in accordance with Part 1, Section 1.3.2 of Schedule 15 - Output Specifications and the requirements set forth in Section 18.3 of this Project Agreement.	
4.2	Construction Documents Submittals	Updated Construction Documents Submittals in accordance with the requirements set forth in Section 18.3 of this Project Agreement including:	
(a)	Site Plans (prepared at 1:500 scale) showing:	(i) Updated site plans showing all previously listed requirements; and (ii) Planting schedule.	
(b)	Landscape Plan (prepared at 1:250 scale)	Updated landscape plan showing all previously listed requirements and fully described accessibility details.	
(c)	Site Servicing Plan Site design requirements. (prepared at 1:500 or as appropriate) showing:	Updated Site servicing plan showing all previously listed requirements.	
(d)	Site Grading Plan	Updated Site grading plan showing all previously listed requirements.	

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Item #	Title	Description	Sheet Set
	(prepared at 1:500 or as appropriate)		
(e)	Erosion and Sediment Control Plans (prepared at 1:500)	Updated erosion and sediment control plans(s) showing all previously listed requirements	
(f)	Drainage Plan (prepared at 1:500)	Updated drainage plan showing all previously listed requirements.	
(g)	Typical Site and Landscape Details (prepared at 1:10 scale)	Updated and augmented Site and landscape details.	
(h)	Architectural Graphic Floor Plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:	Updated composite floor plans (prepared at 1:200) showing all previously listed requirements.	
(i)	Architectural Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), for the Facility, showing:	(i) Architectural floor plans showing all previously listed requirements and: (A) Full dimensions; (B) Layout of all spaces; (C) Fire and life safety plans; (D) Material symbols;	

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Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (E) Door symbols; (F) Glazed light symbols; (G) Window types and numbers; (H) Floor material changes; (I) Pits, trenches, etc.; (J) Furring notes; (K) Hatched walls and partitions; (L) Depressed floor slabs for terrazzo, tile, etc.; (M) Depressed slabs for access flooring (if applicable); (N) Access floors including ramps, stairs, lifts, guards and handrails, etc.; (O) Curbs for mechanical room penetrations; (P) Sump pits, gratings; (Q) Recessed mats; (R) Expansion joints; (S) Pipe trench; (T) Convectors; (U) Low partitions; and (V) Movable partitions. 	
(j)	Heritage Drawings	Heritage floor plans showing all previously listed requirements and full dimensions.	

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Item #	Title	Description	Sheet Set
(k)	Space Development Drawings reflected ceiling plans, and select elevations (prepared at 1:50 scale) for key areas listed:	Updated and augmented enlarged architectural detailed plans showing all previously listed requirements and in addition for all other areas required to explain the design intent.	
(l)	Structural Composite Floor Plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:	Update structural composite floor plans showing previous requirements.	
(m)	Structural Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	(i) Updated structural floor plans showing all previously listed requirements as well as the following: (A) Sections/elevations showing all structural elements of the proposed work and details for the traffic wearing system; (B) All legends and schedules; (C) Finalized phasing; and (D) Finalized structural loads.	
(n)	Mechanical Composite Floor Plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:	Update mechanical floor plans showing previous requirements.	

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Item #	Title	Description	Sheet Set
(o)	Mechanical Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	(i) Updated mechanical works showing all previously listed requirements as well as the following: (A) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical; (B) Mechanical floor plans prepared at 1:50 scale for penthouses and all equipment rooms. (C) All legends and schedules; (D) HVAC and plumbing details; (E) Enlarged equipment room and toilet plans; (F) Mechanical room plans; (G) Finalized estimate of annual energy use; and (H) Control diagrams with control points and devices and sequences of operations for all systems.	
(p)	Electrical Composite Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:	Updated electrical composite floor plans showing previous requirements.	
(q)	Electrical Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	(i) Updated electrical floor plans showing all previously listed requirements as well as the following: (A) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical; (B) All legends, and schedules; (C) Grounding details;	

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Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (D) Fire alarm riser diagram; (E) Telecom riser diagram; (F) Network cabling riser diagram; (G) Lighting control schematics; (H) Electrical details including electrical room equipment requirements; and (I) Electricity metering riser diagram. 	
(r)	IT Composite Floor Plans (prepared at 1:100 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:	<ul style="list-style-type: none"> (i) Updated IT cabling infrastructure composite floor plans showing: <ul style="list-style-type: none"> (A) Zoning; and (B) Main and satellite communications systems rooms. 	
(s)	IT Cabling Infrastructure Floor Plans (prepared at 1:100 scale) of every level showing:	<ul style="list-style-type: none"> (i) Updated IT cabling infrastructure floor plans showing all previous requirements listed above; and (ii) Provide proof of coordination with (v) mechanical and electrical requirements in telecommunications spaces, including UPS, HVAC, grounding, fire alarm, and other systems. 	
(t)	Riser floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:	<ul style="list-style-type: none"> (i) IT floor plans showing: <ul style="list-style-type: none"> (A) Indicating mounting schedules, final locations of equipment. 	
(u)	Security Floor Plans	Security floor plans showing all previous requirements	

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Item #	Title	Description	Sheet Set
	(prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:		
(v)	Architectural Reflected Ceiling Composite Plans (prepared at 1:200 scale) of every level, for the Facility, showing:	Update architectural reflected ceiling composite plans showing previous requirements	
(w)	Architectural Reflected Ceiling Plans (prepared at 1:100 scale) of every level for the Facility, including parking, loading and mechanical penthouse, showing:	(i) Updated reflected ceiling plans (prepared at 1:100 scale) for all areas, showing all previously listed requirements as well as the following: (A) Light fixtures; (B) Grilles; (C) Diffusers; (D) Heat detectors; (E) Smoke detectors; (F) Soffits (dotted); (G) Movable partitions; (H) Access panels; (I) Hatches; (J) Major structural members (if sight exposed); (K) Other ceiling-mounted equipment; (L) Hoods; (M) Exit signs; (N) Room numbers;	

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Item #	Title	Description	Sheet Set
		<p>(O) Any other fixture or device to be installed in or mounted on ceiling, and</p> <p>(P) Device schedule of all devices including mechanical, electrical, IT, AV, security, etc., with quantities provided per plan.</p>	
(x)	<p>Composite Building Sections (prepared at 1:200 scale), including penthouse(s) and Roof(s), for the Facility, showing:</p>	Composite building sections showing previous requirements.	
(y)	<p>Building Sections (prepared at 1:100 scale) showing:</p>	<p>(i) Updated and augmented building sections for all areas of the Project showing all previously listed requirements as well as the following:</p> <p>(A) Completed ceiling space coordination diagram(s);</p> <p>(B) Vertical dimensions;</p> <p>(C) Floor elevations;</p> <p>(D) Column lines;</p> <p>(E) Room numbers/names;</p> <p>(F) Rooftop equipment; and</p> <p>(G) Wall section designations.</p>	
(z)	<p>Exterior Design Detailed Drawings (prepared at 1:50 scale or as otherwise indicated)</p>	Updated and augmented exterior wall sections (prepared at 1:50 scale) and envelope/ cladding details (prepared at 1:10 scale), with updated building science report reviewing envelope design and details.	

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Item #	Title	Description	Sheet Set
(aa)	Updated Exterior Wall Sections (prepared at 1:50 scale)	Updated and augmented exterior wall sections.	
(bb)	Updated Typical Envelope / Cladding Details (prepared at 1:10 scale)	Updated and augmented typical envelope and cladding details.	
(cc)	Stair and Elevator Plans, Sections and Details (prepared at 1:50 scale or scales as appropriate):	Updated and augmented stair and elevator plans, sections and details.	
(dd)	Composite Building Elevations (prepared at 1:200 scale), including penthouse(s) and Roof(s), for the Facility, showing:	Update composite building elevations showing previous requirements.	
(ee)	Exterior Elevations (prepared at 1:100) showing:	(i) Updated exterior elevations showing all previously listed requirements as well as the following: (A) Window types and numbers; (B) Entrance types and numbers; (C) Door types and numbers; (D) Wall material indication; (E) Coping materials; (F) Overhead fascia materials; (G) Top of foundation wall line; (H) Footing and foundation line;	

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Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (I) Floor lines; (J) Vertical dimensions; (K) Signage; (L) Section lines; (M) Column centerlines; (N) Louvers; (O) Stairs and ramps; (P) Chimneys; (Q) Stacks; (R) Light fixtures; and (S) Other mechanical or electrical equipment. 	
(ff)	<p>Interior Elevations (prepared at 1:50)</p>	<ul style="list-style-type: none"> (i) Interior elevations for all areas and showing: <ul style="list-style-type: none"> (A) Millwork and detail designations; (B) Shelving; (C) Tack board; (D) Whiteboard; (E) Interior glazed panels (dimensions and details); (F) Wall Base indication; (G) Mechanical grilles, thermostats, , etc.; (H) Wall protection indication (I) Graphics; (J) Equipment; (K) Interior finishes; (L) Electrical receptacles, speakers, clocks, light fixtures, etc.; 	

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Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (M) Wall-mounted accessories; (N) Plumbing fixture; and (O) Locker designation. <p>(ii) Interior elevations for all Heritage Attributes indicating all modifications.</p>	
(gg)	<p>Interior Design Details (prepared at 1:10 or scales as appropriate)</p>	<p>(i) Updated interior design details and additional information for all areas of the Facility, and also showing:</p> <ul style="list-style-type: none"> (A) Wall base types; (B) Soffits; (C) Curbs for mechanical penetrations; (D) Door and screen details; (E) Access floor details including all transitions between access floor and adjacent floor, ramps, stairs, guards and handrails, etc.; (F) Expansion joints; (G) Fireproofing at beams and columns; (H) Low walls; (I) Movable partitions (J) Change rooms pass thru-windows; (K) Automatic sliding/swing door details; (L) Security screening equipment details; (M) Expansion joint details; and (N) Typical partition construction; <p>(ii) Design details of all Heritage Attributes including:</p>	

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Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (A) Connections between existing Heritage Attributes and New Work; (B) Door jambs at existing and new openings, showing integration with heritage materials; (C) Mounting details of signage; (D) Details of Tactile Walking Surface Indicators; and (E) Reinstatement of salvaged materials. 	
(hh)	Door, Window/Glazing and Hardware Submittals	Updated door, window/glazing and hardware schedules and hardware cut sheets.	
(ii)	Room and Door Finish Schedules	For all areas of the Project.	
(jj)	Lighting Design Submittals	Updated lighting design submittals, including fixture cut sheets and illumination level analysis as well as fixture selection for exterior specialty lighting.	
(kk)	Millwork / Accessories / Casegoods / Systems Furniture / Furniture Drawings (prepared at 1:50 or as otherwise noted)	<ul style="list-style-type: none"> (i) Drawings of all millwork / accessories / casegoods / furniture / Facility FF&E identified in the room data sheets and shown in the space layouts in Schedule 15 - Output Specifications, including all dimensions, key elevations, and all fixed and moving elements for all areas; (ii) Millwork details; and (iii) Cutsheets of furniture selections. 	

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Item #	Title	Description	Sheet Set
(ll)	Audio/Visual Submittals	<ul style="list-style-type: none"> (i) Detailed functional diagrams showing every wire, label, specific device (make/model) and physical i/o for each system type; (ii) Equipment room layouts and rack elevations; (iii) Conduit risers; (iv) Details (plates, mounting, infrastructure, etc.); (v) Device layouts for each room; (vi) Provide audio visual equipment cut sheets; (vii) Detailed network topology and communication paths for each RAPS system including VLANs, IP coordination schedule indicating required ports, protocols and pathways; and (viii) Preliminary GUI's for each system type. 	
(mm)	Information Technology Drawings	Updated and augmented information technology drawings and details.	
4.3	Construction Specifications	Construction specifications, including all previously listed requirements and any new construction specifications required to describe the complete scope of work for the Project.	
4.4	Mock-ups	Report on review and adjustments of mock-ups, including Technical Specifications.	
(a)	Typical Office Floor – Mock-up Requirements	<ul style="list-style-type: none"> (i) On-Site typical floor mock-up to be completed and reviewed prior to the submittal of the 50% Construction Document Submittals; and (ii) Full working mock-up shall include all power, lighting, utilities, materials and components as described in Schedule 15 – Output Specifications. 	

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Item #	Title	Description	Sheet Set
4.5	Acoustics and Vibrations Report	Updated building vibration and acoustical analysis as it relates to relevant equipment, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Contracting Authority.	
4.6	Construction Quality Plan	Updated Construction Quality Plan, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Contracting Authority.	
4.7	Vertical Transportation Analysis	Updated vertical transportation analysis and approach, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Contracting Authority.	
4.8	Code Analysis	Updated Ontario Building Code and Ontarians with Disabilities Act analysis and compliance strategy.	
4.9	Accessibility Diagrams and Analysis	Updated accessibility approach with associated diagrams.	
4.10	Wayfinding	<ul style="list-style-type: none"> (i) Drawings detailing technical design of signage elements (interior and exterior) including dimensioned sections, plans and elevations to coordinate structural, fastening details, electrical and data components as applicable; (ii) Phased signage construction schedule; (iii) Installation type schedule; 	

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Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (iv) Complete messaging and graphic schedules, to be approved by Contracting Authority prior to production; and (v) Translation of all French and Braille messaging and submission of certification letters attesting to the accuracy of all such messaging from sources acceptable to Contracting Authority, as described in Part 3, Section 3.2.16 of Schedule 15 - Output Specifications. 	
4.11	Area Summary Analysis	Updated Area Summary Analysis Report including all previously listed requirements.	
4.12	LEED Report	Progress report on LEED credits tracking documentation. Also provide documentation that supports achievement of all targeted LEED Credits and additional sustainable requirements described in Part 1, Section 1.2.4 of Schedule 15 – Output Specifications (e.g. all LEED credits that are requirements of Schedule 15 – Output Specifications and those that are contributing to the LEED Silver Rating).	
4.13	Energy Model Report	Energy model report with narrative, inputs including a digital copy of the entire energy model, and outputs indicating energy and GHG emissions performance, per Part 1, Section 1.2.4 of Schedule 15 – Output Specifications.	
4.14	Commissioning Programs	Submit Outline Commissioning Program.	
4.15	Specific Shop Drawings	(i) Complete millwork Shop Drawings, including complete package of updated, final Shop Drawings used for Mock-up construction to be submitted prior to 100% Construction Documents Stage.	

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Item #	Title	Description	Sheet Set
		(ii) Full working mock-ups shall include all power, lighting, utilities, materials and components as described in Part 3 – Whole Building Statement of Schedule 15 - Output Specifications.	
4.16	Design Acceptability Report	In accordance with Section 18.6 of the Project Agreement: (i) with each of the Design Development Submittals, Project Co shall submit a draft Design Acceptability Report; and (ii) with the Construction Document Submittals, Project Co shall submit a final Design Acceptability Report.	
4.17	FF&E Procurement Sub-Plan and FF&E Design and Construction Coordination Sub-Plan	Shall include, for certainty, an updated FF&E Procurement Sub-Plan and an updated FF&E Design and Construction Coordination Sub-Plan.	
4.18	Operational Start-Up Plan	An updated Operational Start-Up Plan.	
4.19		Any other Submittals Contracting Authority reasonably requires to understand the Works.	

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5. OTHER SUBMITTALS

Project Co shall provide the following document Submittals to the Contracting Authority Design Team for review in accordance with this Schedule 10:

Item #	Title	Description	Sheet Set
5.1	Issue For Construction Documents	<ul style="list-style-type: none"> (i) Contract documents issued for construction (representing all trades, contracts, sub-contracts, etc.) including specifications. (ii) Requirements to be comparable to the requirements for the Construction Document Submittals as noted in Section 4. 	
	Works Schedule	<ul style="list-style-type: none"> (iii) Updated monthly, showing complete sequence of construction by activity, identifying Works of separate stages and other logically grouped activities and indicating: <ul style="list-style-type: none"> (A) dates for submission, review time, resubmission time and last date for meeting fabrication schedule of all required Shop Drawings and samples; (B) the early and late start, early and late finish, float dates and duration of all activities; (C) estimated percentage of completion for each item of the Works at each submission of schedule; (D) changes occurring since previous submission of schedule; and (E) a narrative report defining: <ul style="list-style-type: none"> (i) problem areas, anticipated delays, and impact on schedule; (ii) corrective action recommended and its effect; and (iii) effect of changes on schedules of the Project Co Parties. 	
5.2	Shop Drawings	<ul style="list-style-type: none"> (i) Prior to the 50% Design Development Submittals stage start, Project Co shall submit a complete list of anticipated shop drawings submittals. Contracting Authority shall review the list and select shop 	

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Item #	Title	Description	Sheet Set
		<p>drawings submittals that will be reviewed for compliance with Schedule 15 – Output Specifications. This selection by Contracting Authority shall form the final shop drawings submittal requirement for the Project.</p> <p>(ii) Shop Drawings and samples which will be processed by Contracting Authority include, but are not limited to:</p> <ul style="list-style-type: none"> (A) Major finishes and envelope systems and materials; (B) Security systems including hardware and access control; (C) Signage and wayfinding systems (including demonstration of an interactive digital directory); (D) Architectural feature elements and assemblies such as handrails, guardrails, feature stairs, canopies, etc.; (E) All work related to Heritage Attributes ; (F) All Artwork elements; (G) All major mechanical equipment and systems; (H) All major electrical equipment and systems, electrical coordination study and arc flash study; (I) Structural systems - including, but not limited to areas of structural modifications; (J) Modular systems furniture and all casegoods, accessories and furniture; (K) Millwork Shop Drawings. For timeline requirements, refer to 75% Design Development Submittals (millwork for mock-up shop drawings) and 50% and 100% Construction Document Submittals stage requirements; (L) Vertical transportation; (M) Food services equipment; 	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (N) Messaging Schedule visually detailing all messaging to appear within the Signage and Wayfinding program to be submitted to Contracting Authority for review and approval prior to fabrication; and (O) Any other Shop Drawings Contracting Authority reasonably requires during design and construction. 	
5.3	Review Comments From Authorities Having Jurisdictions'	All review comments from submissions to building authorities, insurance authorities and inspection authorities.	
5.4	Monthly Progress Reports	<p>Monthly progress reports are to be prepared and submitted in accordance with industry standards. The following is a specific list of items that are required to be included in the monthly progress report:</p> <ul style="list-style-type: none"> (a) Photographs of the construction, including aerial, exterior, interior and main mechanical and electrical components. An average of 20 photographs are to be included in each monthly progress report; (b) Project schedule identifying all key milestone dates. Original milestone dates (if revised) are to be provided; (c) Commissioning schedule identifying the dates for all equipment and components including those that will be tested off site; (d) List of work yet to be tendered and awarded; 	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (e) Quantity of construction personnel on site with the projected workforce per month to Final Completion; (f) Block diagram type floor plans showing completion of work - in colour coded format; (g) List of all site instructions and deficiency reviews completed by Project Co and the status with respect to completion of all deficiencies; (h) Site Review Reports issued by Project Co design team; and (i) List of all site review reports issued by the Design Compliance Consultant and status with respect to completion of all deficiencies noted in the site review reports. 	
5.5	Material and Finish Sample Mock-Ups	Material and finish samples (all exterior and interior finishes) and mock-ups, as noted in the construction specifications.	
5.6	Substitutions	Construction Contractor proposed substitutions.	
5.7	Deficiency Reports	Deficiency reports, updated monthly.	
5.8	Final Commissioning Program	Final Commissioning Program.	
5.9	Energy Model	Updated energy model.	
5.10	Approvals	Provide proof of the following by copy of certification or approval letter, as applicable: <ul style="list-style-type: none"> (ii) Electrical Safety Authority (ESA) Certificate of Inspection; 	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (iii) Ministry of the Environment (MOE) Certificate of Approval (Air & Noise); (iv) FM Global approval of Fire Protection System; (v) Technical Standards and Safety Authority (TSSA) approval for fuel systems; (vi) Technical Standards and Safety Authority (TSSA) approval for boilers and pressure vessels; and (vii) Technical Standards and Safety Authority (TSSA) approval for elevating devices including elevators, escalators, platform lifts, etc. 	
5.11	As-Built Documents & Operations Manuals	<ul style="list-style-type: none"> (i) Detailed log (spreadsheet format) identifying all As-Built documents and operations manuals. Detailed log to include as a minimum the following: <ul style="list-style-type: none"> (A) Drawing number for all As-Built documents with a summary of the changes made during construction; (B) List of all systems and components included in the operations manuals; (C) Any other information Contracting Authority reasonably requires to understand the Works; (D) Digital format submission of As-Built drawings shall include Autodesk CAD format for all drawings(all external references bound), in addition to Autodesk Revit and other digital format files; (E) As-Built progress set to be submitted at Substantial Completion stage; (F) Project Architect to review and confirm As-Built documents for accuracy prior to final As-Built document set being issued at final completion stage; and 	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		(G) As-Built set to clearly show location and dimension of all existing interior walls retained as part of the Works.	
5.12	Designated Substance Survey	Provide a report containing sampling throughout the Facility highlighting the location of all remaining DSHM. Sampling to follow applicable provincial regulation and guidelines. In addition, for every 30m of partition wall retained, three intrusive investigations are required within the top two courses to confirm cavity is free of asbestos.	
5.13	Furniture, Fixtures, & Equipment (Part 04)	Provide catalogue cuts and, if required, samples of all Facility FF&E and Part 04 FF&E required for the Project. Organize a tour to review samples of furniture proposed to be used in the Facility. Provide cost of all items including an itemized price for upgrades such as fabrics and other components.	
5.14	1 Year Post Occupancy Review	Prior to the one year post-occupancy date, as determined by Contracting Authority and Project Co, a detailed Facility report is to be provided identifying any deficiency issues with the Facility experienced since occupancy.	
5.15	Air and Water Testing and Balancing Reports	<ul style="list-style-type: none"> (i) Final air and water testing and balancing report prepared in accordance with industry standards. (ii) Air and water balancing to be started and 30 day stability testing to be completed and report submitted 30 days prior to Substantial Completion stage. Further required adjustment to be performed at occupancy stage. (iii) Following reports for balancing and testing to be submitted: 	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		<ul style="list-style-type: none"> (A) One month prior to Substantial Completion with forecast on future activities; (B) One month after Substantial Completion, with the final Commissioning Report; and (C) One month after post-Substantial Completion activities, with the final Commissioning Report. 	
5.16	Acoustics Report	<ul style="list-style-type: none"> (i) Written report with: <ul style="list-style-type: none"> (A) Octave band sound level plots and overall A-weighted sound levels for each space measured, from 31.5 Hz to 8kHz. Reconcile with NC levels specified in Room Data Sheets and Part 3, Section 3.2.14 of Schedule 15 - Output Specifications; (B) Apparent sound transmission class (ASTC) performance results, including 1/3 octave band (100Hz to 5kHz) source room and receiver room sound pressure level plots, receiver room reverberation time, and receiver room background noise levels for each space measured. Reconcile with STC ratings in Room Data Sheets and Part 3, Section 3.2.14 of Schedule 15 - Output Specifications; and (C) Octave band reverberation time plots for spaces tested. Reconcile with the reverberation time requirements specified in Part 3, Section 3.2.14 of Schedule 15 - Output Specifications. 	
5.17	System Test Report	<ul style="list-style-type: none"> (i) All building system test reports of the following key components: <ul style="list-style-type: none"> (A) Complete list of all building system test reports to be provided to the Design Compliance Consultant within 1 month after 	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		Commercial Close.	
5.18	BAS and Control Report	(i) Submit the following documentation prior to Substantial Completion: <ul style="list-style-type: none"> (A) General list, description and cut sheets for all components; (B) Detailed wiring and installation illustrations and complete calibration procedures for each field and panel device; (C) Print out list of all control points connected to the Building Automation System; and (D) Verification report indicating that all Building Automation System and controls components have been tested and are operating as intended. Include as part of verification report a copy of all point to point tests performed to confirm operation of the Building Automation System and connected points. 	
5.19	LEED General Requirements: Annotated LEED Checklist available from the US Green Building Council (USGBC)	Provide LEED project checklist provided by the US Green Building Council (USGBC) with all credits annotated as to whether they are: Yes, ? or No. For those credits defined as Yes or ?, provide a description of how that credit will be obtained for the Project per Section 22.3 of the Project Agreement.	
5.20	LEED Sustainability Plan	(i) Provide a detailed LEED sustainability plan that addresses but is not limited to the following key areas: <ul style="list-style-type: none"> (A) How the Project will achieve the required LEED certification level; (B) LEED mission statement for the Project; (C) Short term vision (design and construction); 	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		(D) Long term vision (30 year concession period); and (E) How the Project will achieve the GHG emissions target.	
5.21	LEED Submission	Provide all LEED documents required to be submitted to GBCI Canada and/or LEED Online (as one complete electronic document file) prior to actual submission to GBCI Canada and/or LEED Online.	
5.22	LEED Silver Accreditation	Provide proof of obtaining LEED Silver certification.	
5.23	Energy Target Letter	(i) Provide a final Energy Target Letter and supporting Aggregate Energy Model for approval by Contracting Authority as per the requirements of Schedule 36 – Energy Matters. (A) Provide a summary report identifying the areas and reasons for variation between the Aggregate Energy Model submitted at Commercial Close and the Aggregate Energy Model submitted with the final Energy Target Letter.	
5.24	Remedial Action Plan	Submit a Remedial Action Plan for the remediation of impacted soil and groundwater beneath the northeastern portion Macdonald Block, as required by Part 3, Section 3.2.19 of Schedule 15 - Output Specifications.	
5.25	Remediation Report	Submit a soil and groundwater remediation report within 60 days of completion of the remedial activities, as required by Part 3, Section 3.2.19 of Schedule 15 - Output Specifications.	
5.26	Long Term Strategic Conservation Plan	Submit an updated and comprehensive long-term Strategic Conservation Plan in accordance with the requirements of Part 3, Section 3.2.1.5.3.3 of Schedule 15 - Output Specifications.	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
5.27	Fit-Out Sub-Plans	<ul style="list-style-type: none"> (i) Submit a Fit-Out Design and Construction Coordination Sub-Plan addressing Appendix A to Part 7 of Schedule 15 - Output Specifications. (ii) Submit a Fit-Out Sub-Plan addressing the work plan and Gantt chart to achieve Fit-Out Works Phase Completion for each Phase of the Fit-Out Works. (iii) Submit a Fit-Out Works Phase Commissioning Program per Part 7, Section 7.1.9 of Schedule 15 - Output Specifications. 	
5.28	Fit-Out Design	<p>Per Part 7, Section 7.1.6 of Schedule 15 - Output Specifications submit the following:</p> <ul style="list-style-type: none"> (i) Design consultation kick-off presentation; (ii) Project Co Variation Notice outlining the difference between the Background Information identified as guidance in Appendix B of Part 7 of Schedule 15 - Output Specifications and the Functional Program per Appendix A of Part 7 of Schedule 15 - Output Specifications; (iii) Floor layouts and reflected ceiling plans 50% Design Development Submittals; (iv) Floor layouts and reflected ceiling plans 100% Design Development Submittals; (v) Floor layouts and reflected ceiling plans 50% Construction Document Submittals; (vi) Floor layouts and reflected ceiling plans 100% Construction Document Submittals; (vii) Floor layouts and reflected ceiling plans to include mechanical, electrical, security and IT/AV, and 	

Macdonald Block Reconstruction Project

Item #	Title	Description	Sheet Set
		(viii) Project Co Variation Notice outlining the difference between the approved Construction Document Submittals and the final Fit-Out designs;	
5.29	Operational Start-Up Plan	Submit an updated Operational Start-Up Plan particular to the Fit-Out Works Phase Completion and the move of Macdonald Block Occupants following each Fit-Out Works Phase Completion.	
5.30	Condition Assessment Reports	In accordance with the requirements of Schedule 15 - Output Specifications, and Schedule 33 – Existing Facilities Repairs and Independent Assessor, prior to the start of construction, submit the Condition Assessment Reports.	
5.31	Reconciliation Reports	In accordance with Project Agreement, Schedule 33 – Existing Facilities Repairs and Independent Assessor, submit the Reconciliation Reports. Locations and types of Prescribed Repairs and Additional Repairs shall be mapped in plan and in elevation so that the locations and extent of the repairs can be clearly identified.	
5.32	Independent Assessor Qualifications	In accordance with Project Agreement, Schedule 33 – Existing Facilities Repairs and Independent Assessor, submit documentation that describes the qualifications of the individual representatives of the Independent Assessor.	
5.33		Any other Submittals Contracting Authority reasonably requires to understand the Works.	

SCHEDULE 11A

DESIGN QUALITY PLAN AND CONSTRUCTION QUALITY PLAN

[REDACTED]

SCHEDULE 11B

SERVICE QUALITY PLAN OUTLINE

[REDACTED]

SCHEDULE 12

WORKS SCHEDULING REQUIREMENTS

1. DEFINITIONS

- 1.1 “**As-built Works Schedule**” means the final Progress Works Schedule with a Schedule Status Date equal to the actual Fit-Out Works Final Completion Date.
- 1.2 “**Contracting Authority Review Period**” means the time period required by Contracting Authority to review a Works Submittal measured in Business Days starting on the first Business Day after receipt of a Works Submittal from Project Co up to and including the day on which Contracting Authority returns the Works Submittal to Project Co with an assigned comment pursuant to Schedule 10 – Review Procedure.
- 1.3 “**Close-out Activity**” has the meaning given in this Schedule 12 Appendix B.
- 1.4 “**Commissioning Activity**” has the meaning given in this Schedule 12 Appendix B.
- 1.5 “**Current Look-ahead Schedule**” means the most up-to-date Look-ahead Schedule submitted by Project Co pursuant to Section 20.2(b)(iii) of the Project Agreement representing the current Project Co strategy for completing the Works in greater detail than is shown in the Current Progress Works Schedule. For clarity, a Look-ahead Schedule with a Schedule Status Date or a Schedule Revision Date earlier than 15 Business Days following the end of the previous calendar month shall not be deemed the Current Look-ahead Schedule.
- 1.6 “**Current Progress Works Schedule**” means the most up-to-date Progress Works Schedule submitted by Project Co pursuant to Section 20.2(b)(ii) of the Project Agreement representing the current Project Co strategy for completing the Works and the actual progress of the Works. For clarity, a Progress Works Report with a Schedule Status Date earlier than 15 Business Days following the end of the previous calendar month shall not be deemed the Current Progress Works Schedule.
- 1.7 “**Design Development Activity**” has the meaning given in this Schedule 12 Appendix B.
- 1.8 “**Draft Works Schedule**” means a draft version of the Works Schedule based on the Proposed Works Schedule to be delivered by Project Co pursuant to Section 20.2(b)(i) of the Project Agreement. “**Draft Works Schedules**” means collectively all Draft Work Schedules.
- 1.9 “**Interim Works Schedule**” means the schedule developed and being consistent with a Primavera Level 3 Schedule to complete the Works established between Contracting Authority and Project Co prior to or on the date of the Project Agreement attached hereto as Schedule 12 - Appendix A, Part 2, which shows a detailed critical path for (i) any Works undertaken by the preferred proponent prior to or on the date of the Project Agreement, and (ii) any Works undertaken by Project Co for approximately 4 months following Financial Close.
- 1.10 “**Key Works Milestone**” has the meaning given in this Schedule 12 Appendix B.

- 1.11 **“Look-ahead Schedule”** shall be developed in accordance with Section 9 of this Schedule 12 and means:
- (a) those elements of the Progress Works Schedule developed and being consistent with a Primavera Level 4 Schedule to support the planning of Contracting Authority activities, including but not limited to all Works Activities and any other applicable milestones and activities in progress, starting, or ending during the 12 week period starting 15 Business Days following the end of a previous calendar month; and
 - (b) the Interim Works Schedule.
- 1.12 **“Major Works Element”** has the meaning given in this Schedule 12 Appendix D.
- 1.13 **“Micro-Schedule Works Activity”** has the meaning given in this Schedule 12 Appendix B.
- 1.14 **“Micro-Schedule Works Milestone”** has the meaning given in this Schedule 12 Appendix B.
- 1.15 **“Permitting, Licensing and Approvals Activity”** has the meaning given in this Schedule 12 Appendix B.
- 1.16 **“Primary Works Activity”** has the meaning given in this Schedule 12 Appendix B.
- 1.17 **“Primary Works Milestone”** has the meaning given in this Schedule 12 Appendix B.
- 1.18 **“Procurement Activity”** has the meaning given in this Schedule 12 Appendix B.
- 1.19 **“Progress Works Schedule”** shall be developed in accordance with Section 8 of this Schedule 12 and means the working schedule indicating for a specific reporting period the actual progress, actual Works Milestone dates, actual Works Activity start and end dates, and revised forecast dates and activity durations for all incomplete Works Activities and Works Milestones, and any mitigation or recovery plan, shown in comparison to the baseline as defined by the Works Schedule or in comparison to the Recovery Schedule, as may be applicable, developed to a level of detail to document Project Co’s actual performance to complete the Works, and facilitate the analysis of any variance from the Works Schedule and forecasting of future performance to complete the Works and to analyze the schedule impact of any and all events or circumstances reported or updated pursuant to Sections 37.2(a), (b) and (d) of the Project Agreement, actual claims for Delay made pursuant to Section 37.2(f) of the Project Agreement or any Variation Confirmation or Variation Directive.
- 1.20 **“Project Schedules”** means, as applicable, any or all of the Current Progress Works Schedule, Current Look-ahead Schedule, Interim Works Schedule, Works Schedule, Look-ahead Schedule, Progress Works Schedule, Recovery Schedule, and Works Area Micro-Schedule.
- 1.21 **“Project Scheduler”** means the Project Co manager responsible to develop and maintain the Project Schedules and related reports.
- 1.22 **“Proposed Works Schedule”** means the schedule to complete the Works established between Contracting Authority and Project Co prior to or on the date of the Project Agreement attached

hereto as Schedule 12 – Appendix A, Part 1, which includes the Schedule Cushion and details in support of monitoring the progress of the Works, determining the likely future progress of the Works, and to analyze the schedule impact of any and all events or circumstances reported or updated pursuant to Sections 37.2(a), (b) and (d) of the Project Agreement, and actual claims for delay made pursuant to Section 37.2(f) of the Project Agreement or Variation until such time as the Draft Works Schedule becomes the Works Schedule pursuant to Section 20.2(d) of the Project Agreement.

- 1.23 **“Recovery Schedule”** means a Progress Works Schedule generated pursuant to Section 20.4(a)(iv)(A) of the Project Agreement to illustrate Project Co’s revised strategy for completing the Works Activities and maintaining the upcoming milestone dates. For clarity, the Recovery Schedule does not replace the Works Schedule and is therefore not a new baseline schedule but the Recovery Schedule will be used as a comparator for subsequent Progress Works Schedules to illustrate progress against Project Co’s revised strategy in accordance with Section 9 of this Schedule 12.
- 1.24 **“Recovery Schedule Report”** has the meaning given in Section 20.4(a)(iv)(C) of the Project Agreement.
- 1.25 **“Review Procedure Activities Register”** means a submittals register that Project Co develops, monitors, and regularly updates, where such register tracks all Works Submittals and including but not limited to those submittals related to FF&E, (including all re-submittals) that Project Co is required to provide in accordance with Schedule 10 – Review Procedure from and after Financial Close through to Fit-Out Works Final Completion.
- 1.26 **“Review Procedure Activity”** has the meaning given in this Schedule 12 Appendix B.
- 1.27 **“Schedule Revision Date”** means the last date on which changes were made to the specific Project Schedules including, but not limited to, the content, calendars or working time, work breakdown structure, groupings, sequencing logic, activity or milestone relationships, activity or milestone descriptions, any work breakdown structure code, the addition or deletion of any activity or milestone, or any settings, but excluding updates to indicate the actual progress of each activity, actual Works Milestone dates, actual Works Activity start and end dates, and revised forecast dates and activity durations for all incomplete Works Activities and Works Milestones.
- 1.28 **“Schedule Status Date”** means the date up to which (inclusive) the progress of the Works were measured, and on which the update to the specific Project Schedule is based, indicating the progress of each activity, actual as-built Works Milestone dates, and actual as-built Works Activity, durations, start and end dates.
- 1.29 **“Secondary Works Activity”** has the meaning given in this Schedule 12 Appendix B.
- 1.30 **“Secondary Works Milestone”** has the meaning given in this Schedule 12 Appendix B.
- 1.31 **“Utility Related Activity”** has the meaning given in this Schedule 12 Appendix B.
- 1.32 **“Working Day”** means a day on which Project Co can reasonably schedule a specific Works Activity considering the requirements of the Project Agreement and any other constraints.

- 1.33 **“Works Activity”** means any of the Design Development Activities, Permitting, Licensing and Approval Activities, Procurement Activities, FF&E Procurement and Installation Activities, Close-Out Activities, Primary Works Activities, Secondary Works Activities, Micro-Schedule Works Activities, as defined in Appendix B to this Schedule 12 or any other activity to complete the Works as defined in this Project Agreement.
- 1.34 **“Works Area Micro-Schedule”** shall be developed at the request of Contracting Authority in accordance with Section 20.2 of the Project Agreement, and Section 10 of this Schedule 12 and means any portion of the Progress Works Schedule for a specific portion of the Works that has been developed and is consistent with a Primavera Level 5 Schedule to support effective day-by-day or hour-by-hour coordination of the Works described in Section 20.2(e) of the Project Agreement; and each Works Area Micro-Schedule shall further contain the dates for events and activities (including Works Milestones) that are consistent with those set out in the Progress Works Schedule.
- 1.35 **“Works Milestone”** means any of the Key Works Milestones, Primary Works Milestones, Secondary Works Milestones, or Micro-Schedule Works Milestones as defined in Appendix B to this Schedule 12 or any other milestone included in the Project Schedules.
- 1.36 **“Works Schedule”** means Project Co’s baseline schedule which shall comply with Section 20.2 of the Project Agreement and Section 7 of this Schedule 12.
- 1.37 **“Works Submittals”** has the meaning given in Schedule 10 – Review Procedure.

2. GENERAL REQUIREMENTS

- 2.1 Project Co shall schedule the Works to conform to all the requirements of the Project Agreement. Project Schedules shall contain sufficient detail to the satisfaction of Contracting Authority.
- 2.2 Project Co shall prepare the Project Schedules in accordance with Good Industry Practice for a large complex project and in accordance with the Project Agreement.
- 2.3 Project Co shall base all the Project Schedules on the logical sequencing and reasonable durations anticipated to complete the Works
- 2.4 Project Co shall prepare detailed computerized Project Schedules using the critical path method network and a Works Schedule dependent cash flow forecast, each in a form approved by Contracting Authority.
- 2.5 Project Co shall divide the applicable Works into activities and milestones with appropriate phases, sequencing, interdependencies and logic to show Project Co’s overall approach to the planning and execution of the Works including, but not limited to, all Works Activities, all Works Milestones, and any other activities related to mobilization and setup, manufacturing and construction, including self-performed works, construction staging and sequencing, temporary works, subcontractor work, quality control and quality assurance activities, integration and commissioning activities, Variations and cash allowance works, and any other activities required both on and off the Site to complete the Works up to Fit-Out Works Final Completion.

2.6 Project Co shall:

- (a) continuously monitor and compare the progress of the Works against the Works Schedule, a Recovery Schedule, the Current Progress Works Schedule, and Current Look-ahead Schedule;
- (b) update the Project Schedules in accordance with the Project Agreement;
- (c) update the cash flow projections set out in the Works Report;
- (d) maintain the continuity of the Project Schedules critical path network for all updates and revisions;
- (e) immediately notify Contracting Authority of any variance or potential variance in any Works Activities or Works Milestones if the affected Works Activities or Works Milestones have any known or readily apparent impact on Contracting Authority, including integration and coordination issues with Contracting Authority or commissioning issues involving Contracting Authority or that is undertaken by Contracting Authority or by a Contracting Authority Party; and
- (f) notify Contracting Authority of any variance or potential variance in any Works Activities or Works Milestones in accordance with Project Co's obligations set out in Section 37.2 of the Project Agreement.

3. PROJECT SCHEDULE MEETINGS AND WORKSHOPS**3.1 Initial Meetings to Discuss Draft Works Schedule**

- (a) Prior to the submission of the Draft Works Schedule by Project Co pursuant to Section 20.2(b)(i) of the Project Agreement, Project Co shall schedule and attend a minimum of two planning meetings with Contracting Authority to discuss the scope, phasing and sequencing of the Project, the Works Activities and the Works Milestones and to resolve questions or issues relating to Project Co's preparation of the Draft Works Schedule.
- (b) The planning meetings shall take place at the date and time mutually agreed upon by Contracting Authority and Project Co provided that the first meeting shall be completed no later than 10 Business Days following Financial Close and the second meeting shall be completed no later than 30 Business Days following Financial Close.

3.2 Ongoing Meetings to Discuss Project Schedules

- (a) Unless otherwise agreed to by Contracting Authority and Project Co, at least twice and no more than five times per calendar year, upon Contracting Authority's written request, Project Co shall meet with Contracting Authority to explain Project Co's strategy, activities, critical path and areas of concern or particular challenges associated with the performance of the Works or any part thereof in relation to the Progress Works Schedule or any other Project Schedule for the upcoming six month period. The meetings shall take place at the date and time mutually agreed upon by Contracting Authority and Project Co.

- (b) To additionally prepare for a Works Committee meeting, the Project Co Representative, the Project Scheduler and the Contracting Authority Representative shall meet in the week preceding a Works Committee meeting to discuss the Current Progress Works Schedule, the Current Look-ahead Schedule and any other Project Schedule related matters.

3.3 Works Schedule Meeting Procedures and Practices

- (a) The meetings described in Sections 3.1(a) and 3.2(a) of this Schedule 12 shall have the following procedures and practices:
 - (i) Project Co shall chair the meeting.
 - (ii) Project Co shall prepare the agenda, subject to Contracting Authority comments.
 - (iii) The agenda and accompanying materials shall be circulated to the attendees at least 5 Business Days in advance of the meeting date.
 - (iv) Minutes of the meetings, recommendations and requests for matters to be escalated to the Works Committee shall be recorded and maintained by Project Co.
 - (v) Project Co shall distribute the minutes of the meeting within 5 Business Days of the meeting. Unless Contracting Authority notifies Project Co within 5 Business Days of receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Contracting Authority and Project Co shall be deemed to be in agreement with the minutes.

4. AUDIT AND SUBMISSION REQUIREMENTS

4.1 Audit Requirements:

- (a) On a quarterly basis, Project Co shall provide to Contracting Authority an audit of the Current Progress Works Schedule and the Current Look-ahead Schedule, to confirm conformance to the requirements of Appendix D to this Schedule 12, and to confirm the accuracy of the progress and as-built information. Project Co shall submit the audit report to Contracting Authority no later than 10 Business Days after the last day of the quarter. The audit report shall be reviewed and signed by the Project Scheduler and the Project Co Representative.

4.2 General Submission Requirements

- (a) Project Co shall submit the Project Schedules to Contracting Authority pursuant to Section 20.2 of the Project Agreement.
- (b) Project Co shall review and approve the Project Schedules and shall indicate same by including the Project Co Representative's dated signature on the front cover of each document.

- (c) Project Co shall submit the Draft Works Schedule, Recovery Schedule(s), As-built Works Schedule, the draft of a Works Area Micro-Schedule, and any revision to any of these submittals in accordance with Schedule 10 – Review Procedure.
- (d) Project Co shall submit all Project Schedules and related reports to Contracting Authority in accordance with the Project Agreement and this Schedule 12 and Contracting Authority may comment on these other Project Schedules in its sole discretion. For clarity, these documents shall not be Works Submittals.
- (e) All Project Schedules submitted to Contracting Authority shall be submitted in two electronic soft copy file formats. The first format shall be in the native file format of the software used to generate and manage the Project Schedules. The native format shall be Primavera 6.0 .XER. . The second format shall be a word searchable high resolution colour PDF version of each Project Schedule. Additionally, Project Co shall provide two hardcopy versions of the Project Schedules printed in colour in a reasonable scale and on a minimum paper size of 11” x 17”, one version displaying graphical sequence logic links and the other version suppressing the graphical sequence logic links. Each month, Project Co shall submit the .XER file used to generate all Project Schedules together with PDF soft and hard versions of the Project Schedules. Project Co shall base the next month’s .XER file on the preceding month’s .XER file.
- (f) The filename of each of the electronic files submitted shall indicate the project name acronym, schedule type, revision number and the Schedule Status Date in the format ‘YYYYMMDD’. e.g. the 5th version of the Progress Works Schedule for the ABC project indicating the progress of the works up to 31 October 2018 shall be named “ABC Updated Works Schedule Rev 05 – 20181031”.
- (g) Project Co shall create and maintain a register detailing the submission of each of the Project Schedule document sets. The register shall include the Project Schedule document title, submission date, Schedule Revision Date, Schedule Status Date, and version number. The updated register shall be included in any Project Schedule submission.
- (h) Upon Contracting Authority’s request, Project Co shall provide the details of the software and any additional software plug-ins used by Project Co, a copy of any templates, and the details for any software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable Contracting Authority to replicate the Project Schedules submitted by Project Co using the native file formats provided by Project Co.

5. PROJECT SCHEDULE REQUIREMENTS FOR SCHEDULE 10 WORKS SUBMITTALS

- 5.1 Project Co shall schedule the Review Procedure Activities, including the submission dates for all Works Submittals and the Contracting Authority Review Period in accordance with Section 2 of Schedule 10 – Review Procedure.

6. PROJECT SCHEDULES TECHNICAL REQUIREMENTS

6.1 Project Co shall comply with the Works Schedule technical requirements set out in this Schedule 12 Appendix D.

7. WORKS SCHEDULE

7.1 The Works Schedule is a baseline representation of Project Co’s initial strategy to complete the Works.

7.2 The Works Schedule shall be an unaltered copy of the Proposed Works Schedule for all information up to the date on which the Draft Works Schedule is submitted to Contracting Authority pursuant to Section 20.2 of the Project Agreement. For clarity, all Works Activities and Works Milestones scheduled to start before the date on which the Draft Works Schedule is submitted to Contracting Authority shall remain unchanged, Project Co may refine the remaining activity sequencing and durations only if these strategic or assumption changes are documented and explained in the Works Report and the forecast Substantial Completion Date shall be equal to the Scheduled Substantial Completion Date and all other Key Milestone dates shall remain unchanged;

7.3 Project Co shall not schedule as part of the Draft Works Schedule any new Works Activities that were not included in the Proposed Works Schedule on the date of this Project Agreement, which require any material input, review or participation or decision from Contracting Authority or any Contracting Authority Party without providing Contracting Authority at least 10 Business Days prior written notice and without obtaining the prior agreement of the Contracting Authority Representative.

7.4 The Works Schedule shall:

- (a) have a Schedule Status Date equal to the Financial Close date, unless the Works Schedule is revised as a result of a Variation issued pursuant to Schedule 22 – Variation Procedure in which case the Schedule Status Date for the revised Works Schedule shall be the date of the Variation Confirmation;
- (b) not have any progress data for any activity or milestone after the Schedule Status Date for the specific Works Schedule; and
- (c) not include any delays whatsoever unless otherwise agreed to by Contracting Authority in writing. Any delay and resulting mitigation measures shall only be shown in the Progress Works Schedule, Look-ahead Schedule and Works Area Micro-Schedule.

7.5 The Draft Works Schedule and the Works Schedule shall include at a minimum:

- (a) The title “Draft Works Schedule” until it becomes the Works Schedule pursuant to Section 20.2(d) of the Project Agreement and “Works Schedule” thereafter.
- (b) All elements included in the Proposed Works Schedule.

- (c) The data from the Proposed Works Schedule shall be saved as the baseline for the Draft Works Schedule and shall be shown together with the revised dates and durations to graphically indicate the variances between the Proposed Works Schedule and the Draft Works Schedule. When the Draft Works Schedule becomes the Works Schedule pursuant to Section 20.2(d) of the Project Agreement, the data from the Draft Works Schedule shall become the new baseline data for the Project Schedules. For clarity, each activity in the Draft Works Schedule shall have two horizontal bars indicating the Proposed Works Schedule baseline, and the revised Draft Works Schedule proposed baseline.
- (d) Key Works Milestones grouped together at the top of the Works Schedule in a section with the heading “Key Works Milestones”.
- (e) In a separate section titled “Review Procedure” a summary activity representing the related Design Development Activities. Project Co may create a single summary activity representing the Design Development Activities or the Review Procedure Activities of multiple Major Works Elements if the design for these Major Works Elements will be consolidated into a single submission.
- (f) The following Works Activities and Works Milestones structured in such a way to clearly indicate Project Co’s overall approach, phasing and sequencing of the planning and execution of the Works:
 - (i) Key Works Milestones;
 - (ii) Primary Works Milestones;
 - (iii) Primary Works Activities; and
 - (iv) any other activities required by Project Co to fulfill the requirements of this Project Agreement.

8. PROGRESS WORKS SCHEDULES

8.1 Progress Works Schedule Validity

- (a) If, in the opinion of Contracting Authority, any Progress Works Schedule does not meet the requirements of the Project Agreement, or the actual progress of the Works on or off the Site, an actual start date, or an actual finish date does not correspond to the information indicated in the Progress Works Schedule for the applicable time period, then the Progress Works Schedule shall be deemed null and void, shall not be relied upon, and Project Co shall submit a revised version of the Progress Works Schedule for review to Contracting Authority within 5 Business Days of receiving Contracting Authority’s written notice of same, which written notice shall include full details of the defects in the Progress Works Schedule rendering it null and void.

8.2 Progress Works Schedule Content

- (a) The Progress Works Schedule shall include, at minimum, the following elements:

- (i) the title “Progress Works Schedule” in the title block;
 - (ii) all elements required to be included in the Works Schedule;
 - (iii) the current progress of the Works;
 - (iv) the Works Schedule (or current Recovery Schedule, as applicable) baseline shown in the schedule using the scheduling software’s baseline functionality to visually indicate the variance between the Works Schedule (or current Recovery Schedule, as applicable) and the actual dates for all past or ongoing activities and milestones and the new forecast dates for all future activities and milestones as indicated in the Progress Works Schedule. For clarity, each activity shall be shown with two bars, the baseline bar and the actual or forecast bar in a format agreed to with Contracting Authority; and
 - (v) the implementation of each Variation Confirmation through which the addition of scope of Works is confirmed. For clarity, all Variations resulting in additional scope of Works shall be listed in the Progress Works Schedule as separate activities grouped together under the heading “Variations”, the activity name shall start with “VC-“ followed by the Variation Confirmation number and a short description;
- (b) the recovery plan to mitigate any delays; and
 - (c) potential Delay Events pursuant to Section 37.2(a) of the Project Agreement for which the notice required pursuant to Section 37.2(b) and 37.2(d) of the Project Agreement was provided to Contracting Authority. Project Co shall show the duration of the event, the impact to any of the related Works Activities and the mitigation measures to be implemented by Project Co.

9. LOOK-AHEAD SCHEDULE REQUIREMENTS

9.1 Look-ahead Schedule validity

- (a) Project Co shall ensure that Works Milestone dates and the Works Activity dates and durations indicated on the Current Look-ahead Schedule correspond to the Works Milestone dates and Works Activity dates and durations of the Current Progress Works Schedule for any specific period. If any of these Work Milestone or Works Activity dates do not correspond with the Current Progress Works Schedule, or the Current Progress Works Schedule does not comply with the requirements of the Project Agreement, the Current Look-ahead Schedule shall be deemed null and void and shall not be relied upon, and Project Co shall either:
 - (i) revise the Current Look-ahead Schedule and submit the revised version to Contracting Authority; or
 - (ii) generate a new version of the Progress Works Schedule indicating the correct Works Milestone and Works Activity dates and durations,

within 5 Business Days of becoming aware of the discrepancy.

- (b) The Current Look-ahead Schedule shall also be deemed null and void, and shall not be relied upon to define the Contracting Authority Review Period to process Works Submittals pursuant to Schedule 10 – Review Procedure, if:
 - (i) the actual sequencing logic and submission dates for the Review Procedure Activities and the scheduled Review Procedure Activities included in the Current Look-ahead Schedule does not conform to the requirements of Section 5 of this Schedule 12; or
 - (ii) if the Current Look-ahead Schedule is deemed null and void pursuant to Section 9.1(a) of this Schedule 12,

in which case the Contracting Authority Representative shall provide Project Co with an estimate of the time necessary for processing such Works Submittals pursuant to Section 2.7 of Schedule 10 – Review Procedure.

9.2 Look-ahead Schedule content

- (a) The Look-ahead Schedule shall at least include:
 - (i) the title “Look-ahead Schedule” and the date range for which the Look-ahead Schedule is applicable in the title block;
 - (ii) time filter of the Progress Works Schedule from the scheduling software for all elements required to be within the 12 week period, starting from the reporting date;
 - (iii) in the section titled “Review Procedure”, expand each summary activity created for the Works Schedule to include a separate activity for each Review Procedure Activity for each Works Submittal, and for each clearly indicating the specific Works Submittal number; and
 - (iv) activities related to each Variation confirmed by a Variation Confirmation issued to a greater level of detail than indicated in the Progress Works Schedule.

10. WORKS AREA MICRO-SCHEDULE REQUIREMENTS

10.1 Works Area Micro-Schedule validity

- (a) Project Co shall ensure that Works Milestone dates and the Works Activity dates and durations indicated on the Works Area Micro-Schedule correspond to the Works Milestone dates and Works Activity dates and durations of the Current Progress Works Schedule for any specific period. If any of these Works Milestone or Works Activity dates do not correspond with the Current Progress Works Schedule the Works Area Micro-Schedule shall be deemed null and void and shall not be relied upon, and Project Co shall either:

- (i) revise the Works Area Micro-Schedule and submit the revised version to Contracting Authority; or
- (ii) generate a new version of the Progress Works Schedule indicating the correct Works Milestone and Works Activity dates and durations,

within 5 Business days after becoming aware of the discrepancy.

- 10.2 Upon Contracting Authority's request, Project Co shall provide a drawing of the affected Works areas, which is marked up to illustrate the sequence and timing of the construction activities depicted within any Works Area Micro-Schedule.
- 10.3 The Works Area Micro-Schedule shall include, at a minimum, the following elements which shall be limited to the specific area or element of the Works related to that Works Area Micro-Schedule:
- (a) the title "Works Area Micro-Schedule", a descriptor of the area of Works for which the schedule is applicable, and the date range for which the Look-ahead Schedule is applicable in the title block;
 - (b) the information of the originally agreed Works Area Micro-Schedule for the specific area or element of Works shown in the schedule using the scheduling software's baseline functionality to visually indicate the variance between the agreed Works Area Micro-Schedule and the actual dates for all past or ongoing activities and milestones and the new forecast dates for all future activities and milestones indicated in any update of the Works Area Micro-Schedule. For clarity, each activity shall be shown with two bars, the baseline bar and the actual or forecast bar in a format agreed to with Contracting Authority, the first version of the schedule shall therefore have two bars per activity indicating the same timeframe, and each of the actual and forecast dates shall correspond with Current Progress Works Schedule;
 - (c) Micro-Schedule Works Milestones; and
 - (d) Micro-Schedule Works Activities.

APPENDIX “A”

PROPOSED WORKS SCHEDULE AND INTERIM WORKS SCHEDULE

[REDACTED]

APPENDIX “B”

DEFINITIONS FOR WORKS SCHEDULE MILESTONES AND ACTIVITIES

1.1 “**Close-out Activity**” means any of the following activities or milestone events:

- (a) any activity to develop, prepare and finalize the Final Commissioning Program and any activity to develop, prepare and finalize each of the Fit-Out Works Phase Commissioning Programs, in accordance with and pursuant to, as applicable, Section 24 and Section 24A of the Project Agreement and Schedule 10 – Review Procedure;
- (b) inspection by Contracting Authority Parties and the Independent Certifier;
- (c) identifying and resolving Minor Deficiencies and Fit-Out Works Phase Minor Deficiencies;
- (d) finalizing and issuing of as-built documents;
- (e) any other pre-Substantial Completion activity required to achieve Substantial Completion;
- (f) any other post-Substantial Completion activity required to achieve Final Completion;
- (g) in respect of each Fit-Out Works Phase Completion, any other pre- Fit-Out Works Phase Completion activity required to achieve such Fit-Out Works Phase Completion;
- (h) in respect of the last Fit-Out Works Phase Completion, any other post- Fit-Out Works Phase Completion activity required to achieve Fit-Out Works Final Completion; and
- (i) any additional activities or milestones related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Close-out Activities**” means collectively all of the Close-out Activities.

1.2 “**Commissioning Activity**” means any of the following activities or milestone events:

- (a) any activity to develop, prepare and finalize the Final Commissioning Program and any activity to develop, prepare and finalize each of the Fit-Out Works Phase Commissioning Programs, in accordance with, as applicable, Section 24 and Section 24A of the Project Agreement and Schedule 10 – Review Procedure;
- (b) any activity to obtain an approval or acceptance pursuant to the Project Agreement to complete the commissioning process;
- (c) joint Contracting Authority and Project Co inspections, testing and walk through activities;
- (d) commissioning coordination meetings, workshops and draft document page turns;

- (e) all notices to be issued pursuant to Section 24 of the Project Agreement;
- (f) activities and requirements pursuant to Schedule 14 – Outline Commissioning Program of the Project Agreement;
- (g) Contracting Authority review period pursuant to Schedule 10 – Review Procedure;
- (h) Independent Certifier review period pursuant to Sections 24.3(b) of the Project Agreement; and
- (i) any additional activities or milestones related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Commissioning Activities**” means collectively all of the Commissioning Activities.

1.3 “Design Development Activity” means any of the following activities or milestones events:

- (a) activities outlined in the Design Quality Plan;
- (b) due diligence, including review of existing information, field survey, investigation and testing;
- (c) presentations/workshops, including but not limited to the Design Workshops, pursuant to section 18.5 of the Project Agreement, on design topics expected to involve multiple Contracting Authority stakeholders, or any other activities required to satisfy and demonstrate design conformance;
- (d) production of Design Development Submittals;
- (e) production of Construction Document Submittals;
- (f) production of Works Submittals and Services Submittals, to be submitted prior to Substantial Completion and each Fit-Out Works Phase Completion, pursuant to Schedule 10 – Review Procedure;
- (g) other design development activities outlined in Section 18 of the Project Agreement; and
- (h) any additional activities related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Design Development Activities**” means collectively all of the Design Development Activities.

1.4 “FF&E Procurement and Installation Activities” means the activities to be undertaken by Project Co as set forth in Section 21 of the Project Agreement, including, the procurement, decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning, and training, in respect of FF&E.

1.5 “**Key Works Milestone**” means any of the following milestone events and activities:

- (a) Commercial Close;
- (b) Financial Close;
- (c) Substantial Completion;
- (d) Final Completion;
- (e) the Longstop Date;
- (f) each Fit-Out Works Phase Completion;
- (g) Fit-Out Works Final Completion; and
- (h) any additional activities related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Key Works Milestones**” means collectively all of the Key Works Milestones.

1.6 “**Micro-Schedule Works Milestone**” means any of the following milestone events:

- (a) any milestone associated with any Micro-Schedule Works Activities; and
- (b) any additional milestone related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Micro-Schedule Works Milestones**” means all of the Micro Schedule Works Milestones.

1.7 “**Micro-Schedule Works Activity**” means any of the following activities:

- (a) any activity in a Primavera Level 5 Schedule;
- (b) any one activity associated with the development of a Works Area Micro-Schedule; and
- (c) any activity requiring the involvement of Contracting Authority or any Contracting Authority Party, for the activity to start and/or finish, or any activity that would impact the subsequent activity or operations of Contracting Authority or any Contracting Authority Party, requiring greater detail than Secondary Activities, and activity requiring the involvement of a Contracting Authority Party for the activity to start and/or finish,

and “**Micro-Schedule Works Activities**” means collectively, all of the Micro-Schedule Works Activities.

1.8 “**Permitting, Licensing and Approvals Activity**” means for each permit, license or approval any of the following activities or milestone events:

- (a) consultation and/or coordination activities with the applicable federal, provincial, municipal authorities, utility service providers and property owners (if applicable);
- (b) preparation of documentation for the permit, licence or approval request, including pre-submission co-ordination and consultation;
- (c) review and approval of the permit, licence or approval starting on the date the submission is made to the relevant authority and ending on the date it is anticipated the decision would be made; and
- (d) any additional activities related to or associated with any of the foregoing for Project Co to fulfill the requirements of this Project Agreement,

and “**Permitting, Licensing and Approvals Activities**” means collectively all of the Permitting, Licensing and Approval Activities.

1.9 “**Primary Works Activity**” means any of the following:

- (a) an activity in a Primavera Level 1, 2 and 3 Schedule;
- (b) any one activity associated with the development of the Works Schedule; and
- (c) depicting, collectively, the overall Project broken down into major components by area including, but not limited to, activities that define all Key Works Milestones, Primary Works Milestones, major elements of design, engineering, permitting, procurement, demolition, abatement, construction, testing, commissioning, start-up and/or handover,

and “**Primary Works Activities**” means, collectively, all of the Primary Works Activities.

1.10 “**Primary Works Milestone**” means any of the following milestones associated with the Primary Works Activities, and any other milestones required by Project Co to fulfill the requirements of the Project Agreement:

- (a) any milestone dates associated with Primary Works Activities;

and “**Primary Works Milestones**” means, collectively all of the Primary Works Milestones.

1.11 “**Procurement Activity**” any of the following activities or milestone events for subcontracts, long-lead or architecturally significant equipment:

- (a) issuance of purchase order or contract finalization;
- (b) manufacturing or assembly;
- (c) pre-delivery factory quality control and acceptance testing, delivery to site, quality assurance and material acceptance; and

- (d) any additional milestones related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Procurement Activities**” means, collectively all of the Procurement Activities.

1.12 “Review Procedure Activity” means any of the following activities or milestones in the context to review procedure:

- (a) the proposed Project Co submission of each Works Submittal (including, for certainty, each Design Development Submittal and Construction Document Submittal) indicated as an activity where the first day of the activity shall be the day on which Project Co submit the Submittal to Contracting Authority for Review followed by the Contracting Authority Review Period starting on the second day of the activity shown in the schedule and the time provided to Contracting Authority to complete the review as governed by this Project Agreement;
- (b) a buffer period to resolve outstanding non-conformance items and incorporate comments after the review of each Works Submittal before the associated construction activity commences, for clarity the buffer may be indicated as a positive lag after the Contracting Authority Review Period except for critical path construction activities for which the buffer between the preceding Contracting Authority Review Period and the construction activity shall be shown as an identifiable activity;
- (c) specific activities and approvals that are the responsibility of Contracting Authority that must coordinate with the Works; and
- (d) any additional activities related to or associated with any of the foregoing for Project Co to fulfill the requirements of this Project Agreement,

and “**Review Procedure Activities**” means all of them.

1.13 “Secondary Works Activity” means any of the following:

- (a) an activity in a Primavera Level 4 Schedule;
- (b) all Primary Works Activities developed at a greater level of detail that depicts important elements of construction; and
- (c) any activity associated with the development of the Look-ahead Schedule,

and “**Secondary Works Activities**” means collectively all of the Secondary Works Activities.

1.14 “Secondary Works Milestone(s)” means any other milestone(s) as required by Project Co to fulfill the requirements of this Project Agreement.

1.15 “Utility Related Activity” means for each system per phase or section of the Works any of the following activities:

- (a) approvals by Utility Companies;
- (b) relocation for each specific occurrence of Utilities;
- (c) inspection, acceptance and hand-back of the Utilities to the Utility Companies; and
- (d) any other activity related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Utility Related Activities**” means, collectively all of the Utility Related Activities.

APPENDIX “C”

MAJOR WORKS ELEMENTS AND PRIMARY AND SECONDARY COMPONENTS

[REDACTED]

APPENDIX “D”

WORKS SCHEDULE TECHNICAL REQUIREMENTS

1. WORKS SCHEDULE TECHNICAL REQUIREMENTS

- 1.1. Project Co shall generate the Project Schedules using Primavera 6.0 that supports the completion of the Works in accordance with Section 20.1 of the Project Agreement. Where software specific terminology is used in this Schedule 12 to defined specific requirements, Project Co shall implement measures to achieve a similar or higher level of scheduling control, quality, content and output.
- 1.2. Project Co shall use critical path methodology that uses the sequence of activities that represents the longest path through the Works to determine the shortest possible project duration to complete the Works.
- 1.3. The title-block of any of the Project Schedule document shall include:
 - (a) Project title;
 - (b) Unique project identifier number;
 - (c) Title of the document (i.e. “Proposed Works Schedule”, “Draft Works Schedule”, “Works Schedule (baseline)”, “Recovery Schedule”, “Progress Works Schedule”, ‘Look-ahead Schedule”, or “Works Area Micro-Schedule”);
 - (d) Works Schedule (baseline) Version number, and the date on which the Works Schedule was agreed. If the Works Schedule has not been agreed, state “not-agreed” instead of a date;
 - (e) Schedule Status Date, when applicable;
 - (f) Version number;
 - (g) Author name;
 - (h) Date on which the document was published for distribution (Schedule Status Date being “as of mmyyyydd”), and
 - (i) Any other information as required pursuant to this Project Agreement.
- 1.4. The Progress Works Schedule, Look-ahead Schedule and Works Area Micro-Schedule shall include the current progress of the Works as of the Schedule Status Date of the specific Project Schedule, including:
 - (a) the percentage completion for each schedule activity and the expected date of completion of each milestone. For clarity, the percentage represents the physical percentage of completion of the underlying Works Activity and does not represent payment progress;

- (b) the actual start date for all in progress activities;
- (c) the actual start and end date for all completed activities;
- (d) the actual date for each milestone achieved;
- (e) the current forecast duration, start and end date for each of the remaining activities; and
- (f) the current forecast date to achieve each of the remaining milestones.

For clarity, the actual as-built information described in 1.4(a) – 1.4(d) above, shall not be changed unless agreed to in writing by Contracting Authority.

1.5. Project Co shall:

- (a) identify activities in a graphical, time-scaled, horizontal bar chart format;
- (b) group the activities to clearly identify Works of separate stages where the completion of a stage of Works or completion of a series of linked stages results in the achievement of one of the Key Works Milestones, and each Key Works Milestone shall be the finish milestone for the series of staged Works;
- (c) employ project level user defined activity codes that allows for the classification, categorizing and organising of each Works Activities and Works Milestone to filter, select and sort the Works Activities and Works Milestones for reporting and analytical purposes based on who is carrying out the work, the stage of the works, and section as agreed to with Contracting Authority and further defined in Section 1.5(f)(xviii) to 1.5(f)(xxii) of this Appendix E of this Schedule 12. All activity codes shall be unique and shall have appropriately defined unique definitions using consistent and intuitive terminology that would be understandable to Contracting Authority;
- (d) employ a coding scheme and activity grouping in the Project Schedules to ensure that each of the Project Schedule deliverables can be generated through the appropriate roll-up of activities. For clarity, each defined higher order activity may act as a summary of the lower order activities representing the overall effort to complete the higher order activity, include sufficient detail to identify the major activities and milestones for planning, coordination, progress and earned value assessment purposes;
- (e) utilize colour coding of work breakdown structure and other visual means to facilitate the understanding of the Project Schedules by Contracting Authority;
- (f) for each Works Activity, Works Milestone or any other activity or milestone included in the Project Schedules, at least include:
 - (i) a unique activity ID that shall be alpha-numeric starting with a letter
 - (ii) a unique name or description using consistent and intuitive terminology that would be understandable to Contracting Authority and only using activity

descriptions that begin with a verb or work function followed by an object. The description shall not include percentages and shall, where applicable, contain a location

- (iii) early and late start dates, each with a starting time set as the intended work start time for each work day, but in any event before noon of the specific day;
- (iv) early and late finish dates, each with a finish time set as the intended work finish time for each work day, but in any event after noon of the specific day;
- (v) actual start and actual finish dates, and Project Co shall include:
 - A. an actual start date for all activities with progress registered, and provide the physical % progress for all activities with an actual start date; and
 - B. an actual finish date for all activities with 100% progress, and 100% physical progress registered for all activities with an actual finish date;
- (vi) original planned duration as defined by the Works Schedule, indicated as work days and not calendar days, which duration shall be the most-likely duration and used for the critical path calculation and shall be at least one work day long. Zero duration activities shall be coded as milestones and not activities;
- (vii) physical % completion, for clarity, all activities shall use the same percentage completion type representing the physical completion of the activity, and shall not use any other completion type i.e. duration completion, payment percentage etc.;
- (viii) remaining duration, manually entered or calculated when entering the physical % completion and the expected finish date;
- (ix) expected finish date, manually entered or calculated when entering the physical % completion and the remaining duration;
- (x) actual duration for all completed activities;
- (xi) calendar assigned;
- (xii) total float or slack (e.g. the amount of time that the activity can be delayed without delaying the Substantial Completion Date);
- (xiii) free float (i.e. the amount of time that the activity can be delayed without delaying the early start of its successor activity);
- (xiv) relationship with other activities and milestones; and
- (xv) activity or milestone lag;

- (g) only use the “task dependent” activity type for all Works Activities, and shall only use a “WBS summary” activity type if the Project Schedules remain logical and the critical path calculation is unaffected by the deletion of any activity defined as a “WBS summary”;
- (h) include inter-relationships and logic dependencies between all Works Activities, Works Milestones or any other activities or milestones included in the Project Schedules, and Project Co shall:
 - (i) use closed sequence logic for each Works Activity, for clarity, each Works Activity shall have at least one predecessor and at least one successor, and each Works Activity shall have a start and a finish relationship;
 - (ii) use closed sequence logic for each Works Milestone, for clarity, each Works Milestone shall have at least one predecessor except for the first Works Milestone denoting Financial Close, and have at least one successor except for the last Works Milestone denoting the Fit-Out Works Final Completion Date, and each Works Milestone except for the first and last shall have a start and a finish relationship;
 - (iii) not use the start-to-finish (SF) activity relationship type between activities unless otherwise agreed to by Contracting Authority;
 - (iv) for each start milestone only define a finish-to-start (FS) or start-to-start (SS) relationship with its predecessor, a start-to-start (SS) or start-to-finish (SF) relationship with its successor, a start-to-start (SS) relationship with any other start milestone, or a start-to-finish (SF) relationship to a finish milestone;
 - (v) for each finish milestone only define a finish-to-finish (FF) or start-to-finish (SF) relationship with its predecessor, a finish-to-start (FS) or finish-to-finish (FF) relationship with its successor, a finish-to-start (FS) relationship to any other start milestone, or a finish-to-finish (FF) with any other finish milestone;
 - (vi) not use a negative lag between any Works Activities and/or Works Milestones;
 - (vii) minimize the use of positive lag between Works Activities or Works Milestones on a finish-to-start (FS) activity type, for clarity, if for any reason the next activity cannot start for a specific period after the preceding activity has finished, e.g. due to concrete curing etc., then such an event shall be indicated as an activity and indicated in the schedule using the appropriate logic unless the Project Agreement requirements specifically allows otherwise;
 - (viii) for any two Works Activities or Works Milestones with a start-to-start (SS) relations define a lag no longer than the duration of the predecessor duration;
 - (ix) not use reverse logic, for clarity, a Works Activity shall not have a finish-to-finish relationship with a predecessor, and a Works Activity shall not have a start-to-start (SS) relationship with a successor; and

- (x) only define one relationship per activity or milestone pair, except for the finish-to-finish (FF) and start-to-start (SS) relationship pair that may be used together for an activity or milestone pair;
- (i) use unconstrained sequencing logic and Project Co shall not use imposed date constraints to replace or limit sequencing logic for any Works Activity or Works Milestone, except for the first starting milestone defining the Financial Close date, unless it is impossible to sequence the work otherwise. When a constraint is used it shall only be of the “start-no-earlier than” or “finish-no-later than” constraint types. For every imposed date constraint used Project Co shall provide a narrative in the Works Report detailing the reason for using the imposed date constraint and the scheduling methodology used to prevent inaccuracy when calculating the critical path and available float. For clarity, Project Co shall never use the “Expected finish”, “Start on”, “Finish on”, “Mandatory start”, “Mandatory finish”, or any other similar constraint type, nor any other constraint type that would impact on the float calculations to determine the critical path;
- (j) reflect the constraints related to allowable hours of work on the Site, or any other schedule related restrictions in establishing the calendars, logical relationships and durations for the activities;
- (k) define and use appropriate non-global project level activity based calendars, and for each calendar define:
 - (i) a descriptive calendar name using intuitive terminology that would be understandable to Contracting Authority;
 - (ii) the intended Working Days and working hours conforming to the requirements of the Project Agreement and any other governing approvals and permits that are used as the basis for critical path calculations, and all non-Working Days;
 - (iii) all non-Working Days including, but not limited to, all public holidays for the full project timeframe;
 - (iv) the first day of each work week as a Monday; and
 - (v) the starting time for each work day to the intended normal starting time, but in any event no later than noon, and set the finish time for each work day to the intended normal finish time, but in any event no earlier than noon of the day;for clarity, global calendars shall not be used. Project Co shall minimize the number of calendars used;
- (l) only specify activity durations using full Working Days and shall not use fractional durations (i.e. 5.5 days);
- (m) schedule the Works to minimize the effects of adverse weather and to allow for protection of the Site from such effects;

- (n) ensure durations for any Works Activity except for single process-step activities (such as manufacturing time and delivery periods, etc.) and activities are as follows:
 - (i) Primary Works Activity duration shall be no less than one calendar day and activities over 20 Business Days are permitted with an explanation, with at least one activity per activity type per section or location;
 - (ii) Secondary Works Activity duration shall be no less than one calendar day and activities over 10 Business Days are permitted with an explanation, with at least one activity per activity type per section or location, and
 - (iii) Micro-Schedule Works Activity duration shall be no more than 5 Business Days and such duration shall be determined on an hour by hour basis, as necessary or required,or as otherwise agreed to between the Parties;
- (o) determine and indicate the critical path applicable to achieve Substantial Completion and each Fit-Out Works Phase Completion where each critical path shall:
 - (i) be calculated using the “retained logic” scheduling methodology and shall not use a progress override option;
 - (ii) not include any “level of effort” type activities, for clarity, all activities on the critical path shall be task dependent activities;
 - (iii) be the result of an unmodified software calculation of the critical path using the critical path method, for clarity Project Co shall not employ any additional filters or any other manual manipulation whatsoever to calculate the critical path;
 - (iv) be continuous and logic driven; and
 - (v) consist only of activities with a float of zero;
- (p) in situations where the same critical path is not identified as calculated using the software’s various standard critical path filters, provide all critical path alternatives together with Project Co’s narrative on which critical path is most representative of the Works; and
- (q) when required to do so by Contracting Authority, indicate all near-critical activities, i.e. activities with a total float of up to 5 Working Days.

SCHEDULE 13

PROJECT CO PROPOSAL EXTRACTS

[REDACTED]

SCHEDULE 14

OUTLINE COMMISSIONING PROGRAM

[REDACTED]

SCHEDULE 15

OUTPUT SPECIFICATIONS

[REDACTED]

SCHEDULE 16

TITLE ENCUMBRANCES

The Title Encumbrances for the Project are, collectively, the following “Specific Title Encumbrances” and “General Title Encumbrances”:

I. SPECIFIC TITLE ENCUMBRANCES

With regard to **PIN 21415-0012 (LT)**:

1. Instrument No. E299003, registered on December 15, 1999, being a transfer of easement in perpetuity in favour of Toronto District Heating Corporation (now Enwave Energy Corporation).
2. Instrument No. AT414305, registered on February 23, 2004, being a notice of security interest in respect to Toronto District Heating Corporation (now Enwave Energy Corporation) as debtor and Her Majesty the Queen in Right of Ontario as represented by the Chair of the Management Board of Cabinet as the secured party, wherein security interest has been created in the steam production equipment located on these lands.
3. Unregistered easement dated March 22, 1973 in favour of Toronto Electric Commission (now Toronto Hydro-Electric System Limited).

With regard to **PIN 21415-0088 (LT)**:

4. Instrument No. EP139972, registered on July 25, 1968, being a transfer of easement in favour of The Consumers’ Gas Company.
5. Instrument No. CA642579, registered on December 15, 1999, being a transfer of easement in perpetuity in favour of Toronto District Heating Corporation (now Enwave Energy Corporation).
6. Instrument No. AT414305, please refer to Item 2 above.

With regard to **PIN 21415-0089 (LT)**:

7. Instrument No. AT2596154, registered on January 12, 2011, being a notice between City of Toronto and Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, being a Section 37 Agreement permitting the increase in height and density and to amend the Zoning By-law to provide for this.

With regard to **PIN 21415-0090 (LT)**:

8. Instrument No. AT2596154, please refer to Item 7 above.

II. GENERAL TITLE ENCUMBRANCES

1. Liens, charges or prior claims for taxes (which term includes charges, rates, levies and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by Contracting Authority.
2. Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against any of the Lands or of which notice in writing shall not at the time have been given to Contracting Authority pursuant to the *Construction Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, Contracting Authority has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Lands therefrom.
3. The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
4. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind.
5. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Site, which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
6. Servitudes, easements, rights-of-way, or other similar rights in land for sewers, electric lines, telegraphs and telephone lines and other utilities and services which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
7. Minor encroachments onto or from neighboring lands which are permitted under agreements with the owners of such lands and which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
8. Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site.
9. Registered subdivision, site-plan, development or other municipal agreements, if any, provided such are complied with and which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.

10. The exceptions and qualifications contained in subsection 44(1) of the *Land Titles Act* (Ontario) except for paragraphs 11 and 14, Provincial Succession Duties and Escheats or Forfeiture to the Crown and the rights of any person who would, but for the *Land Titles Act*, be entitled to the land or any part of it through length of adverse possession, prescription, misdescription, or boundaries settled by convention.

SCHEDULE 17

[INTENTIONALLY DELETED]

SCHEDULE 18

COMMUNICATIONS

1. DEFINITIONS

In this Schedule 18, unless the context otherwise requires:

- (a) **“Communications Protocol”** has the meaning given in Section 3.1(e);
- (b) **“Communications and Stakeholder Relations Plan”** has the meaning given in Section 5.2(c); and
- (c) **“Crisis Communications Plan”** has the meaning given in Section 5.2(d).

2. GENERAL

2.1 Communications Principles

- (a) During the Project Term, Contracting Authority and Project Co shall, in accordance with the provisions of this Schedule 18, work together to deliver communications and stakeholder engagement activities in respect of the Project that will:
 - (i) enhance opportunities for open, transparent, effective and proactive communications with stakeholders and members of the public;
 - (ii) recognize the contributions of the Parties; and
 - (iii) be accountable to the Project’s stakeholders (including Contracting Authority’s community) for the effective implementation of the Communications Protocol, the Communications and Stakeholder Relations Plan and the Crisis Communications Plan.
- (b) The Project represents an important infrastructure commitment by the Province. Accordingly, a comprehensive Communications Protocol, Communications and Stakeholder Relations Plan and Crisis Communications Plan are required to allow the Parties to ensure the public is informed and engaged in respect of the Project where necessary, to meet Contracting Authority’s and MGCS’ communications requirements, and to support effective communications between Project Co and Contracting Authority and with Contracting Authority’s and MGCS’ stakeholders.

3. COMMUNICATIONS PROTOCOL

3.1 Project Co’s Communications Protocol

- (a) No later than 45 days following Financial Close and in collaboration with Contracting Authority and MGCS, Project Co shall prepare and submit to Contracting Authority a comprehensive and detailed draft communications protocol for the Project in accordance with this Section 3.1.
- (b) The draft communications protocol shall:
 - (i) be in compliance with Project Co’s obligations under the Project Agreement, including this Schedule 18;
 - (ii) outline communication roles and responsibilities for the Project; and
 - (iii) assist (in consultation with Contracting Authority and MGCS) in the development and implementation of the Communications and Stakeholder Relations Plan and the Crisis Communications Plan.
- (c) Within the draft communications protocol, Project Co shall submit a description of Project Co’s approach to all communications with respect to the Project, which shall include:
 - (i) a description of Project Co’s communications team, including the roles and responsibilities of each team member and each Project Co Party who shall implement any aspect of the Communications Protocol;
 - (ii) the identification of proposed communications tools to be used by Project Co and each applicable Project Co Party to coordinate with and provide timely, engaging, high-quality and relevant information to Contracting Authority and MGCS to be used to communicate with a variety of audiences during the Project Term; and
 - (iii) the other matters described in Appendix “A” – Communications Protocol Template to this Schedule 18.
- (d) The draft communications protocol shall be (i) based on the template attached as Appendix “A” – Communications Protocol Template to this Schedule 18 and (ii) consistent with the outline of the communications protocol attached hereto as Appendix “B” – Outline Communications Protocol to this Schedule 18.
- (e) The draft communications protocol shall be subject to the review and approval of Contracting Authority (in consultation with MGCS) and, once approved by Contracting Authority, the draft communications protocol shall, for the purposes of this Project Agreement, be the “**Communications Protocol**”.

- (f) The Communications Protocol shall apply to all print and electronic communications related to the Project, including, but not limited to, with respect to the Project’s planning, design, construction, milestones, tenders, community and other stakeholder relations, media relations, website information, branded products and social media updates and responses.
- (g) In the event of any ambiguity, conflict or inconsistency between the provisions of this Schedule 18 and the Communications Protocol, the provisions of this Schedule 18 shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

4. CONTRACTING AUTHORITY RESPONSIBILITIES

4.1 Lead Communications Role

Contracting Authority shall assume the lead communications role and shall be responsible for:

- (a) providing identified, dedicated lead communications contacts with reasonable applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project and designating an appropriate spokesperson(s) for any given issue, to be determined by and as set out in the Communications Protocol;
- (d) providing final review and approval of all public communications materials;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
- (f) maintaining and updating a Project webpage on Contracting Authority’s website; and
- (g) providing coordinated updates to internal/external stakeholders, as required.

4.2 Communications Responsibilities During the Works Phase

In the period up to the Substantial Completion Date, Contracting Authority shall be responsible for the following matters:

- (a) **Planning:** To collaborate with Project Co and MGCS on the development and implementation of the Communications and Stakeholder Relations Plan and the Crisis Communications Plan;
- (b) **Issues Management:** To collaborate with Project Co and MGCS in identifying issues and issues trends as they emerge and develop strategies for addressing or minimizing issues, including developing messages and strategies to address issues and providing accurate and timely information to affected stakeholders.
- (c) **Website and Social Media:** Working with Project Co to:
 - (i) lead the planning of a Project-related microsite for external audiences, which shall be developed, hosted and maintained by Project Co; and
 - (ii) in consultation with MGCS, lead the planning, development and execution of a social media strategy for the Project, which may include timely responses to public enquiries, notification of public meetings and/or responses to issues and crisis situations.
- (d) **Government Relations:** To, in consultation with MGCS, liaise with affected Governmental Authorities to provide information about the Project's status, upcoming milestones and events, and issues that may affect the Project.
- (e) **Special Events:** To work with Project Co to develop, plan, coordinate and implement special events, such as construction tours and milestone celebrations.
- (f) **Performance Review:** To review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 5 of this Schedule 18.

4.3 Contracting Authority Communications Responsibilities During the Operational Term

- (a) No later than 120 days prior to the Scheduled Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term, pursuant to and in accordance with Section 5.3(a), which shall, for greater certainty, outline Contracting Authority's oversight role with regards to Project communications during the Operational Term.
- (b) During the Operational Term, Contracting Authority shall be responsible for the following matters:
 - (i) **Planning:** To collaborate with Project Co and MGCS on the development and implementation of the Communications and Stakeholder Relations Plan and the Crisis Communications Plan;

- (ii) **Issues Management:** To collaborate with Project Co and MGCS in identifying issues and issues trends as they emerge and develop strategies for addressing or minimizing issues, including developing messages and strategies to address issues and providing accurate and timely information to affected stakeholders.
- (iii) **Government Relations:** To liaise with affected Governmental Authorities (in consultation with MGCS) to provide information about Facility related matters.
- (iv) **Performance Review:** To review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 5 of this Schedule 18.

5. PROJECT CO RESPONSIBILITIES

5.1 Support Communications Role

- (a) Project Co shall assume an active role with respect to communications related to the Project, providing support to Contracting Authority in the creation and delivery of a successful communications program. Project Co shall be responsible for:
 - (i) providing an identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
 - (ii) responding to communications issues in accordance with the Communications Protocol and within the agreed timeframes set out in the Communications Protocol;
 - (iii) updating, in collaboration with Contracting Authority and MGCS, internal/external stakeholders, as required, including involvement and participation in community events;
 - (iv) providing Contracting Authority and MGCS access to the Site for milestone events, including making persons available to lead media tours and/or tours for government or Contracting Authority officials, as required;
 - (v) directing all media enquiries and interview requests to Contracting Authority's lead communications contact, and coordinating with Contracting Authority (in consultation with MGCS) to identify which party shall respond to the media enquiries as identified in the Communications Protocol;

- (vi) maintaining a written record of all material public enquiries, complaints and communications and providing copies to Contracting Authority’s lead communications contact on a monthly basis (or immediately, for urgent or highly contentious issues or as otherwise requested by Contracting Authority);
 - (vii) reporting to Contracting Authority on communications matters on an agreed upon basis;
 - (viii) developing, hosting and maintaining a Project-related microsite for external audiences in consultation with Contracting Authority; updating content approved by Contracting Authority (in consultation with MGCS) quarterly or as otherwise required by Contracting Authority;
 - (ix) providing communications and/or technical materials for Contracting Authority and MGCS newsletters, websites, web pages and social media by providing written and multimedia content on a regular agreed upon basis or as otherwise required by Contracting Authority, including:
 - (1) up-to-date professional quality (high resolution) photos and videos, including pursuant to Section 5.1(b);
 - (2) renderings, maps or other imagery;
 - (3) information about the project design, project features, benefits and construction activities; and
 - (4) statistics about materials used, local workers/companies, training, local investments, and community benefits;
 - (x) participating in regular communications committee meetings, as agreed upon or as otherwise required by Contracting Authority; and
 - (xi) during a crisis situation, ensuring and making available sufficient resources to work effectively with Contracting Authority and proactively manage and perform its communications responsibilities.
- (b) Project Co shall also be responsible for the following:
- (i) following the date of the Project Agreement,
 - (1) providing Project images and footage to, and as required and approved by, Contracting Authority, which shall be suitable for public access and viewing; and
 - (2) obtaining all of the rights necessary for Project Co, Contracting Authority and MGCS to use, reproduce, modify and brand all of

the images and footage described in this Section 5.1 without restrictions;

- (ii) in the period up to the Fit-Out Works Final Completion Date,
 - (1) providing to Contracting Authority, a selection of professional, high-resolution photos on a monthly basis, or as required, to document construction progress and key activities underway (both interior and exterior, including 360 degree photos, as appropriate). Photos shall be titled and accompanied by a short description of the activity documented;
 - (2) providing to Contracting Authority high-definition video footage of key construction activities underway on a quarterly basis, or as otherwise required by Contracting Authority, to demonstrate construction progress and/or innovative or noteworthy events. Video clips shall be logged and accompanied by a short description of the activities documented; and
 - (3) posting Project images and footage as required and approved by Contracting Authority, which shall be suitable for public access and viewing on the Project microsite; and
- (iii) immediately following the Substantial Completion Date and, at the request of Contracting Authority between the Substantial Completion Date and the Fit-Out Works Final Completion Date, providing to Contracting Authority and/or MGCS, a compilation of all photos and video recordings undertaken throughout the Project as well as a professional quality (high resolution) video with music capturing the construction of the Project at the Site from start to finish.

5.2 Project Co Communications Responsibilities During the Works Phase

In the period up to the Substantial Completion Date, Project Co shall:

- (a) implement and maintain the Communications Protocol, provided that Project Co shall coordinate with Contracting Authority in respect of such implementation;
- (b) update, in coordination with Contracting Authority and MGCS, the Communications Protocol on an annual basis or as otherwise reasonably requested by Contracting Authority;
- (c) in consultation with Contracting Authority and MGCS, develop and implement a draft comprehensive and detailed communications and stakeholder relations plan that includes Project Co's approach to community relations, media relations, marketing, special events, employee communications and government relations

regarding issues related to the Project. Such plan shall be developed and submitted by Project Co to Contracting Authority for Contracting Authority's approval before the later of the date that (i) is 90 days following Financial Close, and (ii) 15 Business Days following the date of the finalization of the Communications Protocol pursuant to Section 3.1(e). Following Contracting Authority's approval of such plan, it shall become the "**Communications and Stakeholder Relations Plan**" for the purposes of this Schedule 18;

- (d) in consultation with Contracting Authority and MGCS, undertake all necessary planning for potential crisis issues related to the Project. A draft crisis communications plan shall, in consultation with Contracting Authority and MGCS, be developed and submitted by Project Co to Contracting Authority for Contracting Authority's approval before the later of the date that is (i) 90 days following Financial Close, and (ii) 15 Business Days following the date of the finalization of the Communications Protocol pursuant to Section 3.1(e). Such draft plan shall outline the roles and responsibilities of Contracting Authority, MGCS and Project Co for a list of potential crisis issues that could develop during the Works. Following Contracting Authority's approval of such plan, it shall become the "**Crisis Communications Plan**" for the purposes of this Schedule 18;
- (e) attend regular meetings with Contracting Authority and MGCS to discuss communication opportunities, issues and developments;
- (f) produce monthly progress reports, which shall include information on activities, engagement opportunities, public and media enquiries, any emerging issues, and actions taken in response to issues;
- (g) provide regular advance notice and updates to any affected property owners and neighbourhoods on Works related issues with particular attention to communicating the scope, schedule and status of the Works;
- (h) develop processes to proactively address and be prepared to respond to, in consultation with Contracting Authority, any Works related enquiries and issues (e.g., public enquiries and complaints in respect of noise, hours of work, dust, traffic etc.), including the establishment of a Project email address and after-hours telephone number to address community issues/complaints related to construction;
- (i) collaborate with Contracting Authority to identify issues and issues trends as they emerge and develop strategies for addressing or minimizing issues, including developing messages and strategies to address issues and providing accurate and timely information to affected stakeholders;
- (j) identify opportunities to promote and recognize milestones in the delivery of community benefits;

- (k) seek and identify opportunities for Project recognition through industry award programs;
- (l) develop content for review and approval by Contracting Authority as required for Project award submissions; and
- (m) follow any guidelines provided by Contracting Authority and/or MGCS related to signage or advertising at the Site.

5.3 Project Co Communications Responsibilities During the Operational Term

- (a) No later than 120 days prior to the Scheduled Substantial Completion Date, Project Co shall prepare and submit to Contracting Authority a new comprehensive and detailed draft communications protocol. The Parties will agree on the communications protocol to apply during the Operational Term, which shall upon the finalization of such communications protocol, replace the existing Communications Protocol and become the new “Communications Protocol” for the purposes of this Schedule 18. The new Communications Protocol will outline Project Co’s lead role with regards to the communication of Project related matters during the Operational Term, and Contracting Authority’s oversight role with regards to such matters during the Operational Term.
- (b) Project Co shall:
 - (i) no later than 90 days prior to the Scheduled Substantial Completion Date and prior to initiating any communications-related activity or disseminating any communications-related materials related to the Project Co Services, prepare and submit to Contracting Authority for Contracting Authority’s approval a comprehensive and detailed draft communications and stakeholder relations plan in respect of the Project during the Operational Term. Following Contracting Authority’s approval of such plan, it shall replace the existing Communications and Stakeholder Relations plan and become the new “Communications and Stakeholder Relations Plan” for the purposes of this Schedule 18. The new Operational Communications and Stakeholder Relations Plan shall include:
 - (1) a description of the communications activities to be used to notify tenants and stakeholders of Project Co Services activities and respond to enquiries and complaints, including a description of how Project Co will carry out such communications activities in accordance with its obligations set out in this Schedule 18;
 - (2) a calendar outlining various communications deliverables and activities for the first 12-month period following the Scheduled Substantial Completion Date, including identification and scope of

- the deliverable or activity, tactic or tools to be employed, objectives, target audience, timing or deadline, and Project Co resources assigned, which is to be refreshed on an annual basis;
- (3) a description of any outstanding communications-related issues (including enquiries or complaints) related to the Works that originated prior to Substantial Completion and a plan for addressing and resolving such issues; and
- (4) a description of Project Co’s approach with respect to:
- i. Project Co’s role in organizing and leading meetings or events to update and/or educate internal and external stakeholders as required, or as requested by Contracting Authority, including regularly scheduled Facility user group meetings;
 - ii. how Project Co will coordinate communications activities with Contracting Authority during the Operational Term generally; and,
 - iii. how Project Co will respond to communications-related requests from Contracting Authority, MGCS and tenants of the Facility on topics applicable to the performance of the Project Co Services.
- (ii) no later than 30 days prior to the Scheduled Substantial Completion Date, prepare and submit to Contracting Authority for Contracting Authority’s approval a comprehensive and detailed draft crisis communications plan in respect of the Project during the Operational Term. Following Contracting Authority’s approval of such plan, it shall replace the existing Crisis Communications plan and become the new “Crisis Communications Plan” for the purposes of this Schedule 18. The new Crisis Communications Plan shall outline the roles and responsibilities of Project Co, Contracting Authority, MGCS and tenants of the Facility during a crisis situation and will include a description of Project Co’s approach with respect to:
- (1) Project Co’s involvement and participation in meetings to update internal and external stakeholders on crisis communications coordination and planning activities; and,
 - (2) how Project Co will coordinate crisis communications activities with Contracting Authority during the Operational Term generally.

- (c) During the Operational Term, Project Co shall update the Communications and Stakeholder Relations Plan, Crisis Communications Plan and Communications Protocol:
 - (i) on an annual basis; or
 - (ii) more frequently as may be requested by Contracting Authority or as may otherwise be required, including to account for any changes in circumstances or lessons learned with respect to the Project.

6. PUBLIC DISCLOSURE AND MEDIA RELEASES

6.1 Public Disclosure and Media Releases

- (a) Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement or any matters related thereto, without the prior written consent of Contracting Authority, in its sole discretion, or, in the case of any media release, public announcement or public disclosure required by Applicable Law, without the prior written consent of Contracting Authority.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement or any matter related thereto, without the prior written consent of the other Party.
- (c) Project Co shall, and shall ensure that all Project Co Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with the Communications Protocol.

7. CONSTRUCTION SIGNAGE

7.1 Construction Signage Guidelines

With respect to any signage that may be erected and maintained at or on the Site or the Facility, Project Co, the Project Co Parties and the Lenders, as applicable, shall:

- (a) include the Province of Ontario and Contracting Authority's logo on the sign;
- (b) ensure that the signage is no larger than the larger of: (i) an existing government project sign on the Site or (ii) 16 feet by 8 feet;

- (c) comply with Applicable Law, including by-laws regarding the placement and size of signage and the *French Language Services Act* (Ontario);
- (d) consider signage material suitable for long-term outdoor exposure;
- (e) provide a mock-up of the signage to Contracting Authority for written approval prior to printing; and
- (f) be responsible for installation, maintenance and removal of the signage.

7.2 Province of Ontario and Infrastructure Ontario Signage

Without prejudice to Section 7.1, at the request of Contracting Authority, Project Co shall, from time to time, print, install and maintain signage in a prominent location on the fencing or hoarding or at some other location, as requested by Contracting Authority or MGCS, on the Site.

7.3 Construction Hoarding Artwork

Project Co shall, as requested, be responsible for:

- (a) in collaboration with Contracting Authority, MGCS and other stakeholders (including representatives of the City of Toronto, as required by Contracting Authority), designing, printing and installing graphical artwork panels covering up to 100% of the surface area of the Site's hoarding;
- (b) providing a mock-up of the artwork to Contracting Authority for Contracting Authority's written approval prior to printing;
- (c) complying with Applicable Law, including by-laws, regarding the placement and size of artwork panels and the *French Language Services Act* (Ontario);
- (d) considering signage material suitable for long-term outdoor exposure;
- (e) maintaining the artwork panels, including by removing graffiti and replacing damaged panels, and
- (f) removing the artwork panels upon Substantial Completion or as otherwise required by Contracting Authority.

8. ACCESSIBILITY

8.1 Accessibility

Project Co shall ensure that all communications materials with respect to the Project comply with the *Accessibility for Ontarians with Disabilities Act, 2005* (Ontario) and all

regulations thereunder, and for the purposes thereof, as between Project Co and Contracting Authority, Project Co shall be deemed to be a “designated public sector organization” under such Act and regulations.

9. FRENCH LANGUAGE SERVICES ACT

9.1 French Language Services Act

Project Co shall ensure that all public communications materials described in this Schedule 18 comply with the *French Language Services Act, 1990* (Ontario) and all regulations thereunder, and for the purposes thereof, as between Project Co and Contracting Authority, Project Co shall be deemed to be designated as a “public service agency” under such Act and regulations.

10. FAILURE TO PERFORM

Without limiting any other right of Contracting Authority or obligation of Project Co in the Project Agreement, if Project Co at any time fails to perform or comply with any of its obligations under this Schedule 18 (including, for greater certainty, under the Communications Protocol, the Communications and Stakeholder Relations Plan and the Crisis Communications Plan), Contracting Authority may itself, to the extent possible, perform or cause compliance with or engage others to perform or cause compliance with such obligation, at the risk and cost of Project Co, and Contracting Authority may deduct the cost of such activities from any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, provided that, except in the event that Contracting Authority is of the reasonable opinion that such activities must be performed immediately, at least five Business Days prior written notice setting out the precise failure of Project Co is delivered by Contracting Authority to Project Co and, following the receipt of such notice, Project Co fails to commence to diligently and expeditiously perform or comply with its obligations under this Schedule 18 to the reasonable satisfaction of Contracting Authority.

APPENDIX “A”

COMMUNICATIONS PROTOCOL TEMPLATE

I. Project Co’s Communications Team

No.	Name of Project Co or Project Co Party	Project Co Team Member Name and Contact Information	Role and Responsibility of Team Member
1.			
2.			
3.			
4.			
5.			
6.			
7.			

II. Proposed Communications Tools

No.	Proposed Communications Tool	Description	Timing/Frequency
1.			
2.			
3.			
4.			
5.			
6.			
7.			

III. Roles and Responsibilities

To delineate the roles and responsibilities of Contracting Authority, MGCS and Project Co the following chart outlines general communications activities and expectations during the Project Term:

Area/Task	Contracting Authority (IO)	Ministry of Government and Consumer Services (MGCS)	Project Co
Issues tracking and management	<p>Monitor issues related to procurement, P3, cost, Facility matters and ensure partners are informed.</p> <p>Where necessary, develop issues notes, key messages and Questions & Answers lists and share with partners.</p>	<p>Monitor issues related to the overall Project mandate and program to ensure partners are informed.</p> <p>Where necessary, develop issues notes, key messages and Questions & Answers lists and share with partners.</p>	<p>Identify and track issues as they emerge and forward to Contracting Authority to coordinate response.</p> <p>Produce monthly progress reports with respect to the Works, which shall include information on activities, engagement opportunities, public and media enquiries, any emerging issues, and actions taken in response to issues.</p> <p>Work with Contracting Authority and MGCS to develop messages and implement strategies. Respond to issues identified by Contracting Authority as required.</p>
Government Relations, inclusive of City, Province and Federal	Responsible for liaising with affected local governments, boards and executives, and federal elected officials, providing	Responsible for providing updates and information for internal provincial government executives, stakeholders and committees as required.	Provides support to Contracting Authority as requested, including but not limited to: providing collateral (renderings, maps, images) and updates

Area/Task	Contracting Authority (IO)	Ministry of Government and Consumer Services (MGCS)	Project Co
	whatever information is required/ requested about the Project.		(construction and maintenance schedule, community benefits, issue overview, attendance at meetings).
Media Relations	<p>Will be overall media relations lead distributing enquiries to applicable parties as noted. Will lead and support questions about the procurement, P3 delivery, cost and overall contract.</p> <p>Completes media contact report and forwards to MGCS/Project team.</p>	<p>Will lead in answering questions about the project mandate and rationale, community benefits, etc.</p> <p>Completes media contact report and forwards to Contracting Authority/Project team.</p>	<p>Will lead and support answering questions about their team members, Project schedule, labour, etc.</p> <p>For all media enquiries received, forward to Contracting Authority who will determine appropriate party to respond. Work with Contracting Authority and MGCS to develop messaging and provide required support.</p>
Community Relations/ Stakeholder Relations	Oversees/directs/leads community relations. Support development of the Communications and Stakeholder Relations Plan in collaboration with MGCS and Project Co. Provides messaging related to local knowledge initiatives as well as to fact check information about P3, Facility matters.	Oversees/directs/leads stakeholder relations. Provides messaging related to overall Project mandate and rationale, community benefits, etc. to support Contracting Authority.	Lead the development of the Communications and Stakeholder Relations Plan to outline roles and responsibilities including Project Co's approach to community relations, media relations, marketing, special events, employee/tenant communications and government relations regarding issues related to the Project.

Area/Task	Contracting Authority (IO)	Ministry of Government and Consumer Services (MGCS)	Project Co
			Support Contracting Authority and MGCS to carry out community and stakeholder relations as required including but not limited to: providing collateral (renderings, maps, images) and updates (construction/maintenance schedule, community benefits, issue overview, attendance at meetings).
Crisis Communications	Support development of the Crisis Communications Plan in collaboration with MGCS and Project Co.	Provide input and templates, if required, for development of Crisis Communications Plan.	Lead the development of the Crisis Communications Plan to outline roles and responsibilities in the event of a crisis, as well as key contact individuals on the Site.

APPENDIX “B”

OUTLINE COMMUNICATIONS PROTOCOL

[REDACTED]

SCHEDULE 19

CONSTRUCTION PERIOD PAYMENTS

[REDACTED]

SCHEDULE 20

PAYMENT MECHANISM

PART A:
DEFINITIONS

1. DEFINITIONS

1.1 “**Accessibility Condition**” means a state or condition of the relevant Functional Part or the means of access to it which allows all persons who are entitled to enter, occupy or use the relevant Functional Part to enter and leave the Functional Part safely and conveniently and using normal access routes. Without limiting the generality of the foregoing, for the purposes of the Project Agreement:

- (a) in the event of an Elevator Availability Failure, Contracting Authority’s access to the floors serviced by the applicable elevator(s) of the relevant building in the Facility shall be deemed to be impaired, the Accessibility Condition shall not be satisfied and there shall be an Elevator Availability Failure Deduction;
- (b) a Parking Availability Failure shall occur if access to the Wellesley Street West parking ramp leading to parking level 1 and the loading dock is impaired and, in such a circumstance, the Accessibility Condition shall not be satisfied; and
- (c) a Parking Availability Failure shall occur if access to the Grosvenor Street parking ramp leading to parking level 2 is impaired and, in such a circumstance, the Accessibility Condition shall not be satisfied.

1.2 “**Ad-Hoc Services**” has the meaning given in Schedule 15 – Output Specifications.

1.3 “**Ad-Hoc Services Request**” means a request for the provision of Ad-Hoc Services made by Contracting Authority to Project Co in accordance with Schedule 15 – Output Specifications.

1.4 “**Adjusted Service Payment**” means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 1.1 of Part B of this Schedule 20 without deducting the sums represented by the symbol ΣD .

1.5 “**Annual Service Payment**” means the sum in Canadian dollars calculated in accordance with the provisions set out in Section 2 of Part B.

1.6 “**Annual Service Payment – Capital Portion**” means the sum in Canadian dollars representing the capital payment portion of an Annual Service Payment, as identified in Section 2 of Part B.

1.7 “**Annual Service Payment – Service Portion**” has the meaning given in Section 2 of Part B.

1.8 “**Annual Service Payment – Service Portion Fixed**” has the meaning given Section 2 of Part B.

1.9 “**Annual Service Payment – Service Portion Variable**” has the meaning given in Section 2 of Part B.

1.10 “**Area Weighting Percentage**” means the percentage weighting ascribed to the relevant Functional Area for the purpose of calculating Deductions for Availability Failures as set out in Appendix C to this Schedule 20.

1.11 “**Availability Condition**” means any of (i) the Accessibility Condition, (ii) the Safety Condition, or (iii) the Use Condition.

1.12 “**Availability Failure**” means an Event which has not been Rectified within the relevant Rectification Time and which causes a Functional Part to be Unavailable.

1.13 “**Availability Failure Deduction**” means a Deduction which may be made in respect of an Availability Failure.

1.14 “**Availability Gearing**” means the sumproduct of the Area Weighting Percentages and the Unit Weighting Percentages in Table 1 of Appendix C.

1.15 “**Base Date**” means [REDACTED].

1.16 “**Bedding-In Period**” means the 90 calendar day period following the Payment Commencement Date.

1.17 “**Contract Day**” means a 24 hour period commencing at midnight at the start of the relevant day.

1.18 “**Contract Month**” means a calendar month, except with respect to the first Contract Month, which runs from the Payment Commencement Date until the end of the calendar month in which the Payment Commencement Date falls, and the last Contract Month, which runs from the first day of the calendar month in which the Expiry Date falls until the Expiry Date.

1.19 “**Contract Year**” means the period of 12 calendar months that commences on April 1st of each calendar year and ends on the next ensuing March 31st, provided that:

- (a) the first Contract Year shall be such period that commences on the Payment Commencement Date and ends on the next ensuing March 31st; and
- (b) the final Contract Year shall be such period that commences on the April 1st that precedes the date on which the Project Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of the Project Agreement.

1.20 “**Deduction**” means a deduction made from a Monthly Service Payment in accordance with this Schedule 20.

1.21 “**Elevator Availability Failure**” means an Event which has not been Rectified in the Rectification Time and which impacts on Contracting Authority’s ability to access and/or use the elevator(s) in question. For the avoidance of doubt, in these circumstances it shall be assumed that the Accessibility Condition has been breached and that Contracting Authority’s access to the floors serviced by those elevators of the relevant building in the Facility is impaired.

1.22 “**Elevator Availability Failure Deduction**” means a Deduction which may be made in respect of an Elevator Availability Failure as calculated in accordance with the provisions set out in Section 13 of Part C of this Schedule 20.

1.23 “**Energy Failure**” means any failure by Project Co to provide the Project Co Services in accordance with the Performance Indicators designated Failure Type “EF” in Schedule 15 – Output Specifications.

1.24 “**Escalation Factor**” means the escalation factor calculated in accordance with Section 4.1 of Part B of this Schedule 20.

1.25 “**Event**” means an incident or state of affairs which does not meet or comply with the Performance Indicators set out in Schedule 15 – Output Specifications and/or results in an Availability Condition not being met in a Functional Part. An Event is capable of becoming:

- (a) a Service Failure, if the Event is not responded to within the Response Time, regardless of whether any Availability Condition has been breached; and
- (b) in addition to the Service Failure in Part (a), an Availability Failure or a Parking Availability Failure if it results in an Availability Condition being breached in a Functional Part and the Event is not Rectified within the Rectification Time; or an additional Service Failure if no Availability Condition has been breached; and
- (c) if, in accordance with Schedule 15 – Output Specifications, no Rectification Time or Response Time applies, the Event shall be a Service Failure, Quality Failure or Energy Failure as determined by the designation of the applicable Performance Indicator in Schedule 15 – Output Specifications as Failure Type “SF”, “QF” or “EF” respectively; or
- (d) a System Failure, if any Project Co Managed Systems do not satisfy the System Functionality Condition and the Event is not Rectified within the Rectification Time.

1.26 “**Executive Fleet Parking**” has the meaning given in Schedule 15 – Output Specifications.

1.27 “**Failure Points**” means points allocated to Project Co in respect of the occurrence of Availability Failures, Quality Failures, Service Failures and System Failures which are determined by the provisions set out in Part G of and Appendix A to this Schedule 20. For the avoidance of doubt, there shall not be any Failure Points allocated to Project Co in respect of the occurrence of Energy Failures.

1.28 “**Failure Type**” means the designation of Performance Indicators in Schedule 15 – Output Specifications as “AF” (Availability Failure), “QF” (Quality Failure), “SF” (Service Failure), “SyF” (System Failure), or “EF” (Energy Failure).

1.29 “**FM Help Desk**” means the contact point to be established by Project Co pursuant to Schedule 15 – Output Specifications in respect of the FM Help Desk Services for the notification of Events and other day to day matters arising in relation to the provision of Project Co Services.

1.30 “**Functional Area**” means an area of the Facility specified as such in Appendix C to this Schedule 20 comprising one or more Functional Units.

1.31 “**Functional Part**” means a Functional Unit or a Functional Area according to the context in which it is used.

1.32 “**Functional Unit**” means a room or space within a Functional Area which is specified as such in Appendix C to this Schedule 20. For the avoidance of doubt, if a Functional Unit is omitted from Appendix C, the applicable weight for the purpose of calculating a Deduction shall be the same weight assigned to a similar Functional Unit.

1.33 “**Gainshare Adjustment**” means the adjustment calculated in accordance with Schedule 36 - Energy Matters.

1.34 “**Lifecycle Payment**” means the relevant amount calculated in accordance with the provisions set out in Section 3 of Part B, and does not include additional costs other than anticipated costs (and directly related contingencies and reserves) in respect of the replacement, refreshment and/or refurbishment of building systems, equipment and fixtures.

1.35 “**Major Energy Failure**” means an Energy Failure which has been designated with a failure category of “major” in the Output Specifications.

1.36 “**Major Energy Failure Deduction**” means a Deduction which may be made in respect of a Major Energy Failure.

1.37 “**Major Quality Failure**” means a Quality Failure which has been designated with a failure category of “major” in the Output Specifications or in this Schedule 20.

1.38 “**Major Quality Failure Deduction**” means a Deduction which may be made in respect of a Major Quality Failure.

1.39 “**Major Service Failure**” means a Service Failure which has been designated with a failure category of “major” in the Output Specifications or in this Schedule 20.

1.40 “**Major Service Failure Deduction**” means a Deduction which may be made in respect of a Major Service Failure.

1.41 “**Medium Energy Failure**” means an Energy Failure which has been designated with a failure category of “medium” in the Output Specifications.

1.42 “**Medium Energy Failure Deduction**” means a Deduction which may be made in respect of a Medium Energy Failure.

1.43 “**Medium Quality Failure**” means a Quality Failure which has been designated with a failure category of “medium” in the Output Specifications or in this Schedule 20.

1.44 “**Medium Quality Failure Deduction**” means a Deduction which may be made in respect of a Medium Quality Failure.

1.45 “**Medium Service Failure**” means a Service Failure which has been designated with a failure category of “medium” in the Output Specifications or in this Schedule 20.

1.46 “**Medium Service Failure Deduction**” means a Deduction which may be made in respect of a Medium Service Failure.

1.47 “**Minimum Agreed Availability Conditions**” means all of the Accessibility Condition, the Safety Condition and the Use Condition, as temporarily modified as permitted in accordance with Section 9 of Part C of this Schedule 20 for the purposes of a Temporary Repair.

1.48 “**Minimum Unavailability Deduction**” means the sum of \$[REDACTED] which shall be index linked from the Base Date, using the Escalation Factor as referred to in Section 4.1 of Part B of this Schedule 20.

1.49 “**Minor Energy Failure**” means an Energy Failure which has been designated with a failure category of “minor” in the Output Specifications.

1.50 “**Minor Energy Failure Deduction**” means a Deduction which may be made in respect of a Minor Energy Failure.

1.51 “**Minor Quality Failure**” means a Quality Failure which has been designated with a failure category of “minor” in the Output Specifications or in this Schedule 20.

1.52 “**Minor Quality Failure Deduction**” means a Deduction which may be made in respect of a Minor Quality Failure.

1.53 “**Minor Service Failure**” means a Service Failure which has been designated with a failure category of “minor” in the Output Specifications or in this Schedule 20.

1.54 “**Minor Service Failure Deduction**” means a Deduction which may be made in respect of a Minor Service Failure.

1.55 “**Monthly Service Payment**” means the sum in Canadian Dollars payable by Contracting Authority to Project Co for the provision of the Project Co Services in accordance with the Project Agreement, as calculated in Section 1.1 of Part B of this Schedule 20.

1.56 “**Non-Core Hours**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.

1.57 “**Octant**” means each of the areas identified pursuant to Section 2.1.1 (Component A: Government of Ontario Office Space) of Part 2 of Schedule 15 – Output Specifications on each tower level of the Facility other than on the podium level of the Facility. For greater certainty, no Octant shall also be a Podium Octant. For the purposes of this Project Agreement, each Octant shall constitute a Functional Unit.

1.58 “**OPP Parking**” has the meaning given in Schedule 15 – Output Specifications.

1.59 “**Painshare Adjustment**” means the adjustment calculated in accordance with Schedule 36 – Energy Matters.

1.60 “**Parking Availability Deduction**” means a Deduction which may be made in respect of a Parking Availability Failure and is calculated in accordance with Table 2 of Appendix C.

1.61 “**Parking Availability Failure**” means an Event which causes a parking spot to be Unavailable.

1.62 “**Performance Indicators**” means the Performance Indicators as defined in Part 6 of Schedule 15 – Output Specifications.

1.63 “**Performance Monitoring Period**” means the periods of time specified in Schedule 15 – Output Specifications in respect of a Project Co Service or a part of a Project Co Service being the periods by reference to which Project Co has an obligation to monitor its performance of a Project Co Service as set out under the column headed “Recording Frequency” of the Performance Indicators Legend.

1.64 “**Performance Requirements**” means a description in Schedule 15 – Output Specifications of the level of performance that Project Co must achieve to attain compliance with the allotted output specification.

1.65 “**Permanent Repair**” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 9 of Part C of this Schedule 20.

1.66 “**Permanent Repair Deadline**” has the meaning given in Section 9.1(b) of Part C of this Schedule 20.

1.67 “**Podium Octant**” means each of the areas identified pursuant to Section 2.1.1 (Component A: Government of Ontario Office Space) of Part 2 of Schedule 15 – Output Specifications on the podium level of the Facility. For greater certainty, no Podium Octant shall also be an Octant. For the purposes of this Project Agreement, each Podium Octant shall constitute a Functional Unit.

1.68 “**Pre-Occupancy Level of Service**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.

1.69 “**Project Co Managed Systems**” has the meaning given in Schedule 15 – Output Specifications.

1.70 “**Quality Failure**” means any failure by Project Co to provide the Project Co Services in accordance with Performance Indicators designated Failure Type “QF” in Schedule 15 – Output Specifications.

1.71 “**Quality Failure Deduction**” means a Deduction which may be made in respect of a Quality Failure.

1.72 “**Rectification**” means, following the occurrence of an Event and where rectification is applicable in accordance with Schedule 15 – Output Specifications, making good the Event so that the subject matter of the Event complies with the levels of service required pursuant to the Project Agreement. Without prejudice to the generality of the foregoing this shall include (a) restoring all functional capability; (b) ensuring that any Functional Part which has been affected by the relevant Event complies with the Availability Conditions; (c) ensuring that, in the case of any Event impacting any Project Co Managed Systems, the affected Project Co Managed Systems satisfy the System Functionality Condition; and (d) formally notifying the FM Help Desk that Rectification has been completed; and “**Rectify**” or “**Rectified**” shall be construed accordingly.

1.73 “**Rectification Time**” means in the case of an Event which, if not rectified, will result in Unavailability, a period equal to the relevant period prescribed in Table 5.3.2: Response and Rectification Times in Part 6 to Schedule 15 – Output Specifications or, in the case of any other Event, the period specified in Schedule 15 – Output Specifications within which Rectification of the relevant Event must be completed, calculated in either case from the time that such Event is reported to the FM Help Desk. For the avoidance of doubt, if no period for rectification is specified in Schedule 15 – Output Specifications in respect of the relevant Event, no Rectification Time applies.

1.74 “**Remedial Period**” means, as applicable, the period allowed for remedying a Quality Failure in accordance with Section 3.3 of Part C of this Schedule 20 or an Energy Failure in accordance with Section 5.3.

1.75 “**Response**” means, following the notification of the occurrence of an Event and where response is applicable in accordance with Schedule 15 – Output Specifications, the following actions by Project Co:

- (a) establishing the nature, location and cause of the Event and attending the Site if necessary;
- (b) appointing a suitably qualified, experienced and accountable person to assess the situation who, within reasonable limits, is empowered to take or to authorize any required action;
- (c) taking all necessary actions to make the Functional Part safe and secure, thereby as a minimum fulfilling all health and safety requirements;
- (d) when necessary, giving the Contracting Authority Representative an assessment of the problem, the action taken, details of any work required with timescales and any

limitations that this may impose on the related Functional Parts or Project Co Services; and

(e) formally advising the FM Help Desk that the Response has been completed.

1.76 “**Response Time**” means the time required for Project Co to complete its Response measured from when an Event is reported to the FM Help Desk.

1.77 “**Return Date**” has the meaning given in Section 12.3(d) of Part C of this Schedule 20.

1.78 “**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 compliance with Applicable Law (including, but not limited, to Authority Requirements) and relevant Contracting Authority requirements related to fire safety or health or workplace safety. For the avoidance of doubt, if a normal access route is unsafe, the Functional Part that cannot be entered, exited or occupied is considered Unavailable. For greater clarity, it also includes the systems that are necessary for, or support the safe provision of Project Co Services (e.g. fire alarm, ECMS, lighting, etc.) but excludes the Project Co Managed Systems.

1.79 “**Service Failure**” means any failure by Project Co to (a) respond to any Event within the Response Time as set out in Table 1: Response and Rectification Times in Schedule 15 Output Specifications; or (b) provide the Project Co Services in accordance with Performance Indicators designated Failure Type “SF” in Schedule 15 – Output Specifications and which, where a Rectification Time applies, has not been rectified within the Rectification Time. For the avoidance of doubt, where no Response Time and/or Rectification Time applies (for example, in respect of scheduled activities) there shall be a Service Failure at the point at which the non-compliance occurred (for example, non-performance of the scheduled activity by the scheduled time).

1.80 “**Service Failure Deduction**” means a Deduction which may be made in respect of a Service Failure.

1.81 “**Service Failure Performance Indicator**” means a Performance Indicator designated as “SF” (Service Failure) in Schedule 15 – Output Specifications.

1.82 “**Staff Parking**” has the meaning given in Schedule 15 – Output Specifications.

1.83 “**System Failure**” means an Event whereby any Project Co Managed Systems do not satisfy the System Functionality Condition and such Event is not Rectified within the applicable Rectification Time.

1.84 “**System Failure Deduction**” means a Deduction which may be made in respect of a System Failure.

1.85 “**System Functionality Condition**” means that the Project Co Managed System and user devices and any other system required for the functionality of the Project Co Managed System is capable of fully performing its intended purpose. For greater clarity, if the Project Co Managed

System can partially perform its intended purpose, such Project Co Managed System does not satisfy the System Functionality Condition.

1.86 **“Temporary Alternative Accommodation”** means accommodation offered to Contracting Authority by Project Co as a substitute for any Unavailable Functional Part pursuant to Section 12 of Part C of this Schedule 20.

1.87 **“Temporary Repair”** means, in respect of the occurrence of an Event which results in an Availability Condition not being met in a Functional Part, works of a temporary nature that do not constitute Rectification but, in the case of an Event which results in an Availability Condition not being met in a Functional Part, satisfy the Minimum Agreed Availability Conditions and substantially make good the relevant Event for the period until a Permanent Repair can be undertaken; and, in the case of an Event which results in a breach of the System Functionality Condition, works of a temporary nature to achieve the same outputs as would be the case if the System Functionality Condition was materially satisfied.

1.88 **“Unadjusted Monthly Service Payment”** means the Monthly Service Payment excluding Gainshare Adjustment or Painshare Adjustment arising pursuant to Schedule 36 – Energy Matters, and Deduction adjustment.

1.89 **“Unavailable”** means, in relation to a Functional Part, that such Functional Part (or any part thereof) is in a state or condition which does not comply with any one or more of the Availability Conditions and **“Unavailability”** shall be construed accordingly.

1.90 **“Unit Weighting Percentage”** means the percentage weighting ascribed to each Functional Unit for the purpose of calculating Deductions for Availability Failures as set out in Appendix C to this Schedule 20.

1.91 **“Usable Square Feet”** means the total usable square feet area as it relates to A1.01 spaces only and which shall be calculated based on the use of BOMA (version 2010, Method A).

1.92 **“Use Condition”** means a state or condition of the relevant Functional Part which satisfies the Use Parameters for that Functional Part and allows the Functional Part to be able to be used for its intended use or purpose. For greater clarity, it also includes systems that are necessary for or support the provision of the Project Co Services, with the exception of those covered under the Safety Condition and the Project Co Managed Systems. For the purpose of applying the Use Condition, “able to be used for its intended use or purpose” shall be construed from the Output Specifications requirements for the Functional Part, and, at a minimum, shall mean that all of the requirements relating to, but not limited to, architectural, structural, acoustics and vibration, security systems, mechanical and electrical systems, audio-visual, lighting systems and information, communications automation and technology as set out in the Room Data Sheet for the Functional Part are satisfied, that a Fit-Out Works Completion Certificate has been issued for the Functional Part (when applicable), and that any other systems, equipment, and furniture and fittings that are pertinent to the intended use or purpose of the Functional Part are fully functional. For clarity, if Project Co or a Project Co Party occupies a parking spot designated as (a) Staff Parking – Standard, (b) Mail Services Parking, (c) Staff Parking – Accessible, Type A or B, (d)

Executive Fleet Parking, or (e) OPP Parking, then the Use Condition for such parking spot shall not be satisfied.

1.93 “**Use Parameters**” means the range of functional requirements for the proper use and enjoyment of a Functional Part as set out in Schedule 15 – Output Specifications.

**PART B:
CALCULATION OF SERVICE AND FIT-OUT WORKS PAYMENTS**

1. MONTHLY SERVICE PAYMENT

1.1 The Monthly Service Payment payable in respect of any Contract Month shall be calculated in accordance with the following formula:

$$\text{MSPm} = ((\text{ASPn}/12) + \text{LCPm} - \Sigma\text{D} + \text{GS} - \text{PS})$$

where

MSPm is the Monthly Service Payment for the Contract Month m for which the formula is to be applied;

ASPn is the Annual Service Payment for the relevant Contract Year n;

LCPm is the Lifecycle Payment for the relevant Contract Month m, calculated in accordance with the provisions set out in Section 3 of this Part B;

ΣD is the sum of Deductions in respect of the relevant Contract Month in relation to Quality Failures, Service Failures, System Failures, Availability Failures and Energy Failures calculated in accordance with the provisions set out in Part C of this Schedule 20;

GS means any Gainshare Adjustment arising pursuant to Schedule 36 – Energy Matters; and

PS means any Painshare Adjustment arising pursuant to Schedule 36 – Energy Matters.

1.2 In the Contract Month in which the Payment Commencement Date falls and in the last Contract Month of the Project Term, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month from and including the Payment Commencement Date (for the first month) and up to and including the last day of the Project Term (for the last month). Additionally, in the Contract Month in which the Payment Commencement Date falls, the number of days in the Contract Month shall be adjusted to include such number of calendar days after the Substantial Completion Date and before the Payment Commencement Date that Project Co has provided the Project Co Services.

1.3 Contracting Authority shall pay to Project Co the Monthly Service Payment in accordance with the provisions of this Schedule 20 and Section 31 of the Project Agreement.

1.4 For clarity, each Monthly Service Payment may vary on a month to month basis in any Contract Year until the achievement of the last Fit-Out Works Phase Completion

2. ANNUAL SERVICE PAYMENT

2.1 The Annual Service Payment for any Contract Year shall be calculated in accordance with the following formula:

$$ASP_n = ASP_{cap_n} + (ASP_{ser_n} * ESC_n) + IA$$

Where:

ASP_n	Means the total, escalated Annual Service Payment for the relevant Contract Year n ;
ASP_{cap_n}	Means the Annual Service Payment – Capital Portion during the relevant Contract Year n , as referenced in Column B of Table 1 in Appendix E;
ASP_{ser_n}	Means the un-escalated Annual Service Payment – Service Portion during the relevant Contract Year n , calculated in accordance with Section 2.4 of this Part B;
ESC_n	Means the Escalation Factor for the relevant Contract Year n as calculated in accordance with Section 4.1 of this Part B; and
IA	Means any Insurance Adjustment calculated in accordance with Section 2.2 of this Part B.

2.2 In the event that Project Co is entitled to an Insurance Adjustment pursuant to Section 7.5 of Schedule 25 – Insurance and Performance Security Requirements of the Project Agreement, then either (a) on the Payment Commencement Date, such Insurance Adjustment shall constitute an adjustment to the Annual Service Payment, or (b), on each Insurance Review Date following the Payment Commencement Date, the Insurance Adjustment shall be applied in accordance with Section 2.1 of this Part B.

2.3 [Intentionally Deleted.]

2.4 The un-escalated Annual Service Payment – Service Portion for any Contract Year shall be calculated in accordance with the following formula:

$$ASP_{ser_n} = ASP_{serF_n} + ASP_{serV_n}$$

Where:

ASP_{ser_n}	Means the un-escalated Annual Service Payment – Service Portion during the relevant Contract Year n ;
ASP_{serF_n}	Means the un-escalated Annual Service Payment – Service Portion Fixed during the relevant Contract Year n , as referenced in Column C of Table 1 in Appendix E;
ASP_{serV_n}	Means the un-escalated Annual Service Payment – Service Portion Variable and is calculated as follows:

$$ASP_{serV_n} = ASP_{serVRate} \times USF_m$$

Where:

ASPserVRate is the unit rate per square foot applicable once a Functional Area or Functional Unit has achieved Fit-Out Works Phase Completion and is valued at \$[REDACTED];

USF_m is the Usable Square Feet, calculated at the start of the relevant Contract Month *m* for all areas of the Facility that have achieved Fit-Out Works Phase Completion.

2.5 For clarity, the un-escalated Annual Service Payment – Service Portion Variable set out above may vary on a month to month basis in any Contract Year until the achievement of the last Fit-Out Works Phase Completion. For clarity, during such time, the un-escalated Annual Service Payment – Service Portion Variable shall be calculated based on the applicable Usable Square Feet calculated at the beginning of each Contract Month.

2.6 Each Annual Service Payment – Service Portion must include the cost of any District Energy consumed at the Facility.

2.7 For clarity, the following example should be referenced to calculate the appropriate un-escalated Annual Service Payment – Service Portion.

- (a) If for Month *m*, the Usable Square Feet is [REDACTED]sq.ft, then the un-escalated Annual Service Payment – Service Portion shall be calculated as follows:

$$ASP_{ser_n} = ASP_{serF} + ASP_{serVRate} \times [REDACTED]$$

Where MSP_m shall be based on the value of the $ASP_{ser_n}/12$ under (a) above.

- (b) If for Month *m+1*, the Usable Square Feet is [REDACTED]sq.ft, then the un-escalated Annual Service Payment – Service Portion shall be calculated as follows:

$$ASP_{ser_n} = ASP_{serF} + ASP_{serVRate} \times [REDACTED]$$

Where MSP_{m+1} shall be based on the value of the $ASP_{ser_n}/12$ under (b) above.

Based on the example above, the Monthly Service Payment for Contract Month *m+1* shall be larger than the Monthly Service Payment for Contract Month *m* in same Contract Year *n*.

3. LIFECYCLE PAYMENTS

3.1 The Lifecycle Payment applicable for any Contract Month *m* shall be calculated in accordance with the following formula:

$$LCP_m = \frac{(LCP_n * ESC_n)}{12}$$

Where:

LCP_m is the total, escalated Lifecycle Payment applicable for the relevant Contract Month m;

LCP_n is the Lifecycle Payment for the relevant Contract Year as set out in Column C of Table 2 in Appendix E;

ESC_n is the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.1 of this Part B.

4. ESCALATION FACTOR

4.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$ESC_n = CPI_n / CPI_o$$

Where:

ESC_n is the escalation factor applicable to the relevant Contract Year;

CPI_n is the value of CPI on April 1 of the relevant Contract Year “n”, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date; and

CPI_o is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month of February most recently preceding the Base Date.

5. FIT-OUT WORKS PHASE COMPLETION PAYMENTS

5.1 The Fit-Out Works Phase Completion Payment payable in any Contract Month m shall be calculated in accordance with the following formula:

$$FOWPCP_m = (FOWPCP_{Phase Rate} \times NBF_m)$$

Where:

FOWPCP_m is the total Fit-Out Works Phase Completion Payment payable in the relevant Contract Month m under the Project Agreement for Contract Month m;

FOWPCP_{Phase Rate} is \$[REDACTED]. Notwithstanding the forgoing, under no circumstance shall the FOWPCP_{Phase Rate} amount exceed \$[REDACTED]; and

NBF_m is the total number of Fit-Out Works Phase Completion Certificates issued during the relevant Contract Month m.

5.2 No Fit-Out Works Phase Completion Payment shall be subject to the Escalation Factor.

5.3 Each Fit- Out Works Phase Completion Payment invoice shall be subject to the invoicing and payment requirements set out in Section 31.6 of the Project Agreement and shall be submitted simultaneously with the Monthly Service Payment invoice for the applicable Contract Month.

**PART C:
DEDUCTIONS FROM SERVICE PAYMENTS**

1. ENTITLEMENT TO MAKE DEDUCTIONS

1.1 If at any time during the Operational Term a Quality Failure, a Service Failure, a System Failure, an Energy Failure, a Parking Availability Failure, an Elevator Availability Failure or an Availability Failure shall occur, Contracting Authority shall, subject to Sections 1 and 2 of this Part C, be entitled to make a Deduction from the relevant Monthly Service Payment in respect of that Quality Failure, Service Failure, System Failure, Energy Failure, Parking Availability Failure, Elevator Availability Failure or Availability Failure.

1.2 The maximum aggregate of all Deductions that Contracting Authority can make from a Monthly Service Payment in respect of any Contract Month shall be the Adjusted Service Payment relating to that Contract Month.

1.3 The classification of an Event as a potential Quality Failure, Service Failure, System Failure, Energy Failure, Parking Availability Failure, Elevator Availability Failure or Availability Failure shall be made at the time at which the occurrence of the Event is reported to the FM Help Desk. An Event which is incorrectly classified may be re-classified with the approval of the Contracting Authority Representative and the Project Co Representative, acting reasonably, in which case the applicable Performance Monitoring Report will be revised accordingly.

1.4 During the Bedding-In Period, the following provisions shall apply to all Functional Areas and Functional Units of the Facility:

- (a) during the first 30 days of the Bedding-In Period, no Failure Points may be awarded and no Deductions may be made in respect of Quality Failures and Service Failures;
- (b) during the last 60 days of the Bedding-In Period, the number of Failure Points and the amount of any Deductions in respect of Quality Failures and Service Failures, shall be reduced by [REDACTED]%; and
- (c) during the last Contract Month of such last 60 calendar days of the Bedding-In Period, for the purposes of calculating Deductions, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month when the Bedding-In Period applies.

2. FIT-OUT WORKS PHASE COMPLETION

2.1 Quality Failures, Service Failures, System Failures, Energy Failures, Availability Failures, Elevator Availability Failures and Parking Availability Failures, will apply commencing on the Substantial Completion Date for any Functional Area or Function Unit that is not designated for a Pre-Occupancy Level of Service pursuant to Part 6 of Schedule 15 - Output Specifications.

2.2 For each Functional Area and Functional Unit that is designated for a Pre-Occupancy Level of Service pursuant to Part 6 of Schedule 15 - Output Specifications, the Pre-Occupancy Level of Service shall be maintained by Project Co commencing on the Substantial Completion Date and

Failure Points and Deductions will be awarded to Project Co in respect of each Functional Area and Functional Unit as set out in the following Table:

Period	Relief
From Substantial Completion until a Scheduled Fit-Out Works Phase Completion Date in respect of a Phase of the Fit-Out Works	<p>Project Co shall not be subject to any Failure Points or Deductions relating to Availability Failures, Quality Failures or Service Failures if and to the extent that such Failures Points or Deductions arise as a direct result of the Fit-Out Works required to complete the applicable Phase of the Fit-Out Works.</p> <p>Relief for any Failure Points and Deductions relating to System Failures may be provided to Project Co in accordance with Section 2.4 of this Part C.</p> <p>For clarity, no relief from Deductions or Failure Points shall be provided to Project Co for Energy Failures.</p>
Following the Scheduled Fit-Out Works Phase Completion Date in respect of a Phase of the Fit-Out Works	Subject to Sections 1.4 and 2.3 of this Part C, if applicable, no relief from Failure Points or Deductions will be provided to Project Co.

2.3 Elevator Availability Failures shall not be applied in respect of any elevator to the extent that Project Co is permitted to utilize such elevator to complete the Fit-Out Works in accordance with the terms of the document entitled “Design Parameters for Government Offices – Revision 1” provided as part of the Background Information. For clarity, during Core Hours, one elevator in each tower may be used by Project Co to complete the Fit-Out Works in such tower until 50% of the Phases of the Fit-Out Works have been completed with respect to such tower. When 50% of the Phases of the Fit-Out Works have been completed with respect to such tower, then such elevator shall return to use as a Passenger Elevator in such tower.

2.4 If a System Failure arises as a direct result of the Fit-Out Works, Contracting Authority may, acting reasonably, provide relief to Project Co from Failure Points and Deductions in respect of such System Failure as follows:

- (a) in the event that Project Co becomes aware that any Fit-Out Works will or could result in a System Failure, Project Co shall notify Contracting Authority at least 10 Business Days prior to the commencement of such Fit-Out Works and, in such notice, may request relief from the Failure Points and Deductions that will or could arise as a result of such System Failure. Within two Business Days of the receipt of any such notice, Contracting Authority may, acting reasonably, reject or accept any such request for relief; or

- (b) in the event that Project Co, acting reasonably, was unable to notify Contracting Authority within the period set out in Section 2.4(a) of this Part C and a System Failure arises, Project Co may immediately notify Contracting Authority to request relief from the Failure Points and Deductions that arose as a result of such System Failure. Contracting Authority may, acting reasonably, reject or accept such request for relief which, if accepted, will be applied retroactively.

3. AMOUNT OF DEDUCTIONS FOR QUALITY FAILURES

3.1 Subject to Sections 1 and 2 of this Part C, the amount of the Deduction in respect of a Quality Failure shall be as follows:

- (a) in the case of a Minor Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20;
- (b) in the case of a Medium Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20; and
- (c) in the case of a Major Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20.

3.2 There are no Response Times or Rectification Times in respect of Quality Failures. The occurrence of a Quality Failure will result in a Quality Failure Deduction in respect of the Contract Month in which the Quality Failure occurred.

3.3 Following the occurrence of a Quality Failure, Project Co shall be allowed a Remedial Period of one Contract Month. If, before the expiry of the Remedial Period, Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Quality Failure, no further Deduction shall be made in respect of the Quality Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 3.1 of Part C of this Schedule 20) and a further Remedial Period or Remedial Periods of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Quality Failure.

4. AMOUNT OF DEDUCTIONS FOR SERVICE FAILURES

4.1 Subject to Sections 1 and 2 of this Part C, the amount of the Deduction in respect of a Service Failure shall be as follows:

- (a) in the case of a Minor Service Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20. Where the Service Failure affects Functional Units, this Deduction amount will be applied per Functional Unit affected;

- (b) in the case of a Medium Service Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20. Where the Service Failure affects Functional Units, this Deduction amount will be applied per Functional Unit affected; and
- (c) in the case of a Major Service Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20. Where the Service Failure affects Functional Units, this Deduction amount will be applied per Functional Unit affected.

4.2 Where a Service Failure Performance Indicator has a Response Time or a Rectification Time, a Service Failure shall only occur if the Event in question has not been responded to within the applicable Response Time or rectified within the applicable Rectification Time.

4.3 Following the occurrence of a Service Failure where the applicable Service Failure Performance Indicator has a Response Time or a Rectification Time, Project Co shall be allowed an additional Response Time or Rectification Time (as the case may be) equivalent to the original Response Time or Rectification Time. If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Service Failure, no further Deduction shall be made in respect of the Service Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 4.1 of Part C of this Schedule 20) and a further Response Time or Rectification Time of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Service Failure.

4.4 The provisions of Section 4.3 of this Part C shall not apply to Service Failures in cases where, if the response or rectification is not carried out within the Response Time or the Rectification Time, as applicable, the Contracting Authority Representative notifies the Project Co Representative that Contracting Authority's no longer requires the relevant Project Co Service.

4.5 Where a Service Failure Performance Indicator has no Response Time or Rectification Time, a Service Failure, shall occur upon the occurrence of the Event in question and a Service Failure Deduction shall apply in accordance with Section 4.1 of this Part C. If the Recording Frequency of the applicable Service Failure Performance Indicator is indicated in Part 6 to Schedule 15 – Output Specifications with an “R”, Deductions for such Service Failure will be limited to no more than one occurrence per Contract Day.

5. AMOUNT OF DEDUCTIONS FOR ENERGY FAILURES

5.1 Subject to Sections 1 and 2 of this Part C, the amount of a Deduction in respect of an Energy Failure shall be as follows:

- (a) in the case of a Minor Energy Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20;

- (b) in the case of a Medium Energy Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20; and
- (c) in the case of a Major Energy Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20.

5.2 The occurrence of an Energy Failure will result in a Deduction in respect of the Contract Month in which the Energy Failure occurred.

5.3 Any and all Remedial Periods in respect of Energy Failures are specified in Schedule 15 – Output Specifications. Following the occurrence of an Energy Failure, if a Remedial Period exists in respect of such Energy Failure, Project Co shall have until the expiry of such Remedial Period to demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Energy Failure, and in such an event, no further Deduction shall be made in respect of the Energy Failure. Otherwise, a further failure (as described in Schedule 15) and a corresponding Deduction shall be made of the appropriate amount (as described in Section 5.1 of Part C of this Schedule 20) and a further Remedial Period or Remedial Periods shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Energy Failure.

6. DEDUCTIONS FOR AVAILABILITY FAILURES

6.1 Subject to Sections 1 and 2 of this Part C, the amount to be deducted from the Monthly Service Payment in respect of any Availability Failure shall be the higher of:

- (a) the Minimum Unavailability Deduction; and
- (b) the aggregate of amounts calculated in accordance with the following formula in respect of all Functional Parts made Unavailable as a result of the Availability Failure:

$$D = (\text{UMSPm}/(\text{Ny} \times 6)) \times \text{AW} \times \text{UW} \times \text{DP}$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

UMSPm means the Unadjusted Monthly Service Payment at the time the relevant Availability Failure occurs;

Ny means the number of days in the Contract Month m (being the month in which the relevant Availability Failure occurs) applicable to all Functional Areas;

AW means the Area Weighting Percentage attributable to the Functional Area in which the Availability Failure occurs;

UW means the Unit Weighting Percentage attributable to the Functional Unit(s) in which the Availability Failure occurs; and

DP is [REDACTED]% and shall apply only where the relevant Functional Part is Unavailable but Contracting Authority continues to use it (or any part thereof).

The Deductions for Availability Failures will be index-linked by the Escalation Factor in Section 4.1 of Part B in this Schedule 20, per Functional Unit affected.

6.2 For the avoidance of doubt, if more than one Functional Unit or Functional Area is rendered Unavailable by an Availability Failure, the amount of the Minimum Unavailability Deduction in respect of that Availability Failure remains the same. However, if the Availability Failure is not rectified within the applicable period as set out in Table 1: Response and Rectification Times in Part 6 to Schedule 15 – Output Specifications, another Deduction (including the Minimum Unavailability Deduction) may be applied, since this is treated as a further Availability Failure.

6.3 In the event of an Elevator Availability Failure, Section 13 of this Part C explains the calculation of the corresponding Elevator Availability Failure Deduction.

6.4 Contracting Authority has categorized Functional Units as Category 1 Functional Units or Category 2 Functional Units in Appendix D to this Schedule 20 for the purposes of calculating and applying Deductions. Table 1: Response and Rectification Times in Schedule 15 – Output Specifications specifies the Response Time and Rectification Time based on which Deductions will be calculated and applied for Events affecting Category 1 Functional Units or Category 2 Functional Units.

6.5 Following the occurrence of an Availability Failure, Project Co shall have until the later of

- (a) the expiry of such Response Time or Rectification Time (as applicable), or
- (b) end of the current Non-Core Hours period where the Response Time or Rectification Time (as applicable) begins outside of Non-Core Hours and ends within the next occurring Non-Core Hours period

to demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Availability Failure. Otherwise, a further Availability Failure along with corresponding Deduction(s) and Failure Point(s) shall be made and a further Response Time or Rectification Time (as applicable) shall apply.

Additional subsequent Response Time(s) or Rectifications Time(s) (as applicable) shall continue to apply without regard to any Non-Core Hours period until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the Availability Failure.

6.6 For clarity, the following example should be referenced to calculate the appropriate Deduction(s) and Failure Point(s): If the Availability Failure occurs at 14:00, with the Rectification Time set at 4 hours and Non-Core Hours beginning at 19:00 and concluding the next day at 06:59, then the Deductions and Failure Points would be calculated as follows:

- (a) the first Rectification Time would last for a four hour period from 14:01 to 18:00.
- (b) the second Rectification Time would begin at 18:01 and end at the later of 22:00 or the end of the Non-Core Hours period at 06:59. In this case, the later time would be 06:59.
- (c) the third Rectification Time would commence at 07:00 and end at 10:59.
- (d) the fourth Rectification Time would commence at 11:00 and end at 13:59.

6.7 For the avoidance of doubt, once any part of an Octant or a Podium Octant is rendered Unavailable, an Availability Failure for such Octant or Podium Octant shall have occurred. If an additional part of such Octant or Podium Octant is rendered Unavailable while the original Availability Failure in the same Octant or Podium Octant is not Rectified, no additional Availability Failure for such Octant or Podium Octant shall have occurred, and the Response Time or Rectification Time (as applicable) will have commenced at the time of the occurrence of the original Availability Failure.

6.8 Unit Weighting Percentages and Area Weighting Percentages may be amended during the Operational Term in accordance with Part D of this Schedule 20 after each Fit-Out Works Phase Completion is achieved. No such amendment shall constitute a Variation or allow for additional compensation to be paid by Contracting Authority to Project Co unless otherwise set out in this Schedule 20 or in the Project Agreement, if the Availability Gearing remains the same.

6.9 Subject to Section 1 of this Part C, the amount to be deducted from the Monthly Service Payment in respect of any Parking Availability Failure shall be the aggregate of the Parking Availability Deductions for all parking spots made Unavailable as a result of the Parking Availability Failure. For clarity, Parking Availability Deductions will commence immediately at the time of the occurrence of such Parking Availability Failure for each relevant parking spot.

7. RECTIFICATION

7.1 This Section applies where, in Schedule 15 – Output Specifications, a Rectification Time is specified in respect of an Event.

7.2 Subject to Sections 9 and 9.6 (in respect of Rectification only) of this Part C, no Service Failure, System Failure or Availability Failure shall occur if Project Co successfully carries out the Rectification within the specified Rectification Time and in such circumstances no Deduction shall be made.

7.3 When carrying out a Rectification, or a Temporary Repair pursuant to Section 9 of this Part C, Project Co shall act in accordance with Applicable Law, Good Industry Practice, relevant Contracting Authority policies and Contracting Authority requirements related to fire safety or

health or workplace safety. Failure to do so shall be deemed to be a new Minor Service Failure, unless the failure constitutes a breach of Applicable Law, in which case it shall be deemed to be a new Major Service Failure.

8. RE-COMMISSIONING

8.1 Where a Functional Unit needs to be re-commissioned by Contracting Authority following a Rectification, the Contracting Authority Representative shall determine, prior to the commencement of any re-commissioning activities, whether the Rectification has been properly carried out. The Contracting Authority Representative may delegate this task to any other Contracting Authority employee in the relevant Functional Unit and, if re-commissioning activities commence, it shall be assumed that the necessary determination has been made. If it does not then prove possible to successfully complete the re-commissioning of the relevant Functional Unit, Project Co shall, notwithstanding, still be deemed to have carried out Rectification successfully.

8.2 Section 8.1 of this Part C shall not affect the right of Contracting Authority to issue, in accordance with the Output Specifications, an Ad-Hoc Service Request for the provision of Ad-Hoc Services in connection with any re-commissioning activities carried out by Contracting Authority.

9. TEMPORARY REPAIRS

9.1 If Project Co informs Contracting Authority that it is unable to Rectify an Event within the specified Rectification Time due to the need for specialized materials or personnel that are not, and cannot reasonably be expected to be, immediately available at the Facility but that a Temporary Repair can be effected:

- (a) Contracting Authority shall permit Project Co to carry out the Temporary Repair proposed by Project Co unless Contracting Authority, acting reasonably, considers that, if the Temporary Repair proposed by Project Co is carried out, the use of the relevant Functional Part or Project Co Managed Systems will not be in accordance with Good Industry Practice;
- (b) where a Temporary Repair is permitted, a deadline by which a Permanent Repair must be made shall be agreed to by the Parties, each acting reasonably, giving Project Co a reasonable period within which to carry out the Permanent Repair (the “**Permanent Repair Deadline**”).

9.2 During any period beginning at the time when a Temporary Repair is permitted and ending at the earlier of:

- (a) the time at which a Permanent Repair is successfully completed; and
- (b) the Permanent Repair Deadline,

the Availability Conditions shall be replaced by the Minimum Agreed Availability Conditions for the purposes of assessing if the relevant Functional Part is Unavailable.

9.3 Subject to Section 7.3 of this Part C, if the Temporary Repair is effected within the specified Rectification Time and the Permanent Repair is effected by no later than the Permanent Repair Deadline, no Service Failure, System Failure or Availability Failure will occur, and no Deduction may be made, in respect of the Event.

9.4 If the Temporary Repair is not effected within the specified Rectification Time, a Service Failure, System Failure or Availability Failure as the case may be, shall be deemed to occur.

9.5 If the Temporary Repair is not successfully carried out prior to the Permanent Repair Deadline, and no Permanent Repair has been successfully carried out before the expiry of such time period, the right for Project Co to carry out a Temporary Repair pursuant to this Section 9 shall cease and Section 9.6 of this Part C shall apply.

9.6 If the Permanent Repair is not effected by the Permanent Repair Deadline, a Service Failure, System Failure or Availability Failure as the case may be, shall be deemed to occur and the provisions of Sections 4, 14 and 6 of this Part C shall apply.

10. REPEATED RECTIFICATION

10.1 Notwithstanding that Project Co completes a Rectification in respect of an Event within the relevant Rectification Time, there shall be deemed to be a Major Service Failure on the occurrence of:

- (a) the third such Event that arises during the Contract Day; and/or
- (b) the fourth such Event which occurs in any consecutive seven day period,

provided that:

- (c) each such Event is in connection with the same Service Standards set out in Schedule 15 – Output Specifications and occurs in the same Functional Area or affects the same Project Co Managed Systems; and
- (d) whether the Events occur in the same Functional Unit or in different Functional Units within the same Functional Area there is reason to believe that the root cause of each Event is the same.

10.2 If the same such Event occurs more than three times in a Contract Day or more than four times in any consecutive seven day period, a Major Service Failure shall be deemed to have occurred in respect of each and every Event which has occurred during the Contract Day or during the consecutive seven day period (as the case may be).

11. EFFECT OF UNAVAILABILITY ON SERVICE FAILURE DEDUCTIONS

11.1 Subject to 11.2, when an Event occurs and an Availability Failure applies, no Service Failure or Quality Failure in respect of the same Event shall apply.

11.2 If an Event that results in an Availability Condition not being met in a Functional Unit or Functional Area is not responded to within the Response Time prescribed in Table 1: Response and Rectification Times in Part 6 to Schedule 15 – Output Specifications, Deductions for Service Failures shall apply in addition to any Availability Failure that may impact the affected Functional Unit or Functional Area.

11.3 For the avoidance of doubt, in the case of an Elevator Availability Failure, further Deductions in respect of unrelated Availability Failures that affect Functional Parts of the Facility shall continue to apply.

12. TEMPORARY ALTERNATIVE ACCOMMODATION

12.1 If an Availability Failure occurs Project Co may offer Contracting Authority Temporary Alternative Accommodation by written notice to Contracting Authority within 10 Business Days from the commencement of the relevant Event.

12.2 The Temporary Alternative Accommodation shall:

- (a) comply with:
 - (i) the Accessibility Condition;
 - (ii) the Safety Condition; and
 - (iii) the Use Condition;
- (b) be a temporary alternative having regard to the facts and the circumstances in existence;
- (c) be upon terms which are not materially different from the terms upon which Contracting Authority occupied the affected Functional Part;
- (d) unless Contracting Authority otherwise agrees, be accommodation for which Contracting Authority is not already paying within the Monthly Service Payment or other terms of the Project Agreement;
- (e) be supplied with the Project Co Services to the standards set out in Part 6 of Schedule 15 – Output Specifications which Project Co would under normal circumstances be providing within the Unavailable Functional Part;
- (f) not involve Contracting Authority incurring any additional cost or charges in respect of the Temporary Alternative Accommodation including, without limitation, the reasonable costs of any relocation to and from the Temporary Alternative Accommodation; and
- (g) be in reasonable proximity to the Facility for which it is a temporary replacement, shall be reasonably accessible by public and private transport and shall have adequate parking facilities.

12.3 The written notice sent by Project Co to Contracting Authority pursuant to Section 12.1 of this Part C shall:

- (a) describe the Temporary Alternative Accommodation;
- (b) invite Contracting Authority to inspect the Temporary Alternative Accommodation and shall give Contracting Authority reasonable notice of a time and a date when it may do so;
- (c) set out its proposals regarding the timing and co-ordination of relocation to the Temporary Alternative Accommodation;
- (d) specify the date (agreed by Contracting Authority before the submission of the written notice) by which Project Co reasonably expects Contracting Authority to be able to relocate back to the relevant Functional Part (the “**Return Date**”); and
- (e) describe the terms upon which Contracting Authority shall be entitled to occupy such Temporary Alternative Accommodation including the proposed division of such accommodation into Functional Units and Functional Areas and the weighting to be attributed to them for the purposes of the operation of the Payment Mechanism.

12.4 If it requires an inspection of the Temporary Alternative Accommodation, Contracting Authority shall do so within 5 Business Days of receipt of the notice referred to in Section 12.1 above. Contracting Authority shall notify Project Co in writing of its acceptance or refusal of the proposed Temporary Alternative Accommodation within 24 hours of its inspection of the same or, if Contracting Authority has elected not to carry out an inspection, within 5 Business Days of receipt of the notice referred to in Section 12.1 of this Part C. Contracting Authority shall act reasonably when deciding to accept or refuse any proposed Temporary Alternative Accommodation.

12.5 Contracting Authority accepts the offer of Temporary Alternative Accommodation then, without affecting Contracting Authority’s remedial rights under Section 30 of the Project Agreement, Contracting Authority shall not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which Contracting Authority is entitled and able to return to and use the Functional Part in accordance with the agreed program for relocation and re-commissioning referred to in Section 12.9 of this Part C.

12.6 For the avoidance of doubt, Contracting Authority’s rights under Section 30 of the Project Agreement shall not be affected by the acceptance by Contracting Authority of the Temporary Alternative Accommodation.

12.7 If Contracting Authority accepts Project Co’s offer of Temporary Alternative Accommodation, no further Deductions shall be made or Failure Points awarded in respect of a Functional Part vacated by Contracting Authority while the Temporary Alternative Accommodation replacing that Functional Part is being used by Contracting Authority.

12.8 Contracting Authority shall be entitled to award Failure Points and make Deductions in respect of any Service Failure or Availability Failure which occurs in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Part which it replaced and any Deduction in respect of an Availability Failure shall be calculated using the weightings Applicable to the Functional Part which the Temporary Alternative Accommodation has replaced.

12.9 When Project Co has completed the required works to enable Contracting Authority to return to the Functional Part, the Contracting Authority Representative shall confirm that the Availability Conditions for the Functional Part are met and the Contracting Authority Representative and Project Co shall agree a relocation program to return to the Functional Part and any necessary period for re-commissioning.

12.10 Where Contracting Authority has accepted the proposed Temporary Alternative Accommodation pursuant to Section 12.4 of this Part C, in the event that Project Co fails to complete the works to enable Contracting Authority to return to the relevant Functional Part on the Return Date Contracting Authority may, in its absolute discretion, vacate the Temporary Alternative Accommodation at any time after the Return Date or remain in occupation. In such circumstances:

- (a) where Contracting Authority, in its discretion, remains in occupation of the Temporary Alternative Accommodation following the Return Date the Temporary Alternative Accommodation shall be deemed to be Unavailable with Effect from the Return Date and Contracting Authority shall levy [REDACTED]% of the Deduction which would have been levied in respect of that Availability Failure for each Contract Day on which Contracting Authority occupies the Temporary Alternative Accommodation thereafter until the date on which the Availability Failure referred to in Section 12.1 of this Part C has been rectified and Contracting Authority is able to resume its use of the Functional Part; and
- (b) where Contracting Authority, in its discretion, vacates the Temporary Alternative Accommodation following the Return Date, the Temporary Alternative Accommodation shall be deemed to be Unavailable on each Contract Day on which Contracting Authority is not in occupation of the Temporary Alternative Accommodation until the date on which the Availability Failure referred to in Section 12.1 of this Part C has been rectified and Contracting Authority is able to resume its use of the Functional Part.

12.11 Contracting Authority shall specify a date, being a date no earlier than the Return Date, by which the Rectification shall be completed and if Project Co fails to complete the Rectification of the Functional Part for which the Temporary Alternative Accommodation is a replacement by such date the following shall apply:

- (a) Contracting Authority may (without prejudice to its rights under Section 42 of the Project Agreement or any other express rights of Contracting Authority under the Project Agreement) take such steps as it considers to be appropriate (either itself or by engaging others to take such steps) to restore any Functional Part for which the

Temporary Alternative Accommodation is a replacement to a condition which satisfies in all respects the requirements of the Output Specifications; and

- (b) Project Co shall reimburse Contracting Authority for all reasonable costs, losses, expenses or damages incurred by Contracting Authority in relation to taking the steps, or engaging others to take the steps, referred to in Section 12.11(a) of this Part C and Contracting Authority shall be entitled to deduct any such amount from any amounts payable to Project Co under the provisions of the Project Agreement.

13. DEDUCTIONS FOR ELEVATOR AVAILABILITY FAILURES

13.1 In the event of an Elevator Availability Failure for any Passenger Elevator, the level of Availability Failure Deduction shall equal the aggregate of amounts calculated in accordance with the following formula in respect of all Functional Parts made Unavailable as a result of the Elevator Availability Failure(s):

$$D = \sum_{L=i}^n (\text{UMSPm}/(\text{Ny} \times 6)) \times \text{AGL} \times \text{LA} \times \text{DP(EAF)}$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

L means the level of the relevant building in the Facility currently being calculated, as indicated in Appendix D;

UMSPm means the Unadjusted Monthly Service Payment at the time the relevant Availability Failure occurs;

Ny means the number of days in the Contract Month (being the month in which the relevant Availability Failure occurs);

AGL means the sumproduct of the Area Weighting Percentages attributable to the relevant Functional Areas and Unit Weighting Percentages attributable to the relevant Functional Units on the level of the relevant building in the Facility to which Contracting Authority's access has been impaired as a result of the Elevator Availability Failure as indicated in Table 1 of Appendix D as applicable to the elevator(s) in question.

LA means Level Adjustment and is determined as follows:

- [REDACTED]% for when L is Floor 6 or below;
- [REDACTED]% for when L is Floor 7 and above; and

DP(EAF) is the percentage set out in Table 1 of Appendix D to this Schedule 20 as determined by the number of Passenger Elevators that are Unavailable at any one time in the relevant building in the Facility currently being calculated.

For clarity, if an Elevator Availability Failure for a Passenger Elevator occurs due to impaired access to such elevator(s) on a specific level(s), but Contracting Authority continues to use the elevator(s) on another level(s), the Availability Failure Deduction will apply only for the level(s) where such Elevator Availability Failure has occurred unless the DP(EAF) is equal to 50% or above, then full Availability Failure Deduction will apply.

13.2 In the event of an Elevator Availability Failure for any Parking Elevator, the level of Availability Failure Deduction shall equal the aggregate of amounts calculated in accordance with the following formula in respect of all Functional Areas made Unavailable as a result of the Elevator Availability Failure(s):

$$D = (\text{PAD}_m / (\text{N}_y \times 6)) \times \text{DP(EAF)} \times \text{PU}$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

PAD_m means Parking Availability Deduction for Contract Month m;

N_y means the number of days in the Contract Month (being the month in which the relevant Availability Failure occurs);

DP(EAF) is the percentage set out in Table 1 of Appendix D to this Schedule 20 as determined by the number of Parking Elevators that are Unavailable at any one time;

PU means the Total Number of Parking Spots as per Appendix D of this Schedule 20 less Parking Spots assigned for Project Co Services.

13.3 In the event of an Elevator Availability Failure for any Podium Elevator, the level of Availability Failure Deduction shall equal the aggregate of amounts calculated in accordance with the following formula in respect of all Functional Parts made Unavailable as a result of the Elevator Availability Failure(s):

$$D = \sum_{L=i}^n (\text{UMSP}_m / (\text{N}_y \times 6)) \times \text{AG}_L \times [\text{REDACTED}] \% \times \text{DP(EAF)}$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

L means the level of the relevant building in the Facility currently being calculated, as indicated in Appendix D;

UMSPm means the Unadjusted Monthly Service Payment at the time the relevant Availability Failure occurs;

Ny means the number of days in the Contract Month (being the month in which the relevant Availability Failure occurs);

AG_L means the sumproduct of the Area Weighting Percentages attributable to the relevant Functional Areas and Unit Weighting Percentages attributable to the relevant Functional Units on the level of the relevant building in the Facility to which Contracting Authority's access has been impaired as a result of the Elevator Availability Failure as indicated in Table 1 of Appendix D as applicable to the elevator(s) in question.

DP(EAF) is the percentage set out in Table 1 of Appendix D to this Schedule 20 as determined by the number of Podium Elevators that are Unavailable at any one time in the relevant building in the Facility currently being calculated.

14. DEDUCTIONS FOR SYSTEM FAILURES

14.1 Subject to Sections 1 and 2 of this Part C, the amount of any Deduction in respect of a System Failure shall be as follows:

- (a) In the case of a System Failure affecting any Project Co Managed Systems classified as a System Failure (Tier 1) pursuant to Section 26.2 of Part 6 of Schedule 15 – Output Specifications, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20.
- (b) In the case of a System Failure affecting any Project Co Managed Systems classified as a System Failure (Tier 2) pursuant to Section 26.2 of Part 6 of Schedule 15 – Output Specifications, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20.
- (c) In the case of a System Failure affecting any Project Co Managed Systems classified as a System Failure (Tier 3) pursuant to Section 26.2 of Part 6 of Schedule 15 – Output Specifications, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 4.1 of Part B in this Schedule 20.

Following the occurrence of a System Failure, Project Co shall be allowed an additional Rectification Time equivalent to the original Rectification Time for such occurrence. If, before the expiry of such additional period, Project Co demonstrates, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the System Failure, no further Deduction shall be made in respect of the System Failure. Otherwise, a

further Deduction shall be made of the appropriate amount and a further Rectification Time of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Contracting Authority Representative, that it has remedied the System Failure. For clarity, no Response Times shall apply in respect of System Failures

**PART D:
REVIEW OF DEDUCTIONS**

1. ANNUAL REVIEW

1.1 The identification of Functional Areas, Functional Units, Project Co Managed Systems, Rectification Times, Area Weighting Percentages, Unit Weighting Percentages and the amount of Deductions for each category of Quality Failure, Service Failure, System Failure, Energy Failure, Parking Availability Failure and Availability Failure shall be reviewed by Contracting Authority and Project Co

- (a) by no later than the date that is 180 days prior to the Scheduled Substantial Completion Date , and
- (b) following the Substantial Completion Date, at any time if requested by either Party.

1.2 Contracting Authority and Project Co shall act reasonably and diligently in carrying out the review.

1.3 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 Project Co Service or the likely magnitude of Deductions. Where proposed changes would result in any such alteration, the matter shall be deemed to be a Variation and Schedule 22 – Variation Procedure shall apply.

1.4 Unless otherwise agreed between the Parties, Contracting Authority and Project Co may in respect of each matter 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.

1.5 Unless otherwise agreed between the Parties, 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 1.1 of this Part D.

**PART E:
FAILURE BY PROJECT CO TO MONITOR OR REPORT**

1. FAILURE BY PROJECT CO TO MONITOR OR REPORT

1.1 Subject to Section 1.2 of this Part E, in the event that at any time within two years of the submission of a Performance Monitoring Report, an error or omission in such Performance Monitoring Report is discovered which reveals one or more failures of Project Co to monitor or accurately report one or more Events, Quality Failures, Service Failures, System Failures, Availability Failures, Energy Failures or Ad-Hoc Service Requests:

- (a) each such failure shall be deemed to be a new Minor Quality Failure, save and except if such failure was the result of any of the circumstances described in Section 1.3 of this Part E, in which case it shall be deemed to be a new Major Quality Failure; and
- (b) Contracting Authority shall be entitled to make Deductions in respect of each such Quality Failure, Service Failure, System Failure, Energy Failure or Availability Failure in the manner set out in Part C of this Schedule 20. Such Deductions shall be made from the Monthly Service Payment payable in respect of the Contract Month in which the relevant matters were discovered or, to the extent that Contracting Authority is unable to make such Deductions from the Monthly Service Payment in respect of that Contract Month, such Deductions may be carried forward and deducted from Monthly Service Payment(s) due in respect of future Contract Months.

1.2 Section 1.1 of this Part E shall be applicable in respect of a Performance Monitoring Report for a period of two years following the submission of such Performance Monitoring Report, save and except if the applicable failure to monitor or accurately report described in Section 1.1 of this Part E arose as a result of any of the circumstances set out in Section 1.3 of this Part E.

1.3 For the purposes of Section 1.1(a) and Section 1.2 of this Part E, the relevant circumstances are:

- (a) fraudulent action or inaction;
- (b) deliberate misrepresentation; or
- (c) gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.

1.4 The provisions of this Part E shall be without prejudice to any rights of Contracting Authority pursuant to Sections 29, 42 and 57 of the Project Agreement.

**PART F:
[INTENTIONALLY LEFT BLANK]**

**PART G:
FAILURE POINTS**

1. FAILURE POINTS

1.1 Failure Points shall be awarded for every Quality Failure, Service Failure, System Failure and Availability Failure which occurs during the Operational Term, unless such Failure Points are cancelled pursuant to any other provision of the Project Agreement.

1.2 For the avoidance of doubt when awarding Failure Points, where a further Availability Failure, Quality Failure, Service Failure or System Failure is deemed to have occurred in accordance with Sections 3, 4, 6 or 14 of Part C of this Schedule 20, the appropriate number of Failure Points shall be awarded in respect of each such Availability Failure, Quality Failure, Service Failure or System Failure even though they arise from the same circumstances.

1.3 If the same Availability Failure or Service Failure affects more than one Functional Unit, the number of Failure Points to be awarded in respect of that Availability Failure shall be determined by the number of Functional Units affected. For example, an Availability Failure affecting one Functional Unit will attract [REDACTED] Failure Points whereas an Availability Failure affecting five Functional Units will attract [REDACTED] (i.e. [REDACTED]) Failure Points.

1.4 The number of Failure Points attributable to Quality Failures, Service Failures, System Failure and Availability Failures is set out in Appendix A – Table 1 to this Schedule 20. For greater certainty, if the Availability Failure is caused by an Elevator Availability Failure, the number of Failure Points shall be allocated based on table 2 of Appendix A to this Schedule 20.

1.5 The maximum number of Failure Points that can be allocated to a single Availability Failure is [REDACTED] for any Contract Month. The maximum number of Failure Points that can be allocated to a single System Failure is: [REDACTED].

1.6 For the avoidance of doubt, if the maximum number of Failure Points has been allocated due to an Availability Failure or System Failure then no further Failure Points shall be allocated due to the continuation of that Availability Failure during the period specified in Section 1.5 above (as a “further Availability Failure” pursuant to Section 6.2 of Part C of this Schedule 20) or System Failure (as a “further System Failure” pursuant to Section 14.1 of Part C of this Schedule 20).

**PART H
[INTENTIONALLY DELETED]**

**APPENDIX A
FAILURE POINTS**

[REDACTED]

**APPENDIX B
[INTENTIONALLY DELETED]**

**APPENDIX C
AREA WEIGHTS AND FUNCTIONAL UNIT WEIGHTS**

[REDACTED]

**APPENDIX D
DEDUCTION PERCENTAGES USED IN THE CALCULATION
OF ELEVATOR AVAILABILITY FAILURES**

[REDACTED]

**APPENDIX E
ANNUAL SERVICE PAYMENT SCHEDULE**

[REDACTED]

SCHEDULE 21

[INTENTIONALLY DELETED]

**SCHEDULE 22
VARIATION PROCEDURE**

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) “**Contracting Authority Work**” has the meaning given in Section 1.7(a).
 - (ii) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
 - (iii) “**Estimate**” has the meaning given in Section 1.4(a).
 - (iv) “**Overhead and Profit**” has the meaning given in Appendix B of this Schedule 22.
 - (v) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a).
 - (vi) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Project Co Services.
 - (vii) “**Variation Confirmation**” has the meaning given in Section 1.8(a)(ii).
 - (viii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the Contracting Authority Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (ix) “**Variation Enquiry**” has the meaning given in Section 1.3(a).

1.2 General

- (a) Contracting Authority has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22, provided that Contracting Authority shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which Contracting Authority is obligated to proceed with a Variation.
- (b) Contracting Authority shall be obligated to proceed with a Variation in certain circumstances specified in the Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.
- (c) The only payment or compensation payable by Contracting Authority to Project Co in connection with any Variation shall be the sum of the following amounts:
- (i) the Direct Cost of such Variation; plus

- (ii) Overhead and Profit.
- (d) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.
- (e) Project Co shall attend and shall cause any relevant Subcontractors to attend any meetings requested by Contracting Authority from time to time to discuss the implementation of any Variation or Variations generally, including with respect to the administration and pricing of Variations.
- (f) Contracting Authority may, in its sole discretion, elect to apply any portion of the Schedule Cushion to any extension of the time for achieving Substantial Completion or any Fit-Out Works Phase Completion otherwise determined under a Variation, with the result that such extension of time shall be reduced or eliminated, as the case may be, by the number of days of the Schedule Cushion that Contracting Authority has elected to apply, and the determination of the increase in the costs and expenses incurred by Project Co and any Project Co Party in connection with the financing from the Lenders pursuant to the Lending Agreements associated with such Variation (including, for greater certainty, all interest, fees, expense reimbursements and all other relevant costs and expenses set out in the Financial Model) shall be recalculated and shall only be based on the remaining extension of such time, if any, under such Variation after such application by Contracting Authority of the Schedule Cushion.
- (g) For greater certainty, subject to Section 1.2(f) and notwithstanding Section 38.2(e) of the Project Agreement, where Contracting Authority elects to apply all or any portion of the number of days of the Schedule Cushion, Project Co shall only be entitled to compensation valued pursuant to Section 1.6(b), provided, however, the Overhead and Profit shall be reduced by [REDACTED]% and applied to the entire scope of the applicable Variation..

1.3 Variation Enquiry

- (a) If Contracting Authority proposes or is obligated pursuant to the terms of the Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
 - (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether Contracting Authority intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Monthly Service Payments (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of the Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to the Project Agreement (including the

Output Specifications or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6 and in the form prescribed by Contracting Authority, acting reasonably.

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to Contracting Authority’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
 - (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
 - (ii) the implementation of the Variation would:
 - (A) infringe Applicable Law;
 - (B) cause to be revoked any of the existing Permits, Licences, Approvals and Agreements required by Project Co to perform the Project Operations, and any such Permit, Licence, Approval and Agreement is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require any new Permits, Licences, Approvals and Agreements for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or Contracting Authority, as applicable, be obtainable;
 - (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
 - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
 - (v) Contracting Authority does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
 - (vi) the Variation would, if implemented, result in a change in the essential nature of the Facility;

- (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof);
 - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts; or
 - (ix) in the case of a Variation relating to the Project Co Services, the time specified for implementation of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to Contracting Authority a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless Contracting Authority in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to Contracting Authority's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances, including a schedule, work breakdown structure, contact list, description of roles and responsibilities and an organizational structure chart;
 - (ii) any impact on the Construction Period Payments, any of the Fit-Out Works Phase Completion Payments, the Scheduled Substantial Completion Date or any Scheduled Fit-Out Works Phase Completion Date, and any other schedule impact on the provision of the Facility, the completion of the Works and the performance of the Project Co Services (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iii) any impact on the performance of the Project Operations and any other impact on the Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iv) any impact on expected usage of utilities, including those identified in Schedule 20 – Payment Mechanism, for the current Contract Year and subsequent Contract Years;
 - (v) any amendments to the Project Agreement (including Schedule 20 – Payment Mechanism) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of Contracting Authority to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;

- (vi) any impact on the Direct Cost to Project Co and each Subcontractor of the proposed Variation, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or Contracting Authority); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
- (vii) either:
 - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
 - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (viii) Project Co's confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be the Base Case Equity IRR;
- (ix) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments (expressed in both real dollar amounts and Base Date dollar amounts using the Escalation Factor as the discount rate), with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Variation;
- (x) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and Project Co or Contracting Authority, as applicable, must obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
- (xi) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of the Project Agreement,

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

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to Contracting Authority's satisfaction, acting reasonably, that:
 - (i) subject to Sections 1.6(c) and 1.6(e), Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders, to minimize any increase in costs and to maximize any reduction in costs;

- (ii) except as otherwise set out in this Schedule 22, all costs of Project Co and each Subcontractor are limited to the Direct Cost of the proposed Variation described in Appendix A of this Schedule 22;
 - (iii) Overhead and Profit has been calculated in accordance with Appendix B of this Schedule 22;
 - (iv) all costs of providing Project Operations, including Capital Expenditures, reflect:
 - (A) labour and material rates applying in the open market to providers of services similar to those required by the Variation;
 - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
 - (C) any and all changes in risk allocation;
 - (v) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) and that all such expenditures, including all applicable amounts for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
 - (vi) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Project Operations, the expected usage of utilities, and the Direct Cost of the proposed Variation to be incurred.
- (c) Project Co shall use commercially reasonable efforts to obtain the best value for money when procuring and/or delivering any work, services, supplies, materials or equipment required by the Variation, including, at the request of Contracting Authority, applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Contracting Authority, including using commercially reasonable efforts to mitigate such costs. Also, to the extent the procurement or delivery of any work, services, supplies, materials or equipment required by the Variation results in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Project Co shall provide Contracting Authority sufficient information and analysis to demonstrate to Contracting Authority's satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject Variation.
- (d) As soon as practicable, and in any event not more than 15 Business Days after Contracting Authority receives an Estimate, Project Co and Contracting Authority shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) At the request of Contracting Authority, including if Contracting Authority is required by Applicable Law or any policy applicable to Contracting Authority, to competitively tender any contract in relation to the proposed Variation, Project Co shall seek and evaluate competitive tenders for the proposed Variation, including in accordance with such Applicable Law or policy.

- (f) Contracting Authority may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify Contracting Authority in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 – Dispute Resolution Procedure.

1.7 Contracting Authority’s Right to Perform

- (a) In respect of the Facility, after Substantial Completion, Contracting Authority shall have the right to perform the subject matter of a proposed Variation (“**Contracting Authority Work**”) itself, or through others contracting directly with Contracting Authority, without compensation to Project Co, except as specifically stated herein.
- (b) Contracting Authority shall indemnify and save Project Co harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Project Co as a direct result of, in respect of, or arising out of the performance by Contracting Authority, or any third party, of Contracting Authority Work, including any loss or expense related to any adverse impacts on the Project Operations.

1.8 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 – Dispute Resolution Procedure, Contracting Authority shall either:
 - (i) subject to Section 1.2(b) and Section 1.8(f), withdraw the Variation Enquiry by written notice to Project Co; or
 - (ii) issue a written confirmation of the Estimate signed by Contracting Authority (the “**Variation Confirmation**”), including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.
- (b) Within five Business Days following Project Co’s receipt of a Variation Confirmation issued pursuant to Section 1.8(a)(ii), Project Co shall execute and deliver a copy of such executed Variation Confirmation to Contracting Authority.
- (c) If Contracting Authority does not issue a Variation Confirmation within such 15 Business Days, then, subject to Section 1.2(b) and Section 1.8(f), the Variation Enquiry shall be deemed to have been withdrawn.
- (d) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9:

- (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend the Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
 - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(d)(i), all provisions of the Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(d)(i).
- (e) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
- (i) Project Co obtains such financing acceptable to Contracting Authority in its sole discretion; or
 - (ii) Contracting Authority in its sole discretion waives such requirement.
- (f) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at Contracting Authority's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (ii) Contracting Authority may at any time withdraw a Variation Enquiry and, subject to Section 1.8(g), Contracting Authority shall not be obligated to Project Co in respect of a Variation until such time as Contracting Authority in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by Contracting Authority or Contracting Authority has waived such requirement,

provided that Contracting Authority may not withdraw a Variation Enquiry in circumstances where Contracting Authority is obligated pursuant to the terms of the Project Agreement to proceed with a Variation. In such circumstances Schedule 27 – Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (g) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, Contracting Authority shall reimburse Project Co for the Direct Cost reasonably and properly incurred by Project Co in connection with preparing the Estimate.

1.9 Financing

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if Contracting Authority requests Project Co to obtain financing for a Variation, then

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- a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co and Contracting Authority, provided that, prior to the Substantial Completion Date, Project Co shall not be required to seek debt financing from any source other than the existing Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and Contracting Authority within 60 days of the date that Contracting Authority issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide Contracting Authority with details of such financing, and Contracting Authority shall, in its sole discretion, determine whether Project Co should proceed with such financing. If Contracting Authority determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (d) Contracting Authority may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (e) If Contracting Authority waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d) then Project Co shall proceed with the Variation as set out in the Variation Confirmation and Contracting Authority shall pay for the Variation as provided for in Section 1.10(a)(ii).

1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by Contracting Authority, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
- (i) the Monthly Service Payments (expressed only in Base Date dollar amounts using the Escalation Factor as the discount rate) shall be adjusted as set out in the Variation Confirmation; and
- (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:

- (A) Contracting Authority shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by Contracting Authority and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by Contracting Authority; and
- (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event Contracting Authority and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by Contracting Authority (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 – Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by Contracting Authority in time to make payments to that third party in accordance with its contract with Project Co.

- (b) Contracting Authority shall make payment to Project Co within 20 Business Days of receipt by Contracting Authority of invoices presented to Contracting Authority in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by Contracting Authority in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Act* (Ontario), as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, Contracting Authority shall provide to Project Co copies of any consent or approval issued by Contracting Authority in connection with a proposed Variation.

1.11 Reduction in Project Operations

- (a) If a Variation involves any reduction in the Project Operations which results in savings in the Direct Cost to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under the Project Agreement in an amount equal to such reduction in the Direct Cost, and Project Co shall compensate Contracting Authority by way of a reduction in the Monthly Service Payments (expressed in Base Date dollar amounts using the Escalation Factor as the discount rate).

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by Contracting Authority and Project Co or if there is a Dispute in relation thereto or if Contracting Authority, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then Contracting Authority may issue a

Variation Directive and, following receipt of the Variation Directive, Project Co shall promptly proceed to implement the Variation.

- (b) Without limiting Project Co’s obligation to promptly implement such Variation:
 - (i) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation;
 - (ii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier (if such Variation is in respect of matters prior to Fit-Out Works Final Completion) or the Contracting Authority Representative, as applicable and, in each case, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

2. PROJECT CO VARIATIONS

2.1 General

- (a) Project Co shall deliver to Contracting Authority a written notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
 - (i) set out details of the proposed Variation in sufficient detail to enable Contracting Authority to evaluate it in full;
 - (ii) specify Project Co’s reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to Contracting Authority, and whether an adjustment to the Monthly Service Payments is required; and
 - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If Contracting Authority, in its sole discretion, elects to consider the Variation proposed by Project Co, Contracting Authority may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.
- (c) Project Co shall, promptly upon demand, reimburse Contracting Authority for all out-of-pocket costs and expenses reasonably incurred by Contracting Authority in connection with Contracting Authority’s consideration of any Variation proposed by Project Co pursuant to Section 2 of this Schedule 22, including, without limitation, legal and consulting fees and disbursements, regardless

of whether (i) a Variation Enquiry or Estimate is issued in connection therewith or (ii) such Variation is implemented.

3. SMALL WORKS

3.1 General

- (a) After the Substantial Completion Date, with respect to the Facility, Project Co shall carry out all Small Works requested by Contracting Authority.
- (b) If Small Works are requested by Contracting Authority, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide Contracting Authority with a price for carrying out the Small Works.
- (c) Project Co's price for Small Works shall include only (i) the Direct Cost of such Small Works and (ii) Overhead and Profit with respect to such Direct Cost calculated in accordance with this Schedule 22, including Appendix B of this Schedule 22.
- (d) If Project Co's price is accepted by Contracting Authority, in its sole discretion, Project Co shall carry out the Small Works for such price.
- (e) Contracting Authority may at any time, in its sole discretion, including if Contracting Authority does not accept the price proposed by Project Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 22, other than this Section 3, shall apply.

3.2 Project Co to Minimize Inconvenience

- (a) Project Co shall notify Contracting Authority of the estimated duration of any Small Works so that Contracting Authority and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to Contracting Authority. Project Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

APPENDIX A
CALCULATION OF DIRECT COST

1. DIRECT COST

- 1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the aggregate total, without duplication, of only the following amounts, as paid or incurred by Project Co or each Subcontractor, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:
- (i) wages and benefits paid for labour in the direct employ of Project Co or each Subcontractor while performing that part of the Project Operations on the Site;
 - (ii) salaries, wages and benefits of Project Co’s or each Subcontractor’s personnel when stationed at the office on the Site in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
 - (iii) salaries, wages and benefits of Project Co’s or each Subcontractor’s office personnel engaged in a technical capacity;
 - (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
 - (v) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
 - (vi) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
 - (vii) deposits lost;
 - (viii) except as otherwise set out in this Schedule 22, a reasonable amount of profit consistent with prevailing market rates that is charged by any Subcontractor, other than the Construction Contractor, the Service Provider and any entity not at arms-length from Project Co, any Equity Providers, the Construction Contractor or the Service Provider;
 - (ix) the reasonable fees and disbursements of the Lenders’ Consultant and the external technical consultants and external legal advisors of Project Co and its Subcontractors;

- (x) the cost of third party quality assurance required by Contracting Authority, such as independent inspection and testing services;
- (xi) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of Contracting Authority to pay HST payable by it under the Project Agreement), but excluding:
 - (A) HST;
 - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
 - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xiii) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under the Project Agreement;
- (xiv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xv) the cost of debt financing provided by the Lenders, including all additional financing costs related to any delay caused by the implementation of the Variation;
- (xvi) the cost of competitively tendering any contract in relation to the proposed Variation that is required by Contracting Authority, including as a result of any Applicable Law or any policy applicable to Contracting Authority;
- (xvii) the cost of any additional insurance or performance security required or approved by Contracting Authority; and
- (xviii) the cost of obtaining all Project Co Permits, Licences, Approvals and Agreements.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the Direct Cost with respect to the per hour cost charged by Project Co or any Subcontractor for salaried personnel shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the Greater Toronto Area;
- (v) any amounts paid in accordance with this Appendix A for fees, wages, salaries and benefits charged by Project Co or any Subcontractor shall be reasonable and shall not exceed commercially competitive rates available in the Greater Toronto Area;
- (vi) the Direct Cost shall not include:
 - (A) any cost incurred due to the failure on the part of Project Co or any Project Co Party to exercise reasonable care and diligence in its attention to the execution of that part of the Project Operations (including any cost due to any negligence, improper work, deficiencies or breaches of contract by Project Co and/or any Subcontractor);
 - (B) the fees, costs or expenses, or any other form of compensation, paid or payable by Project Co or any Subcontractor to any person performing asset management, personnel services and/or similar, comparable or like services to or for the benefit of Project Co or any Subcontractor;
 - (C) the cost and expense of maintaining corporate offices, the cost and expense of office administration, estimation, accounting, payroll, printing, office supplies, phones and courier/postal service, the cost and expense of personnel not directly involved in the implementation of the Variation and any other overhead cost or expense;
 - (D) the cost of travel and subsistence expenses; or
 - (E) any costs or expenses associated with the participation of Project Co and any Subcontractor in the meetings described in Section 1.2(e) of this Schedule 22;
- (vii) for greater certainty, the Direct Cost shall include the aggregate real dollar amount value of all of the costs permitted by this Appendix A related to any variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the Project Co Services associated with the Variation, provided that, in accordance with Section 1.10(a)(i), any adjustment to the Monthly Service Payments pursuant to this Schedule 22 shall only

be expressed in Base Date dollar amounts using the Escalation Factor as the discount rate;
and

- (viii) the Direct Cost must be quantifiable and supported by evidence and proper documentation, such as invoices, proof of payments, and detailed hourly rate information as required by Contracting Authority. Proper documentation shall include unit rates or prices and quantities for all items, including labour and materials that comprise the Direct Cost, including for all work completed by any Subcontractor. Any Direct Cost item claimed as a percentage of any other Direct Cost item, such as a “risk contingency”, will not be permissible, unless approved by Contracting Authority in writing.

**APPENDIX B
CALCULATION OF OVERHEAD AND PROFIT**

- (a) **“Overhead and Profit”** means, for each of rows 1, 2, 3, 4 and 5 in Table A – Applicable Overhead and Profit, the product of:
 - (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by
 - (ii) the percentage set out in such row as determined based on the Direct Cost of the Variation.
- (b) For greater certainty, the percentages applicable to Overhead and Profit shall not be determined based on any component or components of the subject Variation (e.g. initial construction costs or annual Project Co Services costs).
- (c) Project Co, the Construction Contractor and the Service Provider shall charge no more than the amount of Overhead and Profit calculated in accordance with Appendix B of this Schedule 22.
- (d) No amount for Overhead and Profit shall be charged on any other amount of Overhead and Profit.
- (e) No other methodology for the calculation of Overhead and Profit shall be permitted or apply.
- (f) Project Co acknowledges and agrees that the Overhead and Profit payable in accordance with this Schedule 22 is intended to compensate Project Co, the Construction Contractor and the Service Provider for all costs and expenses incurred in connection with a Variation other than the Direct Cost, including, without limitation, all overhead, profit, office administration and the amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 22.

TABLE A
APPLICABLE OVERHEAD AND PROFIT

[REDACTED]

SCHEDULE 23

COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

The following terms shall have the following meanings:

- (a) “**Adjusted Estimated Fair Value**” means the Estimated Fair Value adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce the Estimated Fair Value (whether or not such amounts have been set off by Contracting Authority pursuant to Section 3.3(f) of this Schedule 23);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value;
 - (A) the Post Termination Service Amounts actually paid by Contracting Authority to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) amounts that Contracting Authority is entitled to set off or deduct; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to the Estimated Fair Value:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(a)(iii)(A),
to the extent that:
 - (C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) have not been directly taken into account in calculating the Estimated Fair Value; and
 - (D) Contracting Authority has received such amounts in accordance with this Project Agreement.

- (b) **“Adjusted Highest Qualifying Tender Price”** means the price offered by the Qualifying Tenderer (if any) with the highest tender price, adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce such highest tender price (whether or not such amounts have been set off by Contracting Authority pursuant to Section 3.3(f) of this Schedule 23);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
 - (A) the Post Termination Service Amounts actually paid by Contracting Authority to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) amounts that Contracting Authority is entitled to set off or deduct; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to such highest tender price:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Qualifying Tender is received; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(b)(iii)(A),

to the extent that:
 - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) have not been directly taken into account in that Qualifying Tender; and
 - (D) Contracting Authority has received such amounts in accordance with this Project Agreement.
- (c) **“Breach of Refinancing Termination Sum”** has the meaning given to it in Section 6.1(b) of this Schedule 23.
- (d) **“Compensation Date”** means either:
- (i) if Section 3.3 of this Schedule 23 applies, the earlier of:
 - (A) the date that the New Agreement is entered into; and

- (B) the date on which Contracting Authority pays the Adjusted Highest Qualifying Tender Price to Project Co; or
- (ii) if Section 3.4 of this Schedule 23 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.
- (e) **“Contracting Authority Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (f) **“Discount Rate”** means a rate equal to $((A + B) / C) + D$, where:
- A = the product of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the rate of interest applicable to such amount as shown in the Financial Model at Financial Close.
- B = the product of the Equity Capital as at Financial Close and the Base Case Equity IRR.
- C = the sum of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the Equity Capital as at Financial Close.
- D = the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation, minus the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements as shown in the Financial Model at Financial Close.
- (g) **“Employee Termination Payments”** means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party as a direct result of terminating this Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
- (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
- (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.

- (h) **“Estimated Fair Value”** means the amount determined in accordance with Section 3.4 of this Schedule 23.
- (i) **“Invoice Date”** means the date that is the later of:
- (i) the date on which Contracting Authority receives an invoice from Project Co for the relevant termination sum; and
 - (ii) the date on which Contracting Authority receives the supporting evidence required pursuant to Section 8.1(a) of this Schedule 23.
- (j) **“Junior Debt Amount”** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time. For greater certainty, the Junior Debt Amount includes any amount funded under the terms of the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders and excludes the Junior Debt Makewhole.
- (k) **“Junior Debt Makewhole”** means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any “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 Junior Lenders pursuant to the Lending Agreements.
- (l) **“Lending Agreements”** means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project Operations, including, for greater certainty, the Credit Agreement, the Common Terms and Intercreditor Agreement, the Bond Indenture, any Supplemental Indenture, the Security Documents, any Hedging Agreements and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to (i) any change to the financing terms or conditions of any investment instrument related to the financing of the Project Operations; or (ii) the rescheduling of their indebtedness in respect of the financing of the Project Operations or the refinancing of the Project Operations.
- (m) **“Liquid Market”** means that there are 2 or more willing parties (each of whom is capable of being a Suitable Substitute and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of services to facilities similar to the Facility under an alternative financing and procurement or similar model (where such agreements are the same as or similar to this Project Agreement) such that the retendering process in Section 3.3 of this Schedule 23 can reasonably be expected to result in a highest Qualifying Tender price broadly in the range of values that would reasonably be expected to be achieved calculating the Estimated Fair Value under Section 3.4 of this Schedule 23.
- (n) **“Market Value Availability Deduction Amount”** means for any Payment Period or part of a Payment Period, an amount equal to the Deductions for Availability Failures that were

made from the Monthly Service Payment under the Payment Mechanism in the Payment Period immediately preceding the Termination Date, less an amount equal to Deductions for Availability Failures that were made for Functional Parts which were unavailable at the Termination Date but which have subsequently become available, whether as a result of Contracting Authority incurring Rectification Costs or otherwise.

- (o) **“Maximum Service Payment”** means the Monthly Service Payments payable at any time before any Deductions under the Payment Mechanism but allowing for indexation under the Payment Mechanism.
- (p) **“New Agreement”** means an agreement on substantially the same terms and conditions as this Project Agreement as at the Termination Date, but with the following amendments:
 - (i) if this Project Agreement is terminated prior to the Substantial Completion Date, then the Longstop Date shall be extended by a period to allow a New Project Co to achieve Substantial Completion prior to such extended Longstop Date;
 - (ii) any accrued Failure Points shall be cancelled;
 - (iii) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
 - (iv) any other amendments which do not adversely affect Project Co.
- (q) **“New Project Co”** means the person who has entered or who will enter into the New Agreement with Contracting Authority.
- (r) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (s) **“Post Termination Service Amount”** means, for the purposes of Section 3.3 of this Schedule 23, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment which would have been payable under this Project Agreement had this Project Agreement not been terminated, less an amount equal to the aggregate (without double counting) of:
 - (i) the Market Value Availability Deduction Amount for that Payment Period; and
 - (ii) the Rectification Costs incurred by Contracting Authority in that Payment Period.
- (t) **“Qualification Criteria”** means the criteria that Contracting Authority requires tenderers to meet as part of the Tender Process, which (subject to compliance with Applicable Law) shall include the following:
 - (i) that the tenders confirm acceptance of the New Agreement terms;

- (ii) that the tenderers have, and are able to demonstrate on an indicative basis on request, the financial ability to pay the lump sum tendered;
 - (iii) that tenderers may only bid on the basis of a single lump sum payment to be paid by the tenderer;
 - (iv) that the tenderer is experienced in providing the Project Co Services or similar services;
 - (v) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Project Operations; and
 - (vi) any other tender criteria established by Contracting Authority, acting reasonably.
- (u) **“Qualifying Tender”** means a tender that meets all of the Qualification Criteria.
 - (v) **“Qualifying Tenderer”** means a tenderer who submits a Qualifying Tender.
 - (w) **“Rectification Costs”** means, for the purposes of any Termination Date that occurs after the Substantial Completion Date, an amount equal to the reasonable and proper costs incurred by Contracting Authority in a particular Payment Period or part of a Payment Period in ensuring that the Project Co Services are carried out.
 - (x) **“Senior Debt Amount”** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to the Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Senior Lenders under this Project Agreement shall be construed accordingly. For greater certainty, the Senior Debt Amount excludes the Senior Debt Makewhole.
 - (y) **“Senior Debt Makewhole”** means, (i) at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements with respect to the Senior Debt Amount, including any “make whole” payments, breakage costs (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 Lending Agreements with respect to the Senior Debt Amount; and (ii) any swap breakage benefits, if any, then due and payable to the Hedge Provider(s) under the Hedging Agreement(s) entered into with respect to the Senior Debt Amount.
 - (z) **“Subcontractor Losses”** means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Subcontractors:

- (i) the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or any Subcontractors fail to take commercially reasonable steps to mitigate such amount; and
- (ii) the amount reasonably and properly payable by Project Co to the Service Provider under the terms of the Service Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount,

provided that, in both cases, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:

- (iii) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
 - (iv) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties' obligations in relation to the Project; or
 - (v) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (aa) **“Tender Costs”** means the reasonable and proper costs of Contracting Authority incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (bb) **“Tender Process”** means the process by which Contracting Authority requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new Project Co, in accordance with Section 3.3 of this Schedule 23.
- (cc) **“Tender Process Monitor”** has the meaning given in Section 3.3(g) of this Schedule 23.

2. COMPENSATION ON TERMINATION FOR CONTRACTING AUTHORITY DEFAULT OR CONVENIENCE

2.1 Compensation

- (a) If Project Co terminates this Project Agreement pursuant to Section 43 of this Project Agreement or Contracting Authority terminates this Project Agreement pursuant to Section 44.3 of this Project Agreement, Contracting Authority shall pay to Project Co the Contracting Authority Default Termination Sum.
- (b) The “**Contracting Authority Default Termination Sum**” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
 - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and Subcontractor Losses;
 - (v) Construction Period Payments payable by Contracting Authority in accordance with Schedule 19 – Construction Period Payments on or prior to the Termination Date;
 - (vi) any reasonable costs properly incurred by Project Co to wind up its operations; and
 - (vii) an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such payments, but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal internal rate of return to the Termination Date equal to the Equity IRR on the amount paid for the Equity Capital (to the extent that such Equity Capital has been applied by Project Co for the purposes of the Project);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (viii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure

insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;

- (ix) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (x) amounts which Contracting Authority is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement,

provided that the Contracting Authority Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(ii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Contracting Authority Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Contracting Authority Default Termination Sum in accordance with Section 8 of this Schedule 23.

3. COMPENSATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) Save and except where Section 6 applies, if Contracting Authority terminates this Project Agreement pursuant to Section 42 of this Project Agreement Contracting Authority shall pay to Project Co either the Adjusted Highest Qualifying Tender Price according to the retendering procedure set out in Section 3.3 of this Schedule 23 or the Adjusted Estimated Fair Value according to the no retendering procedure set out in Section 3.4 of this Schedule 23, as applicable.

3.2 Retendering Election

- (a) Contracting Authority shall be entitled to retender the provision of the Project Operations in accordance with Section 3.3 of this Schedule 23 and the provisions thereof shall apply if:
- (i) Contracting Authority notifies Project Co on or before the date falling 30 days after the Termination Date; and
 - (ii) there is a Liquid Market,

but, otherwise, Contracting Authority shall require a determination in accordance with the no retendering procedure set out in Section 3.4 of this Schedule 23 and the provisions thereof shall apply.

- (b) Until it is determined that the basis for determining the compensation to Project Co will be the no retendering procedure set out in Section 3.4 of this Schedule 23, Project Co shall continue to provide the Project Co Services and Contracting Authority shall pay Project Co in accordance with Section 3.3(e).

3.3 Retendering Procedure

- (a) The objective of the Tender Process shall be to enter into a New Agreement with a Qualifying Tenderer.
- (b) Contracting Authority shall commence the Tender Process promptly after delivering the notice pursuant to Section 3.2(a) and use commercially reasonable efforts to complete the Tender Process as soon as practicable.
- (c) Contracting Authority shall, as soon as reasonably practicable, notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.

- (d) Project Co authorizes the release of any information by Contracting Authority under the Tender Process which would otherwise be prevented under Section 49 of this Project Agreement that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to provide the Project Co Services, and, for all or any part of a Payment Period falling within the period from the Termination Date to the Compensation Date, Contracting Authority shall pay to Project Co:
 - (i) the Post Termination Service Amount for each completed Payment Period, on or before the date falling 20 Business Days after the end of that Payment Period; and
 - (ii) the Post Termination Service Amount for the period from the end of the last completed Payment Period until the Compensation Date, on or before the date falling 30 days after the Compensation Date.
- (f) If any Post Termination Service Amount is negative, then the amount by which the Post Termination Service Amount is negative shall be carried forward and may be set off against any future positive Post Termination Service Amounts.
- (g) Project Co may, at its own cost, appoint a person (the “**Tender Process Monitor**”) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Lenders on Contracting Authority’s compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with Contracting Authority in a form acceptable to Contracting Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to Contracting Authority as to compliance with the Tender Process. Contracting Authority shall not be bound to consider or act upon such representations. The Tender Process Monitor will not disclose confidential information to Project Co or the Lenders but shall be entitled to advise Project Co and the Lenders on whether it considers that Contracting Authority has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Qualifying Tender Price.
- (h) As soon as practicable after tenders have been received, Contracting Authority shall, acting reasonably, review and assess the Qualifying Tenders and shall notify Project Co of the Adjusted Highest Qualifying Tender Price.
- (i) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Tender Price to dispute resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Contracting Authority shall, irrespective of such Dispute, be entitled to enter into a New Agreement.
- (j) Contracting Authority shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 8 of this Schedule 23.
- (k) Contracting Authority may elect, by notice to Project Co at any time prior to Contracting Authority ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no

retendering procedure set out in Section 3.4 of this Schedule 23. In addition, Contracting Authority shall follow such no retendering procedure if:

- (i) only one Qualifying Tender is received; or
 - (ii) a New Agreement has not been entered into and compensation paid under Section 8.2 on or before the date falling 18 months after the Termination Date.
- (l) Project Co may give written notice to Contracting Authority at any time after the Termination Date and prior to the date for receipt of Qualifying Tenders that a Liquid Market does not exist (or shall not exist on the date for receipt of Qualifying Tenders). If Contracting Authority is in agreement with such notice, the provisions of Section 3.4 of this Schedule 23 shall apply. If Contracting Authority provides a written response within 10 Business Days of receipt of such notice stating that it is in disagreement with that notice or if no written response is provided by Contracting Authority within such 10 Business Day period, the matter shall be referred for determination in accordance with Schedule 27 – Dispute Resolution Procedure.

3.4 No Retendering Procedure

- (a) Subject to Section 3.4(b), if the provisions of this Section 3.4 apply, Project Co shall not be entitled to receive any Post Termination Service Amount.
- (b) If Contracting Authority elects to require a determination in accordance with this Section 3.4 after it has elected to follow the procedure set out in Section 3.3, then Contracting Authority shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date in accordance with Section 3.3.
- (c) In determining the Estimated Fair Value, the Parties shall be obliged to follow the principles set out below:
 - (i) All forecast amounts should be calculated in nominal terms as at the Termination Date. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment date(s), as set out in this Project Agreement, will be made and, if made, will use an assumed inflation rate of [REDACTED]% per annum.
 - (ii) The Estimated Fair Value shall be calculated using the following formula (without double counting):

$$(A - B - C) - D$$

Where:

A = the present value of (i) the Substantial Completion Payment, (ii) the Separate FF&E and Transition Services Fee and (iii) the Fit-Out Works Phase Completion Payments, if any such payments remain to be paid at the Termination Date, (iv) the

Monthly Service Payments forecast to be made from the Termination Date to the Expiry Date, and (v) the Construction Period Payments, assuming that no Deductions will be made over that period, discounted in each case at the Discount Rate

B = a contingency amount based on a reasonable risk assessment of any cost overruns that may reasonably arise (including in respect of any matter referred to in this Section 3.4(c)(ii)) whether or not forecast in the relevant base case and represented in the Financial Model as of the date of Financial Close, discounted at the Discount Rate

C = the present value of the costs of obtaining or providing the Project Co Services reasonably forecast to be incurred by Contracting Authority from the Termination Date to the Expiry Date to the standard required, discounted at the Discount Rate

D = any rectification costs (including Rectification Costs) reasonably required to deliver the Project Operations to the standard required, including, if applicable, to complete the Works, any costs reasonably forecast to be incurred by Contracting Authority for up-front finance fees and related costs (excluding principal and interest payments) that would not arise at the time or in the future had the termination not occurred, and any other additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs (including Rectification Costs) for the purposes of this item D), the aggregate of:

- (A) any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements; and
- (B) amounts payable by Contracting Authority in respect of Capital Expenditures under this Project Agreement which have not been paid,

discounted at the Discount Rate.

- (iii) The amount of $(A - B - C)$ as defined in Section 3.4(c)(ii) shall be no greater than the Non-Default Termination Sum.
- (iv) All costs referred to in Section 3.4(c)(ii) are to be forecast at a level that will deliver the Project Co Services and other Project Operations to the standards required by this Project Agreement and to achieve the full Monthly Service Payments (without Deductions).
- (v) The calculation will take into consideration the obligations of the Parties with respect to allowances and payments under this Project Agreement.

- (d) If the Parties cannot agree on the Estimated Fair Value, then the Estimated Fair Value shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure.
- (e) Contracting Authority shall pay the Adjusted Estimated Fair Value in accordance with Section 8 of this Schedule 23.

4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION BY CONTRACTING AUTHORITY FOR RELIEF EVENT

4.1 Consequences

- (a) If Contracting Authority terminates this Project Agreement pursuant to Section 44.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 44.2 of this Project Agreement, Contracting Authority shall pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of:
 - (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount;
 - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and Subcontractor Losses (but excluding therefrom any claims for loss of profit);
 - (v) Construction Period Payments payable by Contracting Authority in accordance with Schedule 19 – Construction Period Payments on or prior to the Termination Date; and
 - (vi) an amount equal to the Equity Capital as at Financial Close, less all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date, provided that where such amount is negative, it shall be deemed instead to be zero;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure

insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims; and

- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which Contracting Authority is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(viii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Non-Default Termination Sum in accordance with Section 8 of this Schedule 23.

5. INTENTIONALLY DELETED**6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING****6.1 Consequences**

- (a) If Contracting Authority terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 7.3 of this Project Agreement or Schedule 28 – Refinancing or the Lenders assign, transfer or otherwise dispose of any right, title or interest they may have in, or obligations they may have pursuant to, the Security Documents in breach of the Lenders’ Direct Agreement, Contracting Authority shall pay to Project Co the Breach of Refinancing Termination Sum.
- (b) The “**Breach of Refinancing Termination Sum**” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) any amount payable by Contracting Authority to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
 - (iii) Construction Period Payments payable by Contracting Authority in accordance with Schedule 19 – Construction Period Payments on or prior to the Termination Date; and
 - (iv) the following amounts calculated in respect of the Construction Contractor and the Service Provider, which Project Co can demonstrate will be paid directly to such persons:
 - (A) the Employee Termination Payments; and
 - (B) as applicable, the Construction Contractor’s and Service Provider’s out-of-pocket costs incurred as a direct result of termination of this Project Agreement (excluding any breakage fees and overhead and profit of the Construction Contractor and Service Provider, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (v) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under this Project

Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;

- (vi) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (vii) amounts which Contracting Authority is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement.
- (c) To the extent that such assets and rights referred to in Section 6.1(b)(vi) are not realized and applied pursuant thereto, Project Co shall, on payment of the Breach of Refinancing Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay such termination sum in accordance with Section 8 of this Schedule 23.

7. CONSEQUENCES OF TERMINATION BY PROJECT CO FOR RELIEF EVENT

7.1 Consequences

- (a) If Project Co terminates this Project Agreement pursuant to Section 44.1 of this Project Agreement, Contracting Authority shall pay to Project Co a termination sum equivalent to the greater of:

- (i) an amount calculated and payable in accordance with the Breach of Refinancing Termination Sum, provided that, with respect to the calculation of the amounts which Contracting Authority is entitled to set off pursuant to Section 31.13(a) of this Project Agreement under Section 6.1(b)(vii) of this Schedule 23, Contracting Authority shall only set off amounts which are due to Contracting Authority by Project Co pursuant to the terms of this Project Agreement if and to the extent the Breach of Refinancing Termination Sum exceeds the Senior Debt Amount; and
 - (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 23.
- (b) Contracting Authority shall pay such termination sum in accordance with Section 8.1 or 8.3 of this Schedule 23, as applicable.

8. GENERAL

8.1 Payment and Interest Following Non-Project Co Default Termination

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4, 6 or 7 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to Contracting Authority an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to Contracting Authority, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) Contracting Authority shall:
- (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date; and
 - (ii) indemnify Project Co as provided in Section 53.2(c) of this Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
 - (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and
 - (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (c) In respect of the termination payments to be made pursuant to any of Sections 4, 6 or 7 of this Schedule 23, if the applicable termination sum is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall, within 60 days after the Invoice Date, pay to Contracting Authority the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify Contracting

Authority as provided in Section 53.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

8.2 Payment and Interest Following Project Co Default – Retendering Procedure

(a) Following the retendering procedure set out in Section 3.3 of this Schedule 23, Contracting Authority shall pay to Project Co the Adjusted Highest Qualifying Tender Price no later than the date falling 30 days after the later of:

- (i) the date on which Contracting Authority enters into the New Agreement with the New Project Co; and
- (ii) if Project Co has, pursuant to Section 3.3(i) of this Schedule 23, referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with Schedule 27 – Dispute Resolution Procedure, the date on which the Dispute is finally determined, provided that Contracting Authority shall pay the undisputed amount on the date referred to in Section 8.2(a)(i),

and Contracting Authority shall indemnify Project Co as provided in Section 53.2(c) of this Project Agreement on the Adjusted Highest Qualifying Tender Price on the basis that the due date for the payment of the Adjusted Highest Qualifying Tender Price was the date on which Contracting Authority enters into the New Agreement with the New Project Co:

- (iii) in an amount equivalent to the No Default Payment Compensation Amount from the due date up to (and including) the date following 30 days from after the later of the dates determined under Section 8.2(a)(i) and (ii) above (and for clarity, on such portions of the Adjusted Highest Qualifying Tender Price in the circumstance described in paragraph (ii) above); and
 - (iv) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (b) If the Adjusted Highest Qualifying Tender Price is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the New Agreement, pay Contracting Authority the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify Contracting Authority as provided in Section 53.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

8.3 Payment and Interest Following Project Co Default – No Retendering Procedure

- (a) If Contracting Authority follows the no retendering procedure set out in Section 3.4 of this Schedule 23, Contracting Authority shall pay to Project Co the Adjusted Estimated Fair Value no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.4 of this Schedule 23, together with interest on such amount calculated in accordance with Section 8.1(b)(ii) above.
- (b) If the Adjusted Estimated Fair Value is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay Contracting Authority the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter indemnify Contracting Authority as provided in Section 53.1(e) in respect of any damages suffered or incurred on such amount on the basis that the due date for payment of the negative Adjusted Estimated Fair Value was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

8.4 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

8.5 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 8 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

8.6 Outstanding Debt Amounts

- (a) Contracting Authority shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge Contracting Authority's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

SCHEDULE 24

EXPIRY TRANSITION PROCEDURE

1. Independent Inspector

- 1.1 Not less than 90 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with Contracting Authority's procurement policies, engage an independent and suitably qualified and experienced person (the "**Independent Inspector**") to carry out inspections of the Facility pursuant to this Schedule 24.
- 1.2 Project Co and Contracting Authority shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the Independent Inspector's engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 of this Schedule 24 by the specified deadline, then the Independent Inspector shall be selected as follows:
- (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide notice thereof to the other Party; and
 - (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
 - (c) if the Parties have not selected a common person, then the Independent Inspector shall be selected in accordance with Schedule 27 – Dispute Resolution Procedure.

2. Condition of Facilities on Expiry

- 2.1 Subject to the exceptions specified in Section 2.2, on the Expiry Date:
- (a) each element of the Facility and the Site (including the ground soil located on the Site) shall be in a condition which is consistent with due performance by Project Co of its obligations under this Project Agreement and, in particular, is consistent with the Facility having been maintained in accordance with the Scheduled Maintenance Plan and the Lifecycle Replacement Schedule, and, with respect to the Site and the ground soil located on the Site, does not deviate from the Pre-Existing Environmental Site Conditions by reason of any Contamination for which Project Co is responsible pursuant to this Project Agreement;

- (b) each element of the Facility shall be in good operating order (Normal Wear and Tear excepted) and capable of performing in accordance with the performance specifications and standards set out in Schedule 15 – Output Specifications; and
- (c) each element of the Facility shall be in a condition which ensures that such element of the Facility will have a reasonable likelihood of completing its Replacement Lifecycle and/or remaining lifecycle in good condition and operating order (Normal Wear and Tear excepted), and, if applicable, shall not have any structural faults, deterioration and/or defect,

(collectively, the “**Expiry Transition Requirements**”).

2.2 For greater certainty, this Schedule 24 shall not apply to any FF&E to be maintained by Contracting Authority in accordance with this Project Agreement.

3. Facility Inspections

3.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and to produce and deliver to each of the Parties a written report (a “**Expiry Transition Facility Condition Report**”) not less than 7 years prior to the Expiry Date that:

- (a) identifies the condition of the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2) in relation to the Expiry Transition Requirements;
- (b) assesses Project Co’s business case related to capital replacement (which, for greater certainty, will include consideration of energy consumption), and provides the Independent Inspector’s opinion on both the adequacy of Project Co’s proposed strategy and the consistency of Project Co’s proposed strategy with the business case methodology and lifecycle strategy set out in Appendix A hereto;
- (c) identifies any works required to ensure the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2) will meet the Expiry Transition Requirements on the Expiry Date (the “**Expiry Transition Works**”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
- (d) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Expiry Transition Works (the “**Expiry Transition Works Costs**”);
- (e) details how the Expiry Transition Works Costs were calculated; and
- (f) identifies any works required and the timing for such works to ensure that, in respect of each element of the Facility, such element can be used and does not need to be replaced, refreshed or refurbished until the applicable Anticipated Lifecycle Replacement Year for such element of the Facility, subject to the exception

specified in Section 2.2, as identified in Appendix A of this Schedule 24. Such works shall form part of the Expiry Transition Works and the estimated costs of such works shall form part of the Expiry Transition Works Costs.

- 3.2 The Parties shall cause the Independent Inspector to perform another inspection of the Facility and produce and deliver to each of the Parties an updated Expiry Transition Facility Condition Report (each a “**Revised Expiry Transition Facility Condition Report**”) on each anniversary of the date of the original Expiry Transition Facility Condition Report.
- 3.3 The Scheduled Maintenance Plan, the Five-Year Maintenance Plan and the Lifecycle Replacement Schedule shall be amended and updated, as applicable, to include all Expiry Transition Works identified in either the Expiry Transition Facility Condition Report or any Revised Expiry Transition Facility Condition Report not already included in the then current Scheduled Maintenance Plan, Five-Year Maintenance Plan or Lifecycle Replacement Schedule.
- 3.4 Project Co shall carry out the Expiry Transition Works at its own cost notwithstanding that the actual cost of the Expiry Transition Works may be higher than the Expiry Transition Works Costs.
- 3.5 Either Party may dispute the Expiry Transition Facility Condition Report or any Revised Expiry Transition Facility Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with Schedule 27 – Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 27 – Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the Expiry Transition Facility Condition Report or any Revised Expiry Transition Facility Condition Report, then either the Expiry Transition Facility Condition Report or any Revised Expiry Transition Facility Condition Report, as the case may be, shall be deemed to be amended accordingly, and the Scheduled Maintenance Plan, Five-Year Maintenance Plan and Lifecycle Replacement Schedule, as amended pursuant to Section 3.3, and all deductions and payments permitted or required by Section 4, shall be adjusted accordingly.

4. Payments To and From Escrow Account

- 4.1 Following the date for delivery of the Expiry Transition Facility Condition Report, for the purposes of Section 4.2, the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the “**Expiry Lifecycle Costs**”). Where the Expiry Transition Works Costs are greater than the Expiry Lifecycle Costs, the difference between the Expiry Transition Works Costs and the Expiry Lifecycle Costs shall be apportioned equally over the Payment Periods from the date the Expiry Transition Facility Condition Report is to be delivered hereunder to the Expiry Date (each installment being the “**Expiry Transition Amount**”). If the Expiry Transition Facility Condition Report is delivered after the date for delivery hereunder, then the first installment to be paid shall also include the amounts to be paid under the installments that would have been payable prior to the

- date the Expiry Transition Facility Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.2 or 3.5, the Parties agree that the Expiry Transition Amount shall be adjusted accordingly.
- 4.2 Subject to Sections 4.3 and 4.5, Contracting Authority may deduct the Expiry Transition Amount from each Monthly Service Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the “**Escrow Account**”), the Expiry Transition Amount. If in any Payment Period, the Expiry Transition Amount is greater than the relevant Monthly Service Payment, Contracting Authority may deduct the difference between the Expiry Transition Amount and the Monthly Service Payment from the next Monthly Service Payment or from such other Payment Period as otherwise agreed between the Parties.
- 4.3 Contracting Authority shall not deduct any amount from a Monthly Service Payment as contemplated in Section 4.2 if, at such time, the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed.
- 4.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. Contracting Authority shall consider such request within 10 Business Days and if the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then Contracting Authority shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by Contracting Authority to evaluate such request.
- 4.5 Following the date of any Revised Expiry Transition Facility Condition Report, the Expiry Transition Amount under Section 4.1 shall be recalculated and if the amount in the Escrow Account (being the deductions of the Expiry Transition Amount made since the Expiry Transition Facility Condition Report) together with the deductions currently scheduled to be made from the remaining Monthly Service Payments under Section 4.2 (and under any previous application of this Section 4.5) is less than the revised Expiry Transition Amount, then Contracting Authority may additionally deduct such shortfall, in equal installments, from each remaining Monthly Service Payment until the Expiry Date, and pay each installment into the Escrow Account and Section 4.4 shall continue to apply until the Expiry Date.
- 4.6 As an alternative to the deductions permitted by Sections 4.2 and 4.5 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4, Project Co may (and if, at any time, the amounts which Contracting Authority is permitted to deduct pursuant to Sections 4.2 and 4.5 is greater than the remaining Monthly Service Payments, Project Co shall), within 5 Business Days of a written request from Contracting Authority, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of Contracting Authority in an amount equal to the amounts which Contracting Authority

is permitted to deduct pursuant to Sections 4.2 and 4.5, in a form and from a surety or bank, as applicable, acceptable to Contracting Authority.

5. Project Co Not Relieved of Obligations

5.1 Notwithstanding:

- (a) any agreement of Contracting Authority to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of Contracting Authority in any inspection under this Schedule 24; and
- (c) the complete or partial carrying out of the Expiry Transition Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Project Agreement, including without limitation the Output Specifications.

6. Final Expiry Transition Facility Condition Report

6.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and to produce and deliver to each of the Parties a Expiry Transition Facility Condition Report within 30 Business Days after the Expiry Date (the “**Final Expiry Transition Facility Condition Report**”) that documents whether the Facility met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.

6.2 If the Final Expiry Transition Facility Condition Report identifies any Expiry Transition Works, Contracting Authority may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and Contracting Authority shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Expiry Transition Security to Project Co.

6.3 Provided that the funds in the Escrow Account and/or the Expiry Transition Security is adequate to meet Project Co’s obligations in respect of the Expiry Transition Works identified in the Final Expiry Transition Facility Condition Report, following any withdrawal from the Escrow Account or call upon the Expiry Transition Security in accordance with Section 6.2, Project Co shall have no further liability with respect to such Expiry Transition Works.

6.4 If no Expiry Transition Works are identified in the Final Expiry Transition Facility Condition Report, Contracting Authority shall, within 20 Business Days of receipt by Contracting Authority of the Final Expiry Transition Facility Condition Report, pay the funds in the Escrow Account (including any interest accrued) to Project Co and return the

Expiry Transition Security to Project Co, unless Contracting Authority disputes the Final Expiry Transition Facility Condition Report, in which case the Escrow Account and Expiry Transition Security shall be dealt with as determined in accordance with Schedule 27 – Dispute Resolution Procedure.

**APPENDIX A
LIFECYCLE REPLACEMENT SCHEDULE**

[REDACTED]

SCHEDULE 25

**INSURANCE AND PERFORMANCE
SECURITY REQUIREMENTS**

**ARTICLE 1
WORKS PHASE INSURANCE COVERAGE**

- 1.1 Subject to Article 8, from and after execution of this Project Agreement and until the completion of the Fit-Out Works, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the Infrastructure Ontario Construction Insurance Program (IOCIP) the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
 - (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
 - (c) Project Specific Professional Liability; and
 - (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).
- 1.2 Subject to Article 8, from and after execution of this Project Agreement and until the completion of the Fit-Out Works, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) Automobile Liability;
 - (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-site operations and activities;
 - (c) Aircraft and Watercraft Liability (if any exposure);
 - (d) “All Risks” Marine Cargo (if any exposure);
 - (e) “All Risks” Contractors’ Equipment;
 - (f) Comprehensive Crime; and
 - (g) WSIB.

**ARTICLE 2
SERVICES PHASE INSURANCE COVERAGE**

- 2.1 Subject to Article 8, from and after the Substantial Completion Date and until the Termination Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Property;
 - (b) Boiler and Machinery;
 - (c) Commercial General Liability and Non-Owned Automobile Liability;
 - (d) Environmental Impairment (Pollution) Liability;
 - (e) Automobile Liability;
 - (f) Comprehensive Crime; and
 - (g) WSIB.

**ARTICLE 3
NO LIMIT ON RECOVERY**

- 3.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by Contracting Authority or by Project Co, shall in no way limit Project Co’s liability or obligations to Contracting Authority or Contracting Authority’s liability or obligations to Project Co, as applicable.

**ARTICLE 4
ADDITIONAL COVER**

- 4.1 Without prejudice to the other provisions of this Schedule 25, Contracting Authority and Project Co shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.
- 4.2 Contracting Authority reserves the right to require Project Co to purchase such additional insurance coverage as Contracting Authority may reasonably require. Contracting Authority also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Project Co Services and the Works, contract value, industry standards, and availability of insurance) as Contracting Authority may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne

by Contracting Authority and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of Contracting Authority.

**ARTICLE 5
RESPONSIBILITY FOR DEDUCTIBLES**

- 5.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

**ARTICLE 6
COOPERATION WITH INSURER’S CONSULTANT**

- 6.1 If an insurer or an insurer’s appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then Contracting Authority and Project Co shall, and shall require the Contracting Authority Parties and the Project Co Parties, respectively, to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
 - (b) allow the insurer and its consultant to attend meetings between Project Co and Contracting Authority (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

**ARTICLE 7
INSURANCE ADJUSTMENT**

- 7.1 For purposes of this Article 7, the following terms shall have the following meanings:
- (a) “**Actual Relevant Insurance Cost**” means the aggregate of the annual insurance premiums reasonably incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during each Insurance Review Period (expressed on an annualized basis for any policies covering multiple Insurance Review Periods), but excluding Taxes and all broker’s fees and commissions.
 - (b) “**Base Relevant Insurance Cost**” means the aggregate of the annual insurance premiums which were projected to be incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during each Insurance Review Period, which amounts exclude Taxes and all broker’s fees and commissions and are set out in the Financial Model.
 - (c) “**Insurance Adjustment**” means, in respect of a Severe Insurance Market Price Increase, an amount equal to (i) the Actual Relevant Insurance Cost for the current Insurance

Review Period minus (ii) the average of the Actual Relevant Insurance Costs in the two Insurance Review Periods immediately prior to the current Insurance Review Period, as set out in the Annual Insurance Reports in respect of the relevant Insurance Review Periods. Notwithstanding the foregoing, with respect to the first two Insurance Review Periods, where any amount(s) for the Actual Relevant Insurance Cost does not exist as a result of Project Co not maintaining or causing to be maintained any Relevant Insurance before the Relevant Insurance Inception Date, with respect to such amount(s), for the purposes of this Project Agreement, the Actual Relevant Insurance Cost shall be calculated by using the average of the annual insurance premiums that Project Co can demonstrate to Contracting Authority's reasonable satisfaction would have been reasonably incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during the applicable year(s) immediately prior to the Relevant Insurance Inception Date (but excluding Taxes and all broker's fees and commissions) if Project Co were to have maintained or caused to be maintained the Relevant Insurance during such year(s).

- (d) **“Insurance Cost Factor”** means the amount calculated in accordance with the following formula:

$$\mathbf{ICF_n = ARIC_n / ARIC_{n-2}}$$

Where:

“**ICF_n**” is the Insurance Cost Factor for the current Insurance Review Period n;

“**ARIC_n**” is the Actual Relevant Insurance Cost for the current Insurance Review Period n, as set out in the Annual Insurance Report; and

“**ARIC_{n-2}**” is the average of ARIC over the two Insurance Review Periods immediately prior to the current Insurance Review Period n, as set out in the Annual Insurance Reports in respect of such Insurance Review Periods. Notwithstanding the foregoing, with respect to the first two Insurance Review Periods, where any amount(s) for ARIC does not exist as a result of Project Co not maintaining or causing to be maintained any Relevant Insurance before the Relevant Insurance Inception Date, with respect to such amount(s), **ARIC_{n-2}** shall be calculated by using the average of the annual insurance premiums that Project Co can demonstrate to Contracting Authority's reasonable satisfaction would have been reasonably incurred by Project Co to maintain or cause to be maintained the Relevant Insurance during the applicable year(s) immediately prior to the Relevant Insurance Inception Date (but excluding Taxes and all broker's fees and commissions) if Project Co were to have maintained or caused to be maintained the Relevant Insurance during such year(s).

- (e) **“Insurance Review Date”** means the Relevant Insurance Inception Date and thereafter each anniversary of the Relevant Insurance Inception Date, except where such date lies

beyond the end of the Project Term, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance and prior to the Expiry Date.

- (f) **“Insurance Review Period”** means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on the anniversary of the Relevant Insurance Inception Date, except where the end of such period lies beyond the end of the Project Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Project Term.
- (g) **“Relevant Insurance”** means all policies of insurance to be obtained or caused to be obtained by Project Co in accordance with Article 2 of this Schedule 25.
- (h) **“Relevant Insurance Inception Date”** means the date on which the Relevant Insurance is first providing active insurance cover to Project Co and Contracting Authority, respectively, being the Substantial Completion Date.
- (i) **“Severe Insurance Market Price Increase”** means the occurrence of circumstances generally prevailing in the worldwide insurance market that cause the Actual Relevant Insurance Cost to materially increase in an Insurance Review Period with the result that the Insurance Cost Factor for such Insurance Review Period is greater than or equal to 1.20, excluding, for greater certainty, any increase in the Actual Relevant Insurance Cost caused by or connected with claims made as a result of acts or omissions of Project Co or any Project Co Party or re-rating of Project Co or any Project Co Party.

7.2 No later than 90 days prior to the Relevant Insurance Inception Date and no later than 60 days prior to each other Insurance Review Date thereafter, Project Co’s insurance broker shall, at Project Co’s sole cost and expense, prepare a report on behalf of both Project Co and Contracting Authority (the **“Annual Insurance Report”**) and submit such report to Contracting Authority. Each Annual Insurance Report shall contain the following information for the relevant Insurance Review Period:

- (a) a full breakdown of the Actual Relevant Insurance Cost, together with evidence satisfactory to Contracting Authority, acting reasonably, in support of the Actual Relevant Insurance Cost;
- (b) the Base Relevant Insurance Cost;
- (c) the calculation of the Insurance Cost Factor, together with evidence satisfactory to Contracting Authority, acting reasonably, in support of the Insurance Cost Factor;
- (d) any Severe Insurance Market Price Increase, together with
 - (i) the opinion of Project Co’s insurance broker as to the reasons for such Severe Insurance Market Price Increase; and

- (ii) evidence satisfactory to Contracting Authority, acting reasonably, (A) in support of such opinion (including, for greater certainty, evidence that the applicable increase in the Actual Relevant Insurance Cost was not caused by or connected with claims made as a result of acts or omissions of Project Co or any Project Co Party or re-rating of Project Co or any Project Co Party), and (B) that Project Co has complied with Section 7.4.
- 7.3 Project Co shall notify Contracting Authority as soon as possible and, in any event, within 15 Business Days, of becoming aware of a Severe Insurance Market Price Increase or circumstances that are reasonably likely to cause a Severe Insurance Market Price Increase.
- 7.4 In the event that Project Co is or is reasonably likely to be affected by a Severe Insurance Market Price Increase, Project Co shall, and shall require all Project Co Parties to, take commercially reasonable steps to eliminate or mitigate such actual or potential Severe Insurance Market Price Increase, including the exertion of commercially reasonable efforts to obtain a better price for the Relevant Insurance. In the event that Project Co does not comply with its obligations under this Section 7.4, Project Co shall not be entitled to an Insurance Adjustment and no Insurance Adjustment shall be made.
- 7.5 In accordance with Schedule 20 – Payment Mechanism and subject to Sections 7.4, 7.6 and 7.7, in the event that a Severe Insurance Market Price Increase occurs, then the Annual Service Payment will be adjusted by the Insurance Adjustment Amount.
- 7.6 In the event that an Annual Insurance Report is not submitted to Contracting Authority pursuant to Section 7.2, then, until such time as an Annual Insurance Report is submitted, (a) one or more Major Quality Failures shall arise and one or more Deductions shall apply in accordance with Part 6 of Schedule 15 – Output Specifications and Schedule 20 – Payment Mechanism, and (b) no Insurance Adjustment shall be made.
- 7.7 In the event that an Annual Insurance Report is submitted to Contracting Authority pursuant to Section 7.2 but in Contracting Authority’s reasonable opinion, such Annual Insurance Report fails to satisfy the requirements of Section 7.2, then Contracting Authority may, within 15 Business Days of Contracting Authority’s receipt of such Annual Insurance Report, provide notice to Project Co of such failure and the reasons why, in Contracting Authority’s reasonable opinion, the Annual Insurance Report fails to satisfy such requirements. If Contracting Authority provides such a notice to Project Co, then Project Co shall have 10 Business Days of Project Co’s receipt of such notice to submit a revised Annual Insurance Report to Contracting Authority that satisfies the requirements of Section 7.2 (a “**Revised Annual Insurance Report**”). If Project Co fails to submit such Revised Annual Insurance Report to Contracting Authority before the expiry of such 10 Business Day period, then, until such time as such Revised Annual Insurance Report is submitted, (a) one or more Major Quality Failures shall arise and one or more Deductions shall apply in accordance with Part 6 of Schedule 15 – Output Specifications and Schedule 20 – Payment Mechanism, and (b) no Insurance Adjustment shall be made.

**ARTICLE 8
UNINSURABLE RISKS**

- 8.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk:
 - (i) where Applicable Laws require that the insurer be licensed in the Province of Ontario to insure such a risk, by insurers licensed in the Province of Ontario; or
 - (ii) where Applicable Laws do not require that the insurer be licensed in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of the Project Agreement; or
 - (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.
 - (c) Project Co has the onus of demonstrating, to Contracting Authority’s reasonable satisfaction that the foregoing definition applies to a particular risk.
- 8.2 Project Co shall notify Contracting Authority as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide Contracting Authority with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 8.3 Project Co and Contracting Authority shall, as soon as possible following the provision of the notice referred to in Section 8.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and Contracting Authority are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 8.4 In the event that Project Co and Contracting Authority, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 8.2 of this Schedule 25, Contracting Authority may, in its absolute discretion, either:
- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or

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- (b) terminate this Project Agreement in accordance with Section 44.2 of this Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.2 of this Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 8.5 On the occurrence of an Uninsurable Risk, Contracting Authority may, in its absolute discretion, either:
- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
 - (b) terminate this Project Agreement in accordance with Section 44.2 of this Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.2 of this Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 8.6 With respect to any Uninsurable Risk:
- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
 - (b) Subject to Section 8.6(a) of this Schedule 25, Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.
- 8.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Article 8 shall no longer apply to such risk.
- 8.8 From and after the Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

**ARTICLE 9
TOTAL OR SUBSTANTIAL DESTRUCTION**

- 9.1 In the event of damage to, or destruction of, all or substantially all of the Facility for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations, all in accordance with the terms of the Insurance Trust Agreement.

**ARTICLE 10
SUBCONTRACTORS**

- 10.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which Contracting Authority may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 10.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained (or caused to be obtained) by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;
 - (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
 - (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in this Project Agreement regarding new and replaced Subcontractors shall be complied with.

**ARTICLE 11
RENEWAL**

- 11.1 Project Co shall provide to Contracting Authority, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to Contracting Authority, acting reasonably.

ARTICLE 12**NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION**

- 12.1 All insurance provided by Project Co, shall:
- (a) include Project Co, Contracting Authority, the Contracting Authority Parties, IO, the Lenders, the Lenders' Agent and Macdonald Block Occupants as Named Insureds to the extent specified in Appendix A of this Schedule 25;
 - (b) include Contracting Authority, the Contracting Authority Parties, IO, Macdonald Block Occupants, the Lenders' and the Lenders' Agent as Additional Insureds, or loss payees to the extent of their respective insurable interests specified in Appendix A of this Schedule 25;
 - (c) except with respect to the Project Specific Professional Liability specified in Part 1 of Appendix A to this Schedule 25 and Automobile Liability, Comprehensive Crime and WSIB specified in Parts 1 and 2 of Appendix A to this Schedule 25, contain a waiver of subrogation as against Contracting Authority, IO, Contracting Authority Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
 - (d) with respect to "All Risks" Course of Construction Property, including Boiler and Machinery insurance specified in Part 1 of Appendix A to this Schedule 25, contain a waiver of subrogation as against Macdonald Block Occupants, and their respective shareholders, officials, directors, officers, employees, servants, consultants and agents.
 - (e) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
 - (f) to the extent Contracting Authority, the Contracting Authority Parties, IO and Macdonald Block Occupants are Named Insureds (as specified in Appendix A of this Schedule 25) or Additional Insureds or loss payees (as specified in Appendix A of this Schedule 25), be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to Contracting Authority, the Contracting Authority Parties, IO or Macdonald Block Occupants without any right of contribution of any insurance carried by Contracting Authority, IO or Macdonald Block Occupants.

ARTICLE 13**CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES**

- 13.1 Prior to the commencement of any part of the Works, Project Co will provide Contracting Authority with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 13.2 Prior to the commencement of any part of the Works, Project Co will provide Contracting Authority with certificates of insurance or certified copies of policies, confirming that the

insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to Contracting Authority no later than 90 days after execution of this Project Agreement.

- 13.3 Prior to the commencement of any part of the Project Co Services, Project Co will provide Contracting Authority with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 2.1 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to Contracting Authority no later than 90 days after the Substantial Completion Date; however, specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles, must be provided to Contracting Authority no later than 90 days prior to the Substantial Completion Date. Notwithstanding the foregoing, the Parties agree that with respect to the insurances required under Sections 2.1(e), (f) and (g), prior to the commencement of any part of the Project Co Services, Project Co will provide Contracting Authority with certificates of insurance confirming that such insurances have been obtained and are in full force and effect, provided that Project Co is not required to deliver certified copies of any insurance policies related to such insurances.

ARTICLE 14

FAILURE TO MEET INSURANCE REQUIREMENTS

- 14.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to Contracting Authority a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then Contracting Authority shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at Contracting Authority's option, be payable by Project Co to Contracting Authority on demand or be deducted by Contracting Authority from the next payment or payments otherwise due to Project Co.
- 14.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by Contracting Authority, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

ARTICLE 15

MODIFICATION OR CANCELLATION OF POLICIES

- 15.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to Contracting Authority and the Lenders' Agent. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits

(other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.

- 15.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to Contracting Authority and the Lenders' Agent.
- 15.3 With respect to the Operational Term insurances, only notice of cancellation will be required for the Automobile Liability and Comprehensive Crime described in Part 2 of Appendix A to this Schedule 25.
- 15.4 With respect to insurances described in Section 1.1(a), (b) and (d), Section 1.2(d) and Section 2.1(a), (b), (c) and (d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to Contracting Authority, IO, the Lenders, Macdonald Block Occupants or any other Insured, but only to the extent that such breach is not known to these parties.

ARTICLE 16 INSURERS

- 16.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to Contracting Authority and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 16.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than “[REDACTED]” for three out of the previous five years but not lower than “[REDACTED]” at any time during those five years, and a Financial Size Category not lower than [REDACTED], such ratings being those established by A.M. Best Company (**Best**); or
 - (b) a Long-Term Financial Strength Rating of not lower than “[REDACTED]” for three out of the past five years but not less than “[REDACTED]” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “[REDACTED]” for three out of the previous five years and a Financial Enhancement Rating of not lower than “[REDACTED]” for three out of the previous five years but not less than

“[REDACTED]” at any time during those five years, such ratings being those established by Standard and Poor’s (S&P); or

- (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to Contracting Authority and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

ARTICLE 17 POLICY TERMS AND CONDITIONS

- 17.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to Contracting Authority and its insurance advisors, acting reasonably.
- 17.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

ARTICLE 18 FAILURE TO COMPLY

- 18.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

ARTICLE 19 PERFORMANCE SECURITY REQUIREMENTS

- 19.1 Project Co shall ensure that each of the following performance security and any amendment, replacement, restatement, supplement and/or other modification thereto is provided to Contracting Authority on or before the later of Commercial Close and the date such performance security is delivered to the Lenders pursuant to the Lending Agreements:
- (a) a copy of the certificate of insurance and endorsement evidencing the corporate policy of subcontractor default insurance maintained by the Construction Contractor, together with any endorsements and schedules or exhibits thereto, including naming Contracting Authority as a scheduled entity on the financial interest endorsement, required to be delivered pursuant to the Lending Agreements;
- (b) a copy of each of the Performance Guarantees;
- (c) a copy of the Substantial Completion Letter of Credit (as defined in the Construction Contract), and any other Construction Contractor Performance Support (as defined in the Common Terms and Intercreditor Agreement) required to be delivered by the Construction Contractor, pursuant to the Lending Agreements; and

- (d) a copy of the Service Provider Performance LC (as defined in the Service Contract), and any other Service Provider Performance Support (as defined in the Common Terms and Intercreditor Agreement) required to be delivered by the Service Provider, pursuant to the Lending Agreements.

ARTICLE 20
INSURANCE TRUST AGREEMENT

- 20.1 All losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the Property Insurance carried by Project Co after Substantial Completion; and (iii) the Boiler and Machinery Insurance carried by Project Co after Substantial Completion, which, in each case relate to FF&E purchased, owned or leased by Contracting Authority or Macdonald Block Occupants shall be payable solely to Contracting Authority or Macdonald Block Occupants, as applicable, and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

APPENDIX A – INSURANCE REQUIREMENTS

Macdonald Block Reconstruction Project

Works Phase Insurance – Part 1 Macdonald Block Reconstruction Project

From Commercial Close until completion of the Fit-Out Works (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
"All Risks" Course of Construction Property Including Boiler and Machinery	<p>Value declared to be equal to the estimated completed project value of the Facility, including Property of Every Description, the existing facilities and its Heritage Attributes, the Macdonald Block Artwork, all equipment (including, for clarity, the Category 1 FF&E, but excluding Category 3 FF&E and Category 4 FF&E) and all other property supplied by Contracting Authority or the Contracting Authority Parties for incorporation into the Facility.</p> <p>All Category 1 FF&E until such Category 1 FF&E has become Contracting Authority's or Macdonald Block Occupant's (as the case may be) responsibility.</p> <p>Delay in Start-up [\$[REDACTED]] covering a 30 month indemnity period, including Contingent Delayed Start-Up regarding losses at Suppliers' or Manufacturers' premises, or other temporary storage locations (minimum [\$[REDACTED]] sub-limit)</p> <p>Soft Costs [\$[REDACTED]] (representing [\$[REDACTED]]% of Recurring / Continuing Soft Costs)</p>	<p>For all work, except as noted below:</p> <p>[\$[REDACTED]] % of loss value / [\$[REDACTED]] minimum Earthquake, [\$[REDACTED]] maximum</p> <p>[\$[REDACTED]] Flood</p> <p>[\$[REDACTED]] Testing and Commissioning</p> <p>[\$[REDACTED]] All other losses</p> <p>30 days waiting period applicable to time element coverages</p> <p>48 hour waiting period applicable to Off Premises Services Service Interruption</p> <p>For existing facilities and its Heritage Attributes:</p> <p>[\$[REDACTED]] Flood</p> <p>[\$[REDACTED]] Testing and Commissioning</p> <p>[\$[REDACTED]] All other losses</p>	<p>"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler & Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Contracting Authority, IO, Macdonald Block Occupants or the Lenders.</p>	TBD

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
Extra and Expediting Expense (minimum \$[REDACTED] sub-limit)	Principal Extensions:	For Macdonald Block Artwork: [REDACTED] % of value per item subject to maximum any one occurrence deductible of \$[REDACTED]		
	<ul style="list-style-type: none"> • Replacement Cost Valuation (Property) • Most Recent Technology Replacement Cost Valuation (equipment or machinery) • Flood (to policy limit with annual aggregate) • Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) • Electronic Data Processing equipment and media, including data restoration and re-creation costs • Transit • Unnamed locations • By-laws including Demolition, Increased Cost of Repairs and Replacement (subject to a \$[REDACTED] sub-limit only with respect to existing or renovated buildings) • Debris Removal (minimum \$[REDACTED] sub-limit) • Off-Premises Services Interruption (minimum \$[REDACTED] sub-limit) • Professional Fees (minimum \$ [REDACTED] sub-limit) • Fire Fighting Expenses (minimum \$[REDACTED] sub-limit) • Valuable Papers (minimum 			

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • \$[REDACTED] sub-limit • Accounts Receivable (minimum \$[REDACTED] sub-limit) • Green Building and LEED Upgrades (subject to a \$[REDACTED] sub-limit) • Defence Costs (subject to a \$[REDACTED] sub-limit) • Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to x-ray machines, subject to a \$[REDACTED] sub-limit) • Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit) • Ammonia Contamination (minimum \$[REDACTED] sub-limit) • LEED Recertification Commissioning and Testing Expenses (subject to a \$[REDACTED] sub-limit) • Civil Authority Access Interruption (8 weeks) • Prevention of Ingress/Egress (8 weeks) • Permission for Partial Occupancy prior to Substantial Completion • Cost of Carrying Project Financing (30 Months), included in Delayed Start-Up or Soft Costs coverage • Margin of Profit Extension for Contractors • Testing and Commissioning (120 days) 			

Macdonald Block Reconstruction Project

<i>Comments</i>	<ul style="list-style-type: none">• Named Insured includes Project Co, Lenders, Lender's Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants. IO, Contracting Authority and Macdonald Block Occupants, as their respective interests may appear• No provision permitted allowing a coinsurance penalty• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured• Additional key extensions of coverage:<ul style="list-style-type: none">– Underground services, temporary works involved in the project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the construction project– Losses payable in accordance with the Insurance Trust Agreement– Upon Substantial Completion, coverage for the Facility will cease and be replaced by Property and Boiler & Machinery insurance – Services Phase– Waiver of Subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, IO, Macdonald Block Occupants, Contracting Authority, the Construction Contractor, subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing– Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded– Liberalization Clause– Errors and Omissions– Breach of Conditions– Interim Payments Clause– Non-Vitiation
Underwriters	<ul style="list-style-type: none">• Principal underwriters in compliance with Clause 16 of this Schedule 25.

Macdonald Block Reconstruction Project

Works Phase Insurance – Part 1 Macdonald Block Reconstruction Project

From Commercial Close until completion of the Fit-Out Works (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
Wrap-Up Commercial General Liability and Non-Owned Automobile Liability	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> • \$[REDACTED] Non-Owned Automobile Liability • \$[REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution Liability • \$[REDACTED] "All Risks" Tenants' Legal Liability • \$[REDACTED] Prairie or Forest Fire Fighting Expenses • \$[REDACTED] Employee Benefits Administrative Errors and Omissions • \$[REDACTED] Contractors Rework • \$[REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94) • \$[REDACTED] Medical Payments <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Owner's and Contractor's Protective • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Employee Benefits Administrative Errors and Omissions • Personal Injury (nil participation) 	<p>[\$REDACTED] per occurrence</p> <p>[\$REDACTED] per claim with respect to Contractors Rework</p> <p>[\$REDACTED] per claim with respect to each SEF 94, Tenant's Legal Liability, Employee Benefits, Administrative Errors and Omissions and Prairie or Forest Fire Fighting Expenses</p>	<p>Wrap-Up Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the Substantial Completion Date and each Fit-Out Works Phase Completion Date, as applicable.</p> <p>Coverage shall be maintained continuously from the date of the first activities at the Site, until the Substantial Completion Date and each Fit-Out Works Phase Completion Date at which time the Products and Completed Operations extension will take effect.</p> <p>Pollution Liability – Sudden and Accidental and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure). To include Hostile Fire extension.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Contracting Authority, IO or the Lenders.</p>	

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
			<ul style="list-style-type: none"> • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunneling/grading and similar operations associated with the Works, as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co • Non-Owned Automobile. • Tenants' Legal Liability (All Risks) – subject to sub-limit • Medical Expenses – subject to sub-limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental and Hostile Fire Pollution – subject to sub-limit • Permission for Unlicensed Vehicles (partial road use) • Unlicensed equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Accident Benefits • Worldwide Territory, subject to suits being brought in Canada or the US • Limited UAV 	

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site • Physical damage to the Project, except during Broad Form Products and Completed Operations extension period • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use • Sanctions Clause • Asbestos 				
<p><i>Comments</i></p>	<ul style="list-style-type: none"> • Named Insured includes Project Co and its Affiliates, Contracting Authority, IO, the Lenders, Project Co parties involved in the Works, including all other contractors, subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site or the Facility; engineers, architects, consultants and sub-consultants (other than for professional liability); others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site and Facility • Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds • Macdonald Block Occupants as Additional Insureds • Insurance primary without right of contribution of any other insurance carried by any Named Insured • Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted 			

Macdonald Block Reconstruction Project

- Professional service activities integral to the project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers
- Waiver of Subrogation or insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, Contracting Authority, IO, Macdonald Block Occupants, the Construction Contractor, subcontractors; sub-subcontractors; professional consultants, engineers and architects (other than for their professional liability); Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing
- Non-Vitiation

Underwriters Principal underwriters in compliance with Clause 16 of this Schedule 25.

Macdonald Block Reconstruction Project

Works Phase Insurance – Part 1 Macdonald Block Reconstruction Project

From Commercial Close until completion of the Fit-Out Works (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
Project Specific Professional Liability	<p>[\$REDACTED] minimum per claim / [\$REDACTED] in the aggregate (inclusive of defense and related costs and supplementary payments).</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Primary insurance extension • Automatic addition of firms • Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the Named Insured under a personal services contract • Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act • Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims 	<p>[\$REDACTED] per claim</p>	<p>Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period, to the Substantial Completion Date and completion of the Fit-Out Works, as applicable, plus coverage for an extended reporting period of not less than 36 months effective from the Substantial Completion Date and each Fit-Out Works Phase Completion Date, as applicable.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Contracting Authority, IO or the Lenders.</p>	

Macdonald Block Reconstruction Project

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Duty to defend, even if the allegations are groundless, false or fraudulent • Worldwide Territory, subject to suits brought in Canada <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Express warranties or guarantees • Estimates on profit, return • Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents • Design or manufacture of any good or products sold or supplied by the Named Insured • Terrorism • Nuclear Liability • Judgments and awards deemed uninsurable by law • Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement • Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees • Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies • Sanctions Clause 			

Macdonald Block Reconstruction Project

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
<i>Comments</i>				
Underwriters			<ul style="list-style-type: none"> Principal underwriters in compliance with Clause 16 of this Schedule 25. 	

Macdonald Block Reconstruction Project

Works Phase Insurance – Part 1 Macdonald Block Reconstruction Project

From Commercial Close until completion of the Fit-Out Works (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
<p>Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability):</p> <ul style="list-style-type: none"> Contractors Pollution Liability (Claims Made) Commercial Pollution Legal Liability (Claims Made) <p>Combined Limit subject to Commercial Pollution Legal Liability with a minimum [\$REDACTED] sub-limit</p>	<p>[\$REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period Microbial Matter (including Fungus/Mould) Underground / above ground storage tanks First Party Restoration and Clean-up Costs Disposal Site Extension, including Transportation (reporting required) Duty to Defend Canada and US Territory Contractual Liability Emergency Response Costs <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> Terrorism War Intentional Non-compliance Prior Knowledge WSIB Employers' Liability Professional Liability 	<p>[\$REDACTED] per claim inclusive of defense and all costs and expenses</p>	<p>Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and off-site, as required.</p> <p>Extended Reporting Period: Minimum of 36 months after the completion of the Fit-Out Works.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Contracting Authority, IO or the Lenders.</p>	

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
		<ul style="list-style-type: none"> • Nuclear Liability • Property Damage to Motor Vehicles during Transportation 		
<i>Comments</i>		<ul style="list-style-type: none"> • Named Insured will include Project Co, its Affiliates, Project Co parties and all other parties engaged in the Works, including the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants • Contracting Authority, IO, Macdonald Block Occupants and the Lenders will be identified as Additional Insureds, or insured clients of Project Co and its Affiliates • The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds 		
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

Macdonald Block Reconstruction Project

Works Phase Insurance – Part 1 Macdonald Block Reconstruction Project

From Commercial Close until completion of the Fit-Out Works (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
Automobile Liability	<p>[\$REDACTED] (Minimum) for Project Co and Project Co's Construction Contractor vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants, operated in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to Contracting Authority, the Lenders and IO.</p>	
<p>Commercial General Liability and Non-Owned Automobile Liability</p> <p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent Employers</p>	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co's Construction Contractor</p> <p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works</p> <p>In both instances, limits of liability may be structured as any combination of primary plus supplementary layers and</p>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability Insurance will cover off-site activities connected to the project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy's Products and Completed Operations extension period.</p> <p>This insurance shall be maintained in effect, during the Works phase until twelve (12) months following the earlier of the termination of the insured's person's involvement in the Works and the date of the completion of the Fit-Out Works.</p>	

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
Liability, Products and Completed Operations Liability, and Owner's and Contractor's Protective extensions	Umbrella and/or Excess, or primary plus Umbrella and/or Excess Sub-limits (Project Co and Project Co's Construction Contractor): <ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability • [\$[REDACTED]] Prairie or Forest Fire Fighting Expenses Principal Extensions (required to be provided by the Project Co. and its Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works): <ul style="list-style-type: none"> • Owner's and Contractor's Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/Demolition/Excavating/Under-Pinning/Pile Driving/Shoring/Caisson Work/Work below ground surface/tunneling/grading, and similar operations associated with the Works as applicable • Elevator and Hoist Collision Liability 		Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to Contracting Authority, the Lenders and IO.	

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Permission for Unlicensed Vehicles' (partial road use) • Unlicensed equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Worldwide Territory, subject to suits being brought in Canada or the US <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the project site • Physical damage to the Project, except during Broad Form Products and Completed Operations extension period 			

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
		<ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use 		
<hr/>				
<i>Comments</i>	<ul style="list-style-type: none"> • Contracting Authority, IO and the Lenders will be identified as Additional Insureds, or insured clients of Project Co and its Affiliates 			

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
Aircraft and Watercraft Liability (If any exposure)	Minimum \$[REDACTED] inclusive, including \$[REDACTED] passenger hazard – Owned Aircraft Minimum \$[REDACTED] inclusive – Non-Owned Aircraft Minimum \$[REDACTED] inclusive Owned or Non-Owned Watercraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to Contracting Authority, the Lenders and IO.	
<i>Comments</i> <ul style="list-style-type: none"> Contracting Authority, IO and the Lenders will be identified as additional insureds, or insured clients of Project Co and its Affiliates 				
“All Risks” Ocean Marine Cargo (if any exposure)	[REDACTED] % Replacement Cost Valuation basis	\$[REDACTED]	Property of Every description destined for incorporation into the Facility, during marine transit, on a full replacement value basis, with no co-insurance provision. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Contracting Authority, IO or the Lenders.	
<i>Comments</i> <ul style="list-style-type: none"> Named Insured includes Project Co, Lenders, Lender’s Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants. IO and Contracting Authority, as their respective interests may appear. 				

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
<p>“All Risks” Contractors’ Equipment</p> <p>To cover Project Co, the Construction Contractors, subcontractors, sub-subcontractors consultants and sub-consultants</p>	<p>If site equipment is three years old or less the sum insured shall be equal to [REDACTED] % of the replacement value of all contractors equipment used at the project. If site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.</p>		<p>All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment used at the project site.</p>	

Comments Waiver of Subrogation rights against Project Co, Contracting Authority, IO, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders’ Agent, as well as officers, directors, shareholders and employees of the foregoing

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
<p>Comprehensive Crime</p>	<p>[\$REDACTED] per loss with respect to Employee Dishonesty</p>		<p>Comprehensive Crime insurance, including Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Project Co Parties. Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors’ Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Insurance primary without right of contribution of any other insurance carried by Contracting Authority, IO or the Lenders.</p>	

Underwriters (All non-IOCIP Works Phase insurances that are to be provided or caused to be provided by Project Co)	Principal underwriters in compliance with Clause 16 of this Schedule 25.
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Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Premium
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the project site.</p> <p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion of the Facility, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to Contracting Authority evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>	

Macdonald Block Reconstruction Project

Services Phase Insurance – Part 2 Macdonald Block Reconstruction Project

Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
“All Risk” Property	<p>Full Replacement Cost of all property associated with the Facility, while on the Site or while in transit, including material and supplies destined for incorporation into the Facility or intended to be used in the performance of Project Co Services and, for clarity, including the existing facilities (including its Heritage Attributes) but excluding all Category 1 FF&E, Category 3 FF&E, Category 4 FF&E, Macdonald Block Artwork, Group 1 Fit-Out FF&E and Group 2 Fit-Out FF&E.</p> <p>Business Interruption (Gross Revenue or Gross Profits Form), – 36 months period of indemnity – including interdependency and contingent coverage re losses at key supplier premises, property in transit or in storage off-site</p> <p>Extra and Expediting Expenses (minimum \$[REDACTED] sub-limit)</p> <p>If commercially available, such business interruption insurance should be extended to include infectious disease as a peril that triggers the Business Interruption coverage</p> <p>Principal Extensions:</p>	<p>[REDACTED] % of loss value / \$[REDACTED] minimum Earthquake</p> <p>[\$REDACTED] Flood</p> <p>[\$REDACTED] All other losses</p> <p>[\$REDACTED] existing facilities, including its Heritage Attributes</p> <p>30 days waiting period applicable to time element coverages</p>	<p>All Risks Property insurance covering all property to be insured with a sum insured equivalent to the full replacement cost value of the property insured, and including necessary Business Interruption and Expediting Expenses.</p> <p>Coverage shall be maintained continuously from and after Substantial Completion and at all times thereafter until Termination Date.</p> <p>Such insurance will include Inland Transportation, By-Laws and Off Premises coverage.</p> <p>This coverage shall be primary with respect to the Facility and Project Co Services without right of contribution of any insurance carried by Contracting Authority, IO or the Lenders.</p>	

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<ul style="list-style-type: none"> • Replacement Cost Valuation (Property) • Most Recent Technology Replacement Cost Valuation (equipment or machinery) • Flood (to policy limit with annual aggregate) • Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) • Electronic Data Processing equipment and media, including data restoration and re-creation costs • Debris Removal (minimum \$[REDACTED] sub-limit) • Transit (minimum \$[REDACTED] sub-limit) • Unnamed locations (minimum \$ [REDACTED] sub-limit) • Professional Fees (minimum \$ [REDACTED] sub-limit) • Fire Fighting Expenses (minimum \$[REDACTED] sub-limit) • Valuable Papers (minimum \$[REDACTED] sub-limit) • Accounts Receivable (minimum \$[REDACTED] sub-limit) • Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit) • Civil Authority Access Interruption (minimum 8 weeks) • Prevention of Ingress/Egress (minimum 8 weeks) 				

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Automatic Coverage for Newly Acquired Locations (90 day reporting period acceptable) • By-Laws including demolition and increased replacement / repair costs • Off premises services interruption • Margin of profit extension for contractors • Radioactive contamination caused by sudden and accidental release of radioactive isotopes resulting from an accident to x-ray machines • Joint Loss Agreement (if separate “All Risk” Property and Boiler and Machinery policies are arranged) <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Faulty workmanship, materials construction, design or latent defects but resultant damage to be insured War risk • Terrorism • Nuclear or radioactive contamination, except regarding radioactive isotopes intended for scientific, medical, industrial or commercial use 			

Macdonald Block Reconstruction Project

Comments	<ul style="list-style-type: none"> • Named Insured will include Project Co, Contracting Authority, IO and the Lenders - Lenders will be covered as Loss Payee and Mortgagee • All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement • No provision allowing a coinsurance penalty • Waiver of Subrogation against all Insureds, including but not limited to Project Co, the Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.

Services Phase Insurance – Part 2 Macdonald Block Reconstruction Project

Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Boiler & Machinery	<p>Limit of \$[REDACTED] each Accident to an Insured Object</p> <p>Business Interruption Insurance included, subject to a 36 month period of indemnity</p> <p>If a covered accident to insured objects(s) causes an interruption to Contracting Authority FM Services, the Facility or Macdonald Block Activities, the Business Interruption loss will include the costs of carrying the Project financing, during the affected period</p> <p>Sub-limits (\$[REDACTED] each):</p> <ul style="list-style-type: none"> • Ammonia Contamination • Automatic Coverage • Bylaws 	<p>\$[REDACTED] per claim, Direct Damage</p> <p>Business Interruption – Maximum 30 day Waiting Period</p>	<p>From the date of Substantial Performance, or activation, whichever shall first occur, Boiler & Machinery insurance on a Comprehensive Policy Form basis including HVAC on a full replacement cost basis, including all appropriate endorsements and extensions as well as necessary business interruption and Expediting and Extra Expense coverage.</p> <p>Coverage shall be maintained continuously from and after Substantial Completion and at all times thereafter until Termination Date.</p> <p>Boiler and Machinery Insurance may be arranged on a combined Property/Boiler and Machinery basis, subject to the Boiler and Machinery section of such a policy being arranged on a Comprehensive Form basis.</p> <p>This coverage shall be primary with respect to the Facility and Project Co Services without right of contribution of any insurance carried by Contracting Authority, IO or the Lenders.</p>	

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Errors and Omissions • Expediting Expenses • Extra Expense • Hazardous Substances • Professional Fees • Water Damage 			
<hr/>				
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured will include Project Co, Contracting Authority, IO and the Lenders - Lenders will be covered as Loss Payee and Mortgagee • All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement • As nearly as possible, coverage will be structured to dovetail with the Property Insurance 			
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

Macdonald Block Reconstruction Project

Services Phase Insurance – Part 2 Macdonald Block Reconstruction Project

Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
Commercial General Liability and Non-Owned Automobile Liability	<p>[\$REDACTED] each accident or occurrence and in the aggregate with respect to Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> • \$[REDACTED] Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance • \$[REDACTED] Sudden and Accidental and Hostile Fire Pollution • \$[REDACTED] "All Risks" Tenants' Legal Liability, if any exposure • \$[REDACTED] Prairie or Forest Fire Fighting Expense • \$[REDACTED] Employee Benefits Administrative Errors and Omission Liability • \$[REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94) , unless coverage provided under automobile liability insurance • \$[REDACTED] Medical Payments <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Owner's and Contractor's Protective • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Employee Benefits Administrative Errors and Omissions • Personal Injury (nil participation) 	<p>[\$REDACTED] per occurrence</p>	<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for personal injury (including bodily injury and death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operation Liability insurance.</p> <p>Coverage shall be maintained continuously from and after Substantial Completion and at all times thereafter until Termination Date.</p> <p>Pollution Liability – Sudden and Accidental and Hostile Fire Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours notice coverage structure). To include Hostile Fire extension.</p> <p>This coverage shall be primary with respect to the Facility and Project Co Services without right of contribution of any insurance carried by Contracting Authority, IO or the Lenders.</p>	

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
		<ul style="list-style-type: none"> • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunneling/grading, and similar operations as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co • Non-owned Automobile. • Tenants' Legal Liability (All Risks) – subject to sub-limit • Medical Expenses – subject to sub limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental Pollution – subject to sub-limit • Permission for unlicensed vehicles' partial road use • Unlicensed equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Voluntary Compensation • Worldwide Territory, subject to suits being brought in Canada or the US 		

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the project site • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Asbestos • Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use • Terrorism 				
<p><i>Comments</i></p> <ul style="list-style-type: none"> • Named Insured includes Project Co and its Affiliates, Contracting Authority, IO, the Province (including any Ministry of the Province and any agency of the Province), the Lenders, Project Co parties involved in the Project Co Services, including all other contractors, subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site; engineers, architects, consultants, sub consultants, (other than for professional liability); and others as additional insureds, as may be required from time to time, arising from all operations and activities pertaining to the Project Co Services and the control and use of the Site • Directors, officers, shareholders, employees of the insured parties involved in the Project Co Services are covered as Additional Insureds • Insurance primary without right of contribution of any other insurance carried by any Named Insured • Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted • Professional service activities integral to the Project Co Services, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers 				

Macdonald Block Reconstruction Project

- Waiver of Subrogation or insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, Contracting Authority, IO, the Province (including any Ministry of the Province and any agency of the Province), contractors, subcontractors; sub-subcontractors; professional consultants, engineers and architects (other than for their professional liability); Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing

Underwriters Principal underwriters in compliance with Clause 16 of this Schedule 25.

Macdonald Block Reconstruction Project

Services Phase Insurance – Part 2 Macdonald Block Reconstruction Project

Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
Environmental Impairment (Pollution) Liability	<p>Minimum \$[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period • Microbial Matter (including Fungus/Mould) • Biological Agents • Underground / above ground storage tanks • First Party Restoration and Clean-up • Duty to Defend • Contractual Liability <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Terrorism • Intentional Non-Compliance • WSIB • War • Employers Liability • Nuclear Liability • Professional Liability 	\$[REDACTED] per claim inclusive of defense and all costs and expenses	<p>Pollution Liability insurance covering third party bodily injury and property damage liability, consequential loss or damage, including necessary on-site and off-site clean-up costs, as required. Coverage is extended to include underground and above ground storage tanks.</p> <p>Coverage shall be maintained continuously from and after Substantial Completion and at all times thereafter until Termination Date.</p> <p>This insurance shall include a twelve (12) month extended discovery period and reporting period provision in the event of termination of the Policy or in the event termination of the Project Agreement for any reason, including its expiration.</p> <p>This coverage shall be primary with respect to the Facility and Project Co Services without right of contribution of any insurance carried by Contracting Authority, IO or the Lenders.</p>	

Macdonald Block Reconstruction Project

<i>Comments</i>	<ul style="list-style-type: none">• Contracting Authority, IO, the Province (including any Ministry of the Province and any agency of the Province), Lenders and Lenders' Agent will be identified as Additional Insureds• The directors, officers, shareholders and employees of the foregoing will be identified as Additional Insureds
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.

Macdonald Block Reconstruction Project

Services Phase Insurance – Part 2 Macdonald Block Reconstruction Project

Services Phase Insurance to be provided, or caused to be provided, by Project Co. from Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
Automobile Liability	<p>[\$REDACTED] (Minimum) for Project Co vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants, operated in connection with the Project.</p> <p>Coverage shall be maintained continuously from and after Substantial Completion and at all times thereafter until Termination Date.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to Contracting Authority, IO and the Lenders.</p>	

<i>Comments</i>	
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.

Macdonald Block Reconstruction Project

Services Phase Insurance – Part 2 Macdonald Block Reconstruction Project

Services Phase Insurance to be provided, or caused to be provided, by Project Co. from Substantial Completion Date until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
Comprehensive Crime	[\$REDACTED] per extension		<p>Comprehensive Crime insurance including Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and its Affiliates. Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Coverage shall be maintained continuously, from and after the Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>This coverage shall be primary with respect to the Facility and Project Co Services without right of contribution of any insurance carried by Contracting Authority, IO or the Lenders.</p>	

Comments	
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.

Macdonald Block Reconstruction Project

Type	Amount	Maximum Deductibles	Principal Cover	Estimated Annual Premium
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of Project Co Services, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon completion of the Project Co Services, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to Contracting Authority evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>	

SCHEDULE 26

RECORD PROVISIONS

1. General Requirements

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with the Output Specifications;
 - (c) in accordance with the requirements of Good Industry Practice;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of Project Co's, the Construction Contractor's and the Service Provider's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 34 of this Project Agreement; and
 - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the Facility or otherwise on the Site.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to Contracting Authority, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement Contracting Authority and Project Co have agreed to accept microfilm, microfiche, CD-ROM or other storage media, Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.

- 1.5 Records may, with the consent of Contracting Authority, not to be unreasonably withheld or delayed, be stored in electronic form if Contracting Authority has access thereto and will continue to have access thereto, such that Contracting Authority will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify Contracting Authority if Project Co wishes to destroy any records referred to in this Schedule 26 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, Contracting Authority may elect to require Project Co to deliver such records to Contracting Authority, in which case Project Co shall, at the expense of Contracting Authority, deliver such records (with the exception of Sensitive Information) to Contracting Authority in the manner and to the location as Contracting Authority shall specify; or
 - (b) if Contracting Authority fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of this Project Agreement prior to the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to Contracting Authority in the manner and to the location that Contracting Authority shall reasonably specify. Contracting Authority shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
 - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
 - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of this Project Agreement arises:
- (a) as a result of a Contracting Authority Event of Default or pursuant to Section 44.3 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Contracting Authority; or

- (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.
- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to Contracting Authority a report, as reasonably requested by Contracting Authority in connection with Contracting Authority's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against Contracting Authority or that may be owing by Contracting Authority to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.
- 1.11 Project Co shall provide to Contracting Authority: (a) within 45 days of the first three fiscal quarter ends of each calendar year, a copy of Project Co's quarterly unaudited management financial statements in respect of that period, prepared in accordance with Applicable Law and generally applicable accounting principles in Canada and/or International Financial Reporting Standards; and (b) within 120 days of Project Co's fiscal year-end for each calendar year, annual audited financial statements of Project Co prepared in accordance with generally applicable accounting principles in Canada and/or International Financial Reporting Standards, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 49 of this Project Agreement, shall be treated by Contracting Authority as Confidential Information of Project Co.

2. Records To Be Kept

- 2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) this Project Agreement, its Schedules and the Project Documents, including all amendments to such agreements;
 - (b) all records relating to the appointment and replacement of the Contracting Authority Representative and the Project Co Representative;
 - (c) any documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
 - (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;

- (e) all records relating to any statutory inspections of the Facility or the Site, including any roadways;
- (f) any notices, reports, results and certificates relating to Substantial Completion, Final Completion, each Fit-Out Works Phase Completion and Fit-Out Works Final Completion and completion of the Project Co Commissioning and the Fit-Out Works Phase Project Co Commissioning;
- (g) all operation and maintenance manuals;
- (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
- (i) all formal notices, reports or submissions made to or received from Contracting Authority in connection with the provision of the Project Co Services, the monitoring of performance, the availability of the Facility, and payment adjustments;
- (j) all certificates, licences, registrations or warranties related to the provision of the Project Co Services;
- (k) the invoices for Monthly Service Payments;
- (l) all documents submitted in accordance with Schedule 22 – Variation Procedure;
- (m) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (n) any documents related to a Project Co Change in Ownership or Change in Control;
- (o) any documents relating to any Refinancing;
- (p) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
 - (i) Project Co’s liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (ii) Project Co’s liabilities or payments for capital taxes based on or measured by the capital of Project Co;
 - (iii) the withholdings of any payments by Project Co; or
 - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (q) the financial accounts of Project Co referred to in Section 1.11 above;

- (r) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Project Operations;
 - (s) any documents relating to insurance and insurance claims;
 - (t) records related to the Plant Services;
 - (u) all Jointly Developed Materials;
 - (v) such documents as Contracting Authority may reasonably require relating to Business Opportunities proposed by Project Co in accordance with the Project Agreement; and
 - (w) all documents in its possession related to Security Clearance Checks undertaken pursuant to Section 27.11 of the Project Agreement in accordance with the requirements of Schedule 7 - Security Clearance Check Requirements.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.

SCHEDULE 27

DISPUTE RESOLUTION PROCEDURE

1. General

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of this Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Project Agreement, including, without limitation, this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 27.
- 1.2 The Parties agree that at all times, both during and after the Project Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
 - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 9 of this Schedule 27.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b) of this Schedule 27, either Party may deliver to the Contracting Authority Representative or the Project Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Sections 2 to 9 of this Schedule 27, as applicable, as more particularly described in this Schedule 27. 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 the Contracting Authority Representative, if given by Contracting Authority, or by the Project Co Representative, if given by Project Co.

2. Amicable Resolution by Party Representatives

- 2.1 On receipt of a Notice of Dispute, the Contracting Authority Representative and the Project Co Representative (collectively “**Party Representatives**” and individually “**Party Representative**”) shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

3. Amicable Resolution by Senior Officers of each Party

- 3.1 If, following the process referred to in Section 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 12.6 of this Schedule 27), a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:
- (a) is in a position of authority above that of the Contracting Authority Representative or the Project Co Representative, as the case may be; and
 - (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.
- 3.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

4. Independent Certifier

- 4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 of this Schedule 27 that cannot be resolved as provided in Sections 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 12.6 of this Schedule 27.
- 4.2 All Disputes related to the Works and that:
- (a) arise prior to, or otherwise in relation to Substantial Completion, Final Completion, any Fit-Out Works Phase Completion or Fit-Out Works Final Completion;
 - (b) relate to the completion of Minor Deficiencies or Fit-Out Works Phase Minor Deficiencies;
 - (c) relate to whether any proposed work constitutes a Variation;
 - (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 36 of the Project Agreement;
 - (e) are referred to in this Project Agreement for determination by the Independent Certifier; or
 - (f) relate to the Certification Services or any Certification Service Variations (as those terms are defined in the Independent Certifier Agreement);

shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be specified in this Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

- 4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 4.2 of this Schedule 27.
- 4.4 The Independent Certifier’s decision to issue or not to issue the Substantial Completion Certificate or any Fit-Out Works Phase Completion Certificate shall be final and binding on the Parties solely in respect of determining, as applicable, the Payment Commencement Date or the Fit-Out Works Phase Completion Payment Date and a Dispute in relation to the Payment Commencement Date or a Fit-Out Works Phase Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27. Save and except as aforesaid, the Independent Certifier’s determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier’s decisions shall be resolved pursuant to this Schedule 27, provided however that Sections 5 and 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

5. Expert Determination

- 5.1 If, following the process referred to in Section 2 and 3 (or as otherwise agreed to in writing by the Parties pursuant to Section 12.6 of this Schedule 27) of this Schedule 27, any Dispute as to:
- (a) whether a Liquid Market exists;
 - (b) whether amendments proposed by potentially Qualifying Tenders to this Project Agreement or other Project Documents are material;
 - (c) the Adjusted Highest Qualifying Tender Price;
 - (d) the determination of the Estimated Fair Value in accordance with Schedule 23 – Compensation on Termination of this Project Agreement; or
 - (e) whether Project Co has achieved all necessary prerequisites, credits and points under the LEED-BD+C Rating System in accordance with the specific requirements under this Project Agreement to achieve the LEED-BD+C Silver Rating;

has not been resolved within 10 Business Days after the date the Dispute was referred to the executives of the Parties for resolution by them, or within such longer period of time as the executives may expressly agree in writing in respect of a specific Dispute to allow them to continue their efforts to resolve the Dispute, then either Party may at any time

thereafter, by written notice signed by their Party Representative and delivered to the other Party Representative, require that the Dispute be resolved on an expedited basis by a qualified and experienced expert (the “**Expert**”).

5.2 The Expert shall be appointed as follows:

- (a) if the Parties agree on the Expert, the Parties shall jointly appoint the Expert as soon as possible and, in any event, within 5 Business Days after delivery of the notice requiring that the Dispute be resolved by an Expert;
- (b) if the Parties fail to agree or jointly appoint the Expert within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the Expert, in which case the court shall appoint the Expert at the earliest opportunity from the list of potential Experts submitted by the Parties or, if either or both Parties fail to submit their list of potential Experts within 7 Business Days, the court may appoint such person as the Expert who meets the requirements set out in this Schedule 27 for qualifications and experience of the Expert.

5.3 No one shall be nominated or appointed to act as an Expert who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of Contracting Authority, Project Co, or any consultant, subconsultant or subcontractor of any of them.

5.4 Subject to the matters the Expert is authorized to determine pursuant to Section 5.1 of this Schedule 27, the Expert will be appointed on a Dispute by Dispute basis, with each Expert having the qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed. Where the issues in Dispute include whether Project Co has or will adversely impact the Macdonald Block Activities then such qualifications and experience should include relevant experience in the provision of activities similar to the Macdonald Block Activities in a major facility similar to the Facility.

5.5 The Expert shall determine the appropriate process for timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:

- (a) solicit submissions and documents from both Parties, and impose deadlines for the receipt of such submissions;
- (b) require some or all of the evidence to be provided by affidavit;
- (c) direct either or both Parties to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the Dispute and rendering of a decision;
- (d) require either Party to supply or prepare for examination by the Expert and the other Party, any document or information the Expert considers necessary;

- (e) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the Expert intends to conduct any inspections;
 - (f) convene meetings of the Parties to have the Parties discuss the issues in Dispute in the presence of the Expert; and
 - (g) take, or require either or both Parties to take and provide to the Expert, such measurements, perform such tests, audit such processes and procedures, and take any and all such other measures and steps as the Expert considers necessary to make a final determination in the Dispute.
- 5.6 The Expert shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 10 Business Days after the date of the appointment of the Expert, or such longer period of time as agreed to in writing by the Parties. The Expert shall give reasons or a summary of reasons for the Expert’s decision.
- 5.7 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.
- 5.8 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. In addition, the costs of the Expert shall be borne equally by the Parties.
- 5.9 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Expert’s determination shall be final and binding on both Parties and not subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Expert’s determination. For greater certainty, the final determination by the Expert shall not be referred to an Adjudicator (as defined below) for determination under Section 6 of this Schedule 27.

6. Adjudication

- 6.1 If the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Sections 4.2 and 5.1 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Sections 4.4 or 5.9 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 12.6 of this Schedule 27), either Party may refer the Dispute to an adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the “**Adjudicator**”).
- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior

Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) and shall:

- (a) be independent of and at arm's length to Project Co, Contracting Authority, the Province, any Province Person, the Lenders and any other person having an interest in the Facility, the Existing Facilities or any of the Project Documents;
- (b) if the Dispute arises during the Project Term, be familiar with the building operations and management and Macdonald Block Activities; and
- (c) be a person who has qualifications and experience with respect to the particular issues in Dispute, including, where the issues in Dispute include whether Project Co has or will adversely impact the Macdonald Block Activities, then such qualifications and experience should include relevant experience in the provision of activities similar to the Macdonald Block Activities in a facility similar to the Facility.

6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council's *Model Adjudication Procedure: Fourth Edition* (the "**Model Adjudication Procedure**") the terms of which are incorporated herein by reference, subject to the following modifications:

- (a) notwithstanding paragraph 14 of the Model Adjudication Procedure, within 7 Business 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 Facility is operating in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;
- (b) notwithstanding paragraphs 16 and 24 of the Model Adjudication Procedure, in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such 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 Schedule 27, the Adjudicator's decision shall be binding on the Parties, but not final;
- (c) notwithstanding paragraphs 29 and 30 of the Model Adjudication Procedure, the Adjudicator's costs, including any 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, 1991* (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) notwithstanding paragraph 26 of the Model Adjudication Procedure, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate or a Fit-Out Works Phase Completion Certificate shall be final and binding on the Parties solely in respect of determining, as applicable, the Payment Commencement Date or a Fit-Out Works Phase Completion Payment Date and a Dispute in relation to the Payment Commencement Date or a Fit-Out Works Phase Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27;
- (f) the Adjudicator shall execute a non-disclosure agreement (the "**Non-Disclosure Agreement**") in a form satisfactory to the Parties, providing that, among other things, all information, data and 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 except as expressly permitted by the Non-Disclosure Agreement, 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 mandate with respect to the Dispute; and
- (g) notwithstanding paragraph 34 of the Model Adjudication Procedure, the Adjudicator shall not be liable for anything done or omitted to be done 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.

6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by Contracting Authority unless (i) the Adjudicator determines

otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;

- (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, Contracting Authority 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 Contracting Authority undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to Contracting Authority’s right to contest the determination made by the Adjudicator in a subsequent proceeding. Contracting Authority 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 may be treated as a Delay Event or an Excusing Cause, as applicable, if so determined by the Adjudicator.

6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator’s determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator’s determination.

7. Referral of Disputes to Arbitration or Litigation

7.1 If:

- (a) the amount awarded by the Expert to a Party pursuant to Section 5 of this Schedule 27 or by the Adjudicator pursuant to Section 6 of this Schedule 27 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year;
- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party; or
- (c) a Notice of Dispute has been issued for a Dispute in relation to a determination of the Independent Certifier pursuant to Section 4 of this Schedule 27 for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply to resolve such Dispute,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 of this Schedule 27 or a consolidation of proceedings pursuant to Section 11 of

this Schedule 27, either Party may, by written notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 8 of this Schedule 27 upon the written consent of the other Party. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination, the Adjudicator's decision or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Expert, decision of the Adjudicator or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

- 7.2 If a Party is entitled to refer a Dispute to which Sections 5 or 6 of this Schedule 27 apply to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Expert or the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Expert or the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, neither the Expert or the Adjudicator shall be called as a witness by either party in any arbitration or litigation proceeding.

8. Resolution by Arbitration

- 8.1 Upon the mutual written consent of the parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4, 5 and 6 (to the extent required) of this Schedule 27, and
- (b) all other requirements set out in this Schedule 27 have been satisfied.

such Dispute may be referred to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section.

- 8.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 7.1 of this Schedule 27 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.

- 8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27; and

- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
 - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or
 - (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
 - (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.

8.4 If the arbitration tribunal is comprised of three arbitrators:

- (a) the arbitrators shall be appointed as follows:
 - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27;
 - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27;
 - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
 - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the

earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27; and

- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.
- 8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators. Where the issues in Dispute include whether Project Co has or will adversely impact the Macdonald Block Activities then such qualifications and experience should include relevant experience in the provision of activities similar to the Macdonald Block Activities in a facility similar to the Facility.
- 8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of Contracting Authority, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 8.7 The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
 - (b) require some or all of the evidence to be provided by affidavit;
 - (c) hold a hearing at which evidence and submissions are presented by the Parties;
 - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
 - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
 - (f) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
 - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
 - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such

other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.

- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
 - (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

9. Litigation

9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Expert’s award or determination pursuant to Section 5 of this Schedule 27, or of the Adjudicator’s award or determination pursuant to Section 6 of this Schedule 27, or if applicable a Notice of Dispute has been issued following receipt of a determination of the Independent Certifier pursuant to Section 4 of this Schedule 27 if the Dispute is a Dispute in relation to a determination of the Independent Certifier for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:

- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
- (b) if the Dispute is considered by Contracting Authority to involve material issues of public health or safety.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert’s determination, the Adjudicator’s determination, or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Adjudicator, Expert or Independent Certifier, as applicable, that is to be the subject of the litigation.

9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1 of this Schedule 27, then:

- (a) provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 11 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27; and
- (b) subject to Section 9.2(a), where a Dispute was determined by the Expert, the Expert’s determination is final and binding on both Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.

10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation

10.1 Intentionally Deleted

- 10.2 For all Disputes that arise in respect of the Facility prior to Substantial Completion, unless:
- (a) both Parties otherwise agree; or
 - (b) the issue in a particular Dispute arises in connection with the Review Procedure; or
 - (c) the issue in a particular Dispute is such that waiting until after Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties; or
 - (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Substantial Completion; or
 - (e) in respect to a particular Dispute, the Dispute is consolidated with Third Party Arbitration or Third Party Litigation (each as hereinafter defined) pursuant to Section 11 of this Schedule 27;

all adjudication, arbitral and litigation proceedings between the Parties in respect of the Facility prior to Substantial Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Substantial Completion.

11. Consolidation with Third Party Disputes

- 11.1 Subject to Section 11.4 of this Schedule 27, if either Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (“**Project Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if Contracting Authority, Project Co and the other Parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.
- 11.2 Subject to Section 11.4 of this Schedule 27, if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:
- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
 - (b) one of the Parties is brought directly into the Third Party Litigation as a Party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

11.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other Parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.

11.4 Sections 11.1 and 11.2 of this Schedule 27 only apply:

- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party's liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
- (b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

12. Miscellaneous

12.1 Project Co and Contracting Authority shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any 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 Variations), Project Co shall proceed in accordance with the direction of Contracting Authority, and in the event the matter in dispute is determined in favour of Project Co,

proceeding in accordance with Contracting Authority's position shall: (i) subject to and in accordance with Section 38 of this Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 39 of this Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 4.2 of this Schedule 27, 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 in a subsequent arbitration or litigation proceeding.

- 12.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction, if necessary to prevent irreparable harm to a Party.
- 12.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to Contracting Authority, Project Co shall indemnify Contracting Authority as provided for at Section 53.1(e) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to Contracting Authority until the date of payment; or
 - (b) for amounts payable by Contracting Authority to Project Co, Contracting Authority shall indemnify Project Co as provided for at Section 53.2(c) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Contracting Authority or, as applicable, any underpayment or non-payment by Contracting Authority from the date of any overpayment to Contracting Authority or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.
- 12.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an expert, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Contracting Authority and the Contracting Authority Representative.
- 12.5 Contracting Authority shall ensure that any and all documents and other information in the possession or control of any Contracting Authority Party that are available to Contracting Authority and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and

3 of this Schedule 27, or by an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.

12.6 The Parties can, by written agreement, on a Dispute by Dispute basis:

- (a) extend any or all timelines set out in this Schedule 27;
- (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4, 5 and 6 of this Schedule 27 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27;
- (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27; and
- (d) agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 6 of this Schedule 27.

SCHEDULE 28

REFINANCING

1. DEFINITIONS

1.1 The following terms shall have the following meanings:

- (a) **“Distribution”** means, whether in cash or in kind, any:
- (i) dividend or other distribution in respect of the Equity Capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganization or variation to the Equity Capital;
 - (iii) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
 - (iv) the receipt of any other benefit which is not received in the ordinary course of business nor on reasonable commercial terms,

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

- (b) **“Equity IRR”** means the projected internal rate of return to the Equity Providers over the full term of this Project Agreement, taking into account the aggregate of all their investments and of all Distributions made and projected to be made.
- (c) **“Exempt Refinancing”** means:
- (i) any Refinancing that has the effect of replacing or extending any Mini-Perm Financing, provided that Project Co shall assume any and all risks and benefits associated with such Refinancing without adjustment to the Monthly Service Payments or any other form of compensation to Project Co under the Project Agreement, including any risk that such Refinancing results in higher financing costs than the financing costs assumed by Project Co in its Financial Model as of the date of this Project Agreement for the Refinancing of any Mini-Perm Financing;
 - (ii) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
 - (iii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to Project Co under those agreements;

- (iv) any sale of Equity Capital or securitization of the existing rights or interests attaching to such Equity Capital, unless such sale or securitization involves increasing the Senior Debt Amount or the Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than contained in the Lending Agreements;
 - (v) any Qualifying Bank Transaction;
 - (vi) any Rescue Refinancing;
 - (vii) any Refinancing that was approved by Contracting Authority prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
 - (viii) any amendment, variation or supplement of any agreement approved by Contracting Authority as part of any Variation under this Project Agreement; or
 - (ix) any Permitted Borrowing.
- (d) **“Mandatory Refinancing”** means an Exempt Refinancing described in Section 1.1(c)(c)(i).
- (e) **“Mini-Perm Financing”** means a financing facility under any Lending Agreement that, pursuant to the applicable Lending Agreement, is scheduled to be repaid in whole or in part from the proceeds of a new financing.
- (f) **“Qualifying Bank”** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
 - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls, either directly or through its affiliates, funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person or a person whose standing or activities (i) are inconsistent with Contracting Authority’s role (in its reasonable opinion) generally in the Province or with respect to the Macdonald Block Activities; (ii) may compromise the reputation of Contracting Authority, any Macdonald Block Occupants and/or the Province; (iii) may compromise the integrity of the Existing Facilities or the Facility; or (iv) are inconsistent with the nature of the Province’s public services, so as to affect public confidence in such services.

- (g) **“Qualifying Bank Transaction”** means:

- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
 - (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
 - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (h) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (i) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
 - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
 - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
 - (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co’s ability to carry out any of the foregoing provisions of this definition.
- (j) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to Contracting Authority, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
 - (ii) any changes in structure and funding since the date of this Project Agreement;
 - (iii) the performance of the Project Operations to the date of the Refinancing;
 - (iv) macroeconomic assumptions; and

- (v) all other relevant factors.
- (k) **“Refinancing Gain”** means an amount equal to the greater of zero and $(A - B)$, where:
 - A = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.
 - B = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.
- (l) **“Refinancing Notice”** has the meaning given in Section 2.9.
- (m) **“Rescue Refinancing”** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of Contracting Authority, whether actual or potential.

2. REFINANCING

2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of Contracting Authority, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered a notice of such Refinancing to Contracting Authority before 5 Business Days of such Refinancing, except that such notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided for under a book-based system of a depository or pursuant to a trust indenture that comprises a portion of the Senior Debt Amount and/or Junior Debt Amount.

2.2 Contracting Authority may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;

- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of Contracting Authority, whether actual or contingent, present or future, known or unknown.

2.3 Contracting Authority shall be entitled to receive:

- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
- (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
- (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.

2.4 Project Co shall promptly provide Contracting Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. Contracting Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from Contracting Authority, provide any information in relation to a proposed Refinancing as Contracting Authority may reasonably require. Project Co shall keep Contracting Authority informed as to any changes to the terms of the Refinancing. Both Contracting Authority and Project Co shall at all times act in good faith with respect to any Refinancing.

2.5 Subject to Section 2.6, Contracting Authority shall have the right to elect to receive its share of any Refinancing Gain as:

- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; and/or
- (b) a reduction in the Monthly Service Payments over the remaining Project Term,

- such that the total net present value, discounted at the Discount Rate, of the foregoing, calculated at the time immediately prior to the Refinancing, shall equal Contracting Authority's share of the Refinancing Gain.
- 2.6 Contracting Authority and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of Contracting Authority's share of the Refinancing Gain (taking into account how Contracting Authority has elected to receive its share of the Refinancing Gain under Section 2.5 and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of Contracting Authority's share, the Dispute shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure.
- 2.7 Both Contracting Authority and Project Co shall work collaboratively to establish the rate setting process required to complete the Qualifying Refinancing. The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse Contracting Authority for all such reasonable out-of-pocket costs incurred by Contracting Authority. Project Co and Contracting Authority shall not be entitled to claim as out-of-pocket costs, any charge, cost, expense, fee or similar amount that is incurred by either Party in relation to a Refinancing outside of the ordinary course.
- 2.8 If Project Co must, at a future date, undertake a Mandatory Refinancing, then Contracting Authority may at any time request that Project Co provide to Contracting Authority full and complete details and information with respect to the Mandatory Refinancing and its plan for the Mandatory Refinancing, including in respect to all relevant assumptions regarding the Mandatory Refinancing set out in the Financial Model (the “**Refinancing Information**”). For clarity, if Project Co must, at a future date, undertake a Mandatory Refinancing, Contracting Authority must request Project Co to provide the Refinancing Information before it can issue a Refinancing Notice pursuant to Section 2.9. If Contracting Authority and Project Co mutually agree, acting reasonably, that based on the Refinancing Information, a Refinancing prior to the Mandatory Refinancing would not have a negative material financial impact on the Mandatory Refinancing, then Contracting Authority may provide Project Co with a Refinancing Notice pursuant to Section 2.9.
- 2.9 If Contracting Authority considers the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, Contracting Authority may, by notice in writing to Project Co (a “**Refinancing Notice**”), require Project Co to request potential funders to provide terms for a potential Refinancing.
- 2.10 The Refinancing Notice shall set out in reasonable detail the grounds upon which Contracting Authority believes such funding terms to be available. Project Co and Contracting Authority shall meet to discuss the Refinancing Notice within 20 Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. Contracting Authority shall be

entitled to withdraw the Refinancing Notice at or before such a meeting, or within 7 Business Days following the meeting.

2.11 If Contracting Authority serves a Refinancing Notice which is not withdrawn pursuant to Section 2.10, then Project Co shall:

- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;
- (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that Project Co shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in Canada to that operated by Project Co, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7; and
- (c) either:
 - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to Contracting Authority (I) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of Contracting Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Section 2.11(b) and (II) initial drafts of any changes to the Project Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
 - (ii) if Project Co (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Lending Agreements in accordance with the requirements of Section 2.11(b), provide evidence to the reasonable satisfaction of Contracting Authority for such belief and evidence to the reasonable satisfaction of Contracting Authority that Project Co has complied with its obligations in Sections 2.11(a) and (b) above.

2.12 Following receipt of the information referred to in Section 2.11(c)(i), Contracting Authority shall, acting reasonably, either:

- (a) instruct Project Co to implement the proposed Refinancing; or
- (b) instruct Project Co to discontinue the proposed Refinancing

provided that if Contracting Authority reasonably considers that the requirements of Sections 2.11(c)(i) or (ii) have not been satisfied, Contracting Authority may require Project Co to satisfy its obligations under Sections 2.11(c)(i) or (ii). If Project Co must, at a future date, undertake a Mandatory Refinancing, Contracting Authority shall not instruct

Project Co to implement the proposed Refinancing unless both Contracting Authority and Project Co, acting reasonably, agree that such Refinancing will be likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7 and will not have a negative material financial impact on the Mandatory Refinancing.

2.13 If Contracting Authority instructs Project Co to implement the proposed Refinancing:

- (a) Project Co shall, as soon as reasonably practicable, use all reasonable endeavours to ensure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Sections 2.1 to 2.7 shall apply.

2.14 If:

- (a) Contracting Authority instructs Project Co to discontinue the potential Refinancing pursuant to Section 2.12(b); or
- (b) the requirements of Section 2.11(c)(ii) are satisfied

then, Contracting Authority shall reimburse Project Co for the reasonable and proper professional costs incurred by Project Co in relation to the potential Refinancing, such costs to be paid to Project Co by Contracting Authority within 20 Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by Project Co except insofar as (i) it can be demonstrated to the reasonable satisfaction of Contracting Authority that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (ii) Contracting Authority has, by prior written agreement, approved the use of such internal management resource.

2.15 Contracting Authority shall be entitled to issue a Refinancing Notice under Section 2.9 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Section 2.10 has been issued for the purpose of this Section 2.15.

SCHEDULE 29

CONTRACTOR SITE SPECIFIC SAFETY MANUAL REQUIREMENTS

1. General Requirements

The Contractor Site Specific Safety Manual shall, at a minimum, comply in all respects with:

- a) all applicable requirements of the *Occupational Health and Safety Act* (Ontario);
- b) industry best practices;
- c) health and safety requirements set by Project Co with respect to the Project and the Site, and
- d) health and safety requirements of the Project Agreement.

2. Minimum Categories

The Contractor Site Specific Safety Manual shall, at a minimum, contain narrative addressing the categories and sub-categories as set out below.

1.0	Overview and Scope The manual shall have an introduction that shall set out an overview and scope of the Project.
2.0	Health and Safety Statement A statement that shall refer to the safety goals of the project and the culture of safety planned to be implemented by the Construction Contractor.
2.1	Statement of Commitment by an Officer: A statement that shall specifically refer to the manual itself and be executed by an officer of the Construction Contractor with authority to bind the Construction Contractor.
2.2	Project Company Mandate and OHS Policy.
2.3	Statement of Commitment Regarding keeping Subcontractors Responsible.
2.4	Site Plot Plan: which include an illustration.
3.0	Project Health and Safety Objectives and Performance Measurement Description of methodology for measuring health and safety performance, including key performance indicators to assess whether objectives are being met.
4.0	Roles and Responsibilities Description of the specific roles and responsibilities of the following individuals/entities in relation to meeting the health and safety objectives:
4.1	Project Co
4.2	Project Director

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4.3	Safety Manager
4.4	Construction Manager
4.5	Safety Coordinator
4.6	Joint Occupational Health and Safety Committee/Trades Committee
4.7	Subcontractor
4.8	Subcontractor Supervisor
4.9	Workers
4.11	Visitors
4.12	External Parties
4.13	Contact Sheet
5.0	Sub-contractor Health and Safety Management Plan
6.0	Health and Safety Training & Competency Description of the training program to be implemented to ensure that all persons who will be entering and/or working on the Site are appropriately trained.
6.1	Site Specific Orientation
6.2	Project Specific Orientation
6.3	Worker Training to Specific Site Hazards
6.4	Visitor/Short Duration Work Orientation
6.5	Personal Protective Equipment: Identify the minimum PPE that will be required on-site.
6.6	Delivery Driver/Supplier Orientation
6.7	Worker/ Supervisor Competency and Evaluation: Describe how competency of workers and supervisors will be identified, met and evaluated on an on-going basis.
7.0	Meetings and Communication Plan Description of frequency of meetings relating to health and safety, how meetings will be documented and how agreed outcomes will be communicated to the appropriate parties.
8.0	Emergency Response Plan

	Description of measures to respond to injuries and accidents.
8.1	Emergency Contacts and Roles
8.2	Emergency Evacuation Plan
8.3	Emergency Response Procedure
8.4	Property, Equipment and Environmental Damage Procedure
8.5	First Aid
8.6	Drills and Exercises
9.0	Inspections and Audits Description of the Construction Contractor's strategy for implementing an inspection regime in relation to health and safety on the Site.
9.1	Informal Inspections
9.2	Formal Inspections
9.3	Audits
9.4	Inspection and Audit Schedule
9.5	Inspection Follow-up/Corrections Action Plan
9.6	Maintenance of Records
10.0	Incident Reporting and Investigations Procedure Description of the procedure for reporting incidents, proactive investigations intended to prevent future incidents and measures to resolve the incident.
11.0	Rules of Conduct and Disciplinary Actions Description of disciplinary actions to be taken in the case of health and safety infractions.
11.1	Drugs and Alcohol
11.2	Workplace Violence and Harassment
11.3	Disciplinary Action
11.4	Workers' Rights
12.0	Security Plan

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	Provide a plan that details guidelines for implementing safety on the Site.
12.1	Methodology for Securing the Site and Restricting Trespassers
13.0	Hazard Identification and Control
13.1	Hazard Identification and Control
13.2	Designated Substances
13.3	Task Safety Analysis
13.4	Job Hazard Analysis: Analysis to detail a technique that focuses on job tasks as a way to identify hazards before they occur. It focuses on the relationship between the worker, the task, the tools, and the work environment. It breaks down the job in smaller steps to examine potential hazards and potential preventative steps.
13.5	Project Specific Health and Safety Requirements: Provide a project-specific health and safety risk register which details any unique safety requirements of the Project.
14.0	Traffic Management and Control Plan
15.0	Others

SCHEDULE 30

INSURANCE TRUST AGREEMENT

THIS AGREEMENT is made as of the 7th day of August, 2019

BETWEEN:

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

(“**Contracting Authority**”)

AND:

AST TRUST COMPANY (CANADA), a trust company incorporated under the laws of Canada, acting as agent for and on behalf of the Lenders

(the “**Lenders’ Agent**”)

AND:

FENGATE PCL PROGRESS PARTNERS MBR LP, [REDACTED]

(“**Project Co**”)

AND:

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada

(the “**Account Trustee**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. Contracting Authority, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. Contracting Authority, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that

no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

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

1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) **“Account Trustee”** has the meaning given in the preamble.
- (b) **“Bank”** means [REDACTED].
- (c) **“Business Day”** has the meaning given in the Project Agreement.
- (d) **“Change of Authorization Event”** has the meaning given in Section 7(a).
- (e) **“Change of Authorization Notice”** has the meaning given in Section 7(b)(ii).
- (f) **“Contracting Authority”** has the meaning given in the preamble.
- (g) **“Default Notice”** means a written notice given by the Lenders’ Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (h) **“Default Period”** means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (i) **“FF&E”** has the meaning given in the Project Agreement.
- (j) **“Facility”** has the meaning given in the Project Agreement.
- (k) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (l) **“Insurance Policies”** has the meaning given in Section 4(a).
- (m) **“Insurance Proceeds”** has the meaning given in Section 4(b).
- (n) **“Insurance Trust Account”** means [REDACTED].
- (o) **“Insurance Trust Agreement”** means this insurance trust agreement.
- (p) **“Lenders”** has the meaning given in the Project Agreement.

- (q) “**Lenders’ Agent**” has the meaning given in the preamble.
- (r) “**Lenders’ Direct Agreement**” means the lenders’ direct agreement made on or about the date hereof between Contracting Authority, Project Co and the Lenders’ Agent.
- (s) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (t) “**Order**” has the meaning given in Section 6(k).
- (u) “**Party**” means any of Contracting Authority, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of Contracting Authority, Project Co, the Lenders’ Agent and the Account Trustee.
- (v) “**Project**” has the meaning given in the Project Agreement.
- (w) “**Project Agreement**” means the project agreement between Contracting Authority and Project Co dated the same date as this Insurance Trust Agreement.
- (x) “**Project Co**” has the meaning given in the preamble.
- (y) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (z) “**Project Operations**” has the meaning given in the Project Agreement.
- (aa) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

2. INTERPRETATION

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body

- of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
 - (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
 - (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
 - (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
 - (h) In construing this Insurance Trust Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
 - (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
 - (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
 - (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.

- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of Contracting Authority.
- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, Contracting Authority, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid;
 - (ii) the completion of the Project; or
 - (iii) indemnification for Contracting Authority or any Macdonald Block Occupant loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Project Operations.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if Contracting Authority or any Macdonald Block Occupants are entitled to indemnification under the Insurance Policies in respect of any loss incurred by Contracting Authority or any Macdonald Block Occupants, as the case may be, such related insurance proceeds are to be paid directly to Contracting Authority or such Macdonald Block Occupants, as the case may be, by the

insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii). For greater certainty, it is understood and agreed that Contracting Authority shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. INSURANCE

- (a) Project Co shall deliver, or cause to be delivered, to the Account Trustee certified copies or originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders’ Agent or Contracting Authority (the “**Insurance Proceeds**”) as follows:
- (i) subject to Section 4(c), in the case of the all risks course of construction (builders’ risk), boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
- (A) if the Account Trustee has not received a Default Notice and:
- (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
- (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$[REDACTED], to the Lenders’ Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
- (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders’ Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as Contracting Authority may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and

- (ii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to Contracting Authority, to be distributed to the parties entitled thereto.
- (c) All losses under (i) all risks course of construction (builder's risk) including boiler and machinery insurance carried by Project Co prior to Substantial Completion; (ii) property insurance carried by Project Co after Substantial Completion; and (iii) the boiler and machinery insurance carried by Project Co after Substantial Completion, which in each case relate to FF&E purchased, owned or leased by Macdonald Block Occupants, shall be payable solely to such Macdonald Block Occupants and shall not be payable to the Account Trustee or distributed pursuant to this Insurance Trust Agreement.
- (d) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
 - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
 - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, Contracting Authority, may at any time or from time to time direct in writing.

5. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to Contracting Authority all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as Contracting Authority may from time to time request in writing.

6. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, Contracting Authority or Project Co, as applicable, in

accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, Contracting Authority or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).

- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
- (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).

- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or Contracting Authority for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, Contracting Authority and Project Co.
- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, Contracting Authority, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, to resolve such ambiguity or uncertainty.

- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by Contracting Authority shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from Contracting Authority.
- (o) Each of the Lenders' Agent and Contracting Authority shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or Contracting Authority which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to Section 6(o).
- (q) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to Project Co and Contracting Authority, or any shorter period of time as agreed to by Project Co and Contracting Authority, notwithstanding the provisions of Section 6(a), provided that (i) the Account Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Account Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

7. LENDERS' AGENT AND CONTRACTING AUTHORITY RIGHTS TO DIRECT

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- (a) Until the termination of the Project Agreement in accordance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 - Compensation on Termination to the Project Agreement and all Insurance Proceeds to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by Contracting Authority (a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders' Agent shall cease to be entitled, and Contracting Authority shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
- (ii) the Lenders' Agent and Contracting Authority shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that Contracting Authority shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where an Contracting Authority Event of Default has occurred. Where an Contracting Authority Event of Default has occurred, upon receipt by the Lenders' Agent and Lenders of all amounts owing by Contracting Authority to the Lenders' Agent and Lenders under the Lenders' Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

8. TERMINATION

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
- (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
- (ii) the obligations of Project Co to Contracting Authority have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time

as the Lender’s Agent, Contracting Authority, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory the Lenders’ Agent, the Lenders and Contracting Authority.

9. ASSIGNMENT

- (a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders’ Agent, Contracting Authority and Project Co.

10. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Insurance Trust Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Insurance Trust Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Contracting Authority: [REDACTED]

If to the Lenders’ Agent: [REDACTED]

If to Project Co: [REDACTED]

If to Account Trustee: [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 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party’s receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by 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 10.
- (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.

11. AMENDMENTS

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

12. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

13. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and agent.

14. ENTIRE AGREEMENT

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

15. SEVERABILITY

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

16. ENUREMENT

This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

17. GOVERNING LAW AND JURISDICTION

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario) hereby irrevocably attorn to the exclusive jurisdiction of such courts.

18. 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 Contracting Authority under this Insurance Trust Agreement and Project Co, the Lenders' Agent and the Account Trustee may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Lenders' Agent and the Account Trustee in writing that such designated

person is no longer the person designated by Contracting Authority hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Lenders' Agent and the Account Trustee in writing of any designation hereunder. The rights and obligations of the parties to this Insurance Trust Agreement shall be in no way affected by reason of any such designation. Project Co, the Lenders' Agent and the Account Trustee acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 18.

19. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Insurance Trust Agreement.

20. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

21. COUNTERPARTS

This Insurance Trust Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all 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 Insurance Trust Agreement which was so faxed.

[Remainder of this Page Intentionally Left Blank]

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

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

Per: _____

Name: **[REDACTED]**

Title:

I have authority to bind the corporation.

**FENGATE PCL PROGRESS PARTNERS MBR LP,
by its general partner, FENGATE PCL PROGRESS
PARTNERS MBR GP INC.**

Per: _____

Name: **[REDACTED]**

Title:

I have authority to bind the corporation.

AST TRUST COMPANY (CANADA)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

**COMPUTERSHARE TRUST COMPANY OF
CANADA**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 31

PROJECT CO INFORMATION

[REDACTED]

SCHEDULE 32

FINANCIAL MODEL EXTRACTS

[REDACTED]

SCHEDULE 33

EXISTING FACILITIES REPAIRS AND INDEPENDENT ASSESSOR

1. DEFINITIONS

For the purposes of the Project Agreement, the following terms shall have the following meanings:

- (a) **“Additional Repair”** means individually (i) the Site Services & Utilities Cash Allowance Additional Repairs Works; (ii) the Landscape Cash Allowance Additional Repairs Works; (iii) the Building Envelope Cash Allowance Additional Repairs Works; and (iv) the Structural Cash Allowance Additional Repairs Works; and **“Additional Repairs”** shall be construed accordingly.
- (b) **“Additional Repairs Cash Allowance Amount”** means each of the following:
 - (i) **[\$REDACTED]**for Site Services & Utilities Cash Allowance Additional Repairs Works;
 - (ii) **[\$REDACTED]**for Landscape Cash Allowance Additional Repairs Works;
 - (iii) **[\$REDACTED]**for Building Envelope Cash Allowance Additional Repairs Works; and
 - (iv) **[\$REDACTED]**for Structural Cash Allowance Additional Repairs Works,and **“Additional Repairs Cash Allowance Amounts”** shall be construed accordingly.
- (c) **“Additional Repairs Cash Allowance Item”** means each of the following:
 - (i) Site Services & Utilities Cash Allowance Additional Repairs Works;
 - (ii) Landscape Cash Allowance Additional Repairs Works;
 - (iii) Building Envelope Cash Allowance Additional Repairs Works; and
 - (iv) Structural Cash Allowance Additional Repairs Works,and **“Additional Repairs Cash Allowance Items”** shall be construed accordingly.
- (d) **“Additional Repairs Increased Project Co Services Variation”** has the meaning given in Section 2(f).
- (e) **“Building Envelope Cash Allowance Additional Repairs Works”** means the Works described in Section 1.3.6 of Part 1 of Schedule 15 – Output Specifications.

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- (f) “**Condition Assessment**” means the technical investigations at and assessments of the relevant parts of the Existing Facilities primarily for, without limitation, the purpose set out in Section 5(a)(i) and required by:
- (i) Section 3.1.1 (Site Services & Utilities) of Part 3 of Schedule 15 – Output Specifications;
 - (ii) Section 3.1.2 (Landscape) of Part 3 of Schedule 15 – Output Specifications;
 - (iii) Section 3.2.4 (Building Envelope) of Part 3 of Schedule 15 – Output Specifications; and
 - (iv) Section 3.2.5 (Structural Design) of Part 3 of Schedule 15 – Output Specifications,
- and “**Condition Assessments**” shall be construed accordingly.
- (g) “**Condition Assessment Report**” means each report required by:
- (i) Section 3.1.1 (Site Services & Utilities) of Part 3 of Schedule 15 – Output Specifications;
 - (ii) Section 3.1.2 (Landscape) of Part 3 of Schedule 15 – Output Specifications;
 - (iii) Section 3.2.4 (Building Envelope) of Part 3 of Schedule 15 – Output Specifications; and
 - (iv) Section 3.2.5 (Structural Design) of Part 3 of Schedule 15 – Output Specifications,
- and which must satisfy the additional requirements set out in Section 5(a)(ii); and “**Condition Assessment Reports**” shall be construed accordingly.
- (h) “**Facility Technical Review**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.
- (i) “**Facility Condition Report**” has the meaning given in Part 6 of Schedule 15 – Output Specifications.
- (j) “**Independent Assessor**” has the meaning given in Section 5(a).
- (k) “**Landscape Cash Allowance Additional Repairs Works**” means the Works described in Section 1.3.6 of Part 1 of Schedule 15 – Output Specifications.
- (l) “**Prescribed Repair**” means individually each component of Works identified in the following Sections of Part 3 of Schedule 15 – Output Specifications:
- (i) Table 3.1.1-1 of Section 3.1.1 (Site Services & Utilities);
 - (ii) Tables 3.1.2-1 to 3.1.2-10 (inclusive) of Section 3.1.2 (Landscape);
 - (iii) Tables 3.2.4-1 to 3.2.4-5 (inclusive) of Section 3.2.4 (Building Envelope); and

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- (iv) Tables 3.2.5-1 to 3.2.5-14 (inclusive) of Section 3.2.5 (Structural Design), and “**Prescribed Repairs**” shall be construed accordingly.
- (m) “**Prescribed Repairs and Additional Repairs Notice**” has the meaning given in Section 2(c)(vii)A.
- (n) “**Prescribed Repairs Reduced Works Variation**” has the meaning given in Section 2(e).
- (o) “**Recommended Repairs**” has the meaning given in Section 5(a)(i).
- (p) “**Reconciliation Report**” means a report required by each of the following Sections of Part 3 of Schedule 15 – Output Specifications:
- (i) Section 3.1.1 (Site Services & Utilities);
 - (ii) Section 3.1.2 (Landscape);
 - (iii) Section 3.2.4 (Building Envelope); and
 - (iv) Section 3.2.5 (Structural Design),
- and which must satisfy the additional requirements set out in Section 5(a)(v); and “**Reconciliation Reports**” shall be construed accordingly.
- (q) “**Site Services & Utilities Cash Allowance Additional Repairs Works**” means the Works described in Section 1.3.6 of Part 1 of Schedule 15 – Output Specifications.
- (r) “**Structural Cash Allowance Additional Repairs Works**” means the Works described in Section 1.3.6 of Part 1 of Schedule 15 – Output Specifications.
- (s) “**Unit Price**” means Project Co’s all-inclusive price in respect of the component of the Works or the Project Co Services, as the case may be, described in each row in each of Tables A to D in **Appendix “A” – Unit Prices** to this Schedule 33, which Unit Price, for greater certainty, includes all labour, payroll burdens on labour, materials, products, equipment, services, financing, maintenance, lifecycle, administration, management, overhead and profit, supervision and related charges, including hand tools, height factors, warranties, storage, rentals, additional bonding, parking, clean-up, as-built drawings, hoisting, freight and delivery; and “**Unit Prices**” shall be construed accordingly. For clarity, (i) no charges shall be added by Project Co in addition to a Unit Price in respect of the associated component of the Works or the Project Co Services described in each row of each such Table; (ii) each of the Unit Prices is inclusive of all Taxes other than HST; and (iii) Unit Prices shall be applied to both additions and deductions to the applicable components of the Project Operations identified in each such Table.

2. PROJECT CO TO PERFORM PRESCRIBED REPAIRS AND ADDITIONAL REPAIRS

- (a) Project Co shall:

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- (i) subject to Section 2(c)(vii), during and as part of the Works, be responsible for performing all of the Prescribed Repairs set out in Schedule 15 – Output Specifications;
 - (ii) subject to Section 2(e), during the Operational Term, perform Project Co Services in respect of the elements of the Facility that were subject to the Prescribed Repairs;
 - (iii) during and as part of the Works, perform any Additional Repairs identified and confirmed by Contracting Authority pursuant to Section 2(c)(vii) for the applicable Unit Prices; and
 - (iv) subject to Section 2(f), during the Operational Term, not be responsible for performing the Project Co Services in respect of the elements of the Facility that were subject to the Additional Repairs.
- (b) For greater certainty, Project Co shall perform all Prescribed Repairs and Additional Repairs in accordance with Good Industry Practice and the 100% Construction Document Submittals submitted by Project Co pursuant to and in accordance with Schedule 10 – Design Review Procedure.
- (c) The Parties agree that:
- (i) not all of the Prescribed Repairs may need to be performed by Project Co during and as part of the Works;
 - (ii) the Parties have not identified the locations of the Prescribed Repairs to be performed by Project Co during and as part of the Works;
 - (iii) the Parties have not identified the location or quantity of the Additional Repairs, if any, that may need to be performed by Project Co during and as part of the Works;
 - (iv) the Independent Assessor shall, for and on behalf of Project Co, submit to Contracting Authority each Condition Assessment Report in accordance with the Works Schedule and Schedule 10 – Review Procedure;
 - (v) Project Co shall promptly submit all documentation and information reasonably requested by Contracting Authority in the possession or control of Project Co, the Independent Assessor or any other Project Co Party necessary to substantiate and fully support each Condition Assessment Report (including all working papers, field notes and calculations of the Independent Assessor and other relevant documentation and information);
 - (vi) following the submission of a Condition Assessment Report to Contracting Authority pursuant to Section 2(c)(iv) and notwithstanding anything to the contrary in Schedule 10 – Review Procedure, Contracting Authority shall have a period of 15 Business Days to review such Condition Assessment Report. Before the expiry of such period, Contracting Authority may, at any time, request and the Parties shall convene a meeting between representatives of Contracting Authority, Project Co, the Construction Contractor, the Independent Assessor and any other

Subcontractors of Project Co identified by Contracting Authority for the purpose of the Independent Assessor presenting the Condition Assessment Report to Contracting Authority and for such persons to discuss such Condition Assessment Report with Contracting Authority;

- (vii) notwithstanding anything to the contrary in Schedule 10 – Review Procedure:
 - A. once a Condition Assessment Report has been assigned a comment of “NO COMMENT” or “MINOR NON-CONFORMANCE” without an additional comment of “RE-SUBMIT” by the Contracting Authority Design Team, Contracting Authority shall, within five Business Days of the date such comment was assigned, provide notice to Project Co identifying and confirming to Project Co the actual Prescribed Repairs and Additional Repairs that Project Co shall perform as part of the Works related to the subject matter of such Condition Assessment Report (each is a “**Prescribed Repairs and Additional Repairs Notice**”);
 - B. Contracting Authority may, acting reasonably and within a reasonable time following the issuance of a Prescribed Repairs and Additional Repairs Notice, provide a supplementary Prescribed Repairs and Additional Repairs Notice to Project Co directing Project Co to perform additional or fewer (A) Prescribed Repairs and/or (B) Additional Repairs related to the subject matter of the relevant Condition Assessment Report;
 - C. Project Co shall, following its receipt of a Prescribed Repairs and Additional Repairs Notice or a supplementary Prescribed Repairs and Additional Repairs Notice, as applicable, perform such Prescribed Repairs and Additional Repairs and, for greater certainty, other than as expressly set out in the Project Agreement to the contrary (including as set out in Sections 2(f) and 3(b)), in no event shall Project Co be entitled to a Variation or any extension of time or additional compensation under the Project Agreement in respect of the performance of such Prescribed Repairs and Additional Repairs; and
 - D. Project Co shall not perform any Prescribed Repairs or Additional Repairs (including any Prescribed Repairs or Additional Repairs recommended by a Condition Assessment Report) until Project Co receives a Prescribed Repairs and Additional Repairs Notice or a supplementary Prescribed Repairs and Additional Repairs Notice and, thereafter, shall only perform the Prescribed Repairs and Additional Repairs set out in such notice.
- (d) Project Co shall:
 - (i) cause the Independent Assessor to submit, for and on behalf of Project Co, Reconciliation Reports in accordance with the applicable provisions of Schedule 15 – Output Specifications and Schedule 10 – Review Procedure; and
 - (ii) as part of each Works Report and in accordance with Schedule 34 – Works Report Requirements, cause the Independent Assessor to report on the description and

status of all of the Prescribed Repairs and Additional Repairs completed and remaining to be completed as part of the Works.

- (e) In the event that the actual number of each of the Prescribed Repairs performed by Project Co is lower than the estimated quantity of such Prescribed Repairs set out in Schedule 15 – Output Specifications, then following the performance of such Prescribed Repairs or all of the Prescribed Repairs, Contracting Authority shall, subject to and in accordance with Section 4(a)(iii) and Schedule 22 – Variation Procedure (including Section 1.11 of Schedule 22 – Variation Procedure), issue a Variation to reduce the Project Operations related to the Prescribed Repairs that Project Co was not required to perform (the “**Prescribed Repairs Reduced Works Variation**”).
- (f) In the event that Project Co performs any Additional Repairs, then, prior to Substantial Completion, Contracting Authority shall, subject to and in accordance with Section 4(a)(ii) and Schedule 22 – Variation Procedure, issue a Variation in respect of Project Co’s performance of the Project Co Services with respect to the elements of the Facility that were subject to such Additional Repairs (the “**Additional Repairs Increased Project Co Services Variation**”).

3. ADDITIONAL REPAIRS VARIATION

- (a) Notwithstanding anything to the contrary in the Project Agreement except for Sections 3(b):
 - (i) in the event that Project Co performs any Additional Repairs, Project Co shall, as part of the Works and in accordance with Section 4(a)(i), perform each Additional Repair at the Unit Prices associated with such Additional Repair for a value of up to the corresponding Additional Repairs Cash Allowance Amount (for greater certainty, corresponding to the applicable Additional Repairs Cash Allowance Item); and
 - (ii) any delay in the performance of the Works as the result of the performance of such Additional Repair for up to such value shall not constitute a Delay Event pursuant to Section 37 of the Project Agreement, a Compensation Event pursuant to Section 38 of the Project Agreement or a Variation.
- (b) Project Co shall fund the performance of each Additional Repair for a value of up to the corresponding Additional Repairs Cash Allowance Amount by drawing on the Cash Allowance Amounts deposited into the Cash Allowance Account in accordance with Section 18.12 of the Project Agreement and Section 4(a)(i). In the event that any of Project Co’s payment requirements (including applicable HST) pursuant to and in accordance with Section 18.12 of the Project Agreement and Section 4(a)(i) for any Additional Repair exceeds the value of the corresponding Additional Repairs Cash Allowance Amount, then the Unit Prices associated with such Additional Repair shall no longer be applicable and, subject to and in accordance with Schedule 22 - Variation Procedure, Project Co shall be entitled to a Variation in respect of such Additional Repair.

4. UNIT PRICES

- (a) Notwithstanding anything to the contrary in the Project Agreement, including, for clarity, Section 18.12 of the Project Agreement and Schedule 22 – Variation Procedure:
- (i) subject to Section 3(b), the all-inclusive total cost to Contracting Authority under the Project Agreement for each individual Additional Repair shall be the amount of the Unit Price associated with such Additional Repair and, for greater certainty, with respect to such Additional Repair, Project Co shall only be permitted to submit a Request for Payment Approval to Contracting Authority and draw from the Cash Allowance Account for an amount equal to such Unit Price;
 - (ii) in connection with any Additional Repairs Increased Project Co Services Variation, the all-inclusive value of the increase in the compensation payable by Contracting Authority to Project Co pursuant to Schedule 22 – Variation Procedure for the increase in the scope of the Project Operations shall be an amount equal to the applicable Unit Prices associated with the Additional Repairs performed by Project Co. For greater certainty, the applicable portions of the Unit Prices shall, following the implementation of such Variation and the incorporation of such Unit Prices amounts into the Annual Service Payments and the Lifecycle Payments, be escalated using the Escalation Factor as applied in and subject to Schedule 20 – Payment Mechanism; and
 - (iii) in connection with any Prescribed Repairs Reduced Works Variation, the all-inclusive value of the reduction in the compensation payable to Project Co under the Project Agreement pursuant to Schedule 22 – Variation Procedure for the reduction in the scope of the Project Operations shall be an amount equal to the applicable Unit Prices associated with the Prescribed Repairs that were not performed by Project Co.
- (b) Without limiting any right or obligation of the Parties under the Project Agreement, Project Co acknowledges that Contracting Authority may additionally use the Unit Prices (i) in its review of Estimates provided by Project Co pursuant to Schedule 22 – Variation Procedure other than in relation to any Prescribed Repairs Reduced Works Variation or any Additional Repairs Increased Project Co Services Variation; and (ii) for any other relevant purpose under the Project Agreement.

5. INDEPENDENT ASSESSOR

- (a) At all times during the Project Term, Project Co shall, at its cost and expense, appoint, retain or cause the other engagement of, one or more companies (including, for greater certainty, by way of a joint venture of companies) to perform the following activities in accordance with Good Industry Practice (the “**Independent Assessor**”):
- (i) conducting all Condition Assessments for the primary purpose of identifying and recommending to Contracting Authority the actual locations and quantities of each of the Prescribed Repairs and any Additional Repairs that, in the reasonable opinion of the Independent Assessor, should be performed as part of or are necessary for the performance of the Works (the “**Recommended Repairs**”);

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- (ii) providing the Condition Assessment Reports, each of which must (A) be an expert written opinion addressed to Project Co and Contracting Authority; (B) describe the condition of each of the components of the Existing Facilities that the Independent Assessor investigated and the remaining expected life of each such component; (C) describe and recommend the Recommended Repairs; (D) recommend to Contracting Authority all necessary or desirable future repair work that may need to be undertaken in respect of each such component during the Project Term; and (E) be in the form set out in Schedule 15 – Output Specifications;
 - (iii) the activities of the Independent Assessor set out in Sections 3.1.1, 3.1.2, 3.2.4, and 3.2.5 of Part 3 of Schedule 15 – Output Specifications;
 - (iv) the activities of the Independent Assessor set out in Section 2;
 - (v) providing the Reconciliation Reports, each of which must (A) be an expert written opinion addressed to Project Co and Contracting Authority; (B) describe and certify as complete the Prescribed Repairs and Additional Repairs performed as part of the Works; (C) certify for Project Co and Contracting Authority, the accuracy of the portions of the As Built Drawings that identify the location and quantities of all of the Prescribed Repairs and Additional Repairs completed as part of the Works, including all components of the Facility related to such Prescribed Repairs and Additional Repairs that interface with the Existing Facilities; and (D) be in the form set out in Schedule 15 – Output Specifications; and
 - (vi) the activities of the Independent Assessor set out in Part 6 of Schedule 15 – Output Specifications, including the performance of each Facility Technical Review and the production of each Facility Condition Report.
- (b) The Independent Assessor shall, at all times during the Project Term, be independent of Project Co, the Construction Contractor, the Service Provider and the Design Team.
- (c) The individual representatives of the Independent Assessor performing Project Operations shall, at a minimum, have the following qualifications:
- (i) all individuals performing engineering or architectural work or building assessments as part of the Project Operations (including the Condition Assessments and the Facility Technical Reviews) shall be
 - A. licenced professional engineering or architectural individuals registered to practice each of their specific disciplines in Ontario; and
 - B. a member in good standing of their relevant professional organizations;
 - (ii) each individual shall generally have knowledge and experience and be a specialist in performing activities of a similar nature, scope and complexity;
 - (iii) with respect to the performance of the Independent Assessor’s activities pursuant to Section 3.1.1 (Site Service & Utilities) of Part 3 of Schedule 15 – Output

Specifications, such activities shall be performed by a qualified civil engineer familiar with below grade sanitary and storm service designs of similar scope and complexity;

- (iv) with respect to the performance of the Independent Assessor’s activities pursuant to Section 3.1.2 (Landscape) of Part 3 of Schedule 15 – Output Specifications, such activities shall be performed by a professional (A) with accreditation in the field of landscape architecture (OALA, CSLA), architecture (OAA, RAIC), engineering (PEO) or heritage (CAHP); (B) having a minimum of 10 years of experience in the assessment and repair of similar heritage stone systems; and (C) having experience with similar cultural heritage requirements of a similar size and complexity as the Project;
 - (v) with respect to the performance of the Independent Assessor’s activities pursuant to Section 3.2.4 (Building Envelope) of Part 3 of Schedule 15 – Output Specifications, such activities shall be performed by professional architects or engineers from a professional architecture or engineering firm that specializes in similar heritage stone assessment and renewal works. Such professionals shall have a minimum of 10 years of experience in the assessment and repair of similar heritage stone panel cladding systems; and
 - (vi) with respect to the performance of the Independent Assessor’s activities pursuant to Section 3.2.5 (Structural Design) of Part 3 of Schedule 15 – Output Specifications, such activities shall be performed by a professional engineer having a minimum of 10 years of experience in parking structure, podium and superstructure evaluation and repair.
- (d) Each individual representative of the Independent Assessor leading and supervising its activities during the Works and Project Co Services described in Schedule 9 – Key Individuals shall be an individual with a minimum 10 years of experience in the assessment and repair of similar buildings and systems to the Existing Facilities.
- (e) Project Co shall, upon request from time to time, submit sufficient documentation to the Contracting Authority Representative in accordance with Schedule 10 - Review Procedure to demonstrate that the qualifications of the individual representatives of the Independent Assessor set out in Section 5(c) and Section 5(d) are sufficient to carry out the responsibilities of the Independent Assessor described in Section 5(a).

APPENDIX “A”

UNIT PRICES

[REDACTED]

SCHEDULE 34

WORKS REPORT REQUIREMENTS

1. The Works Report shall include the following:
 - (a) a cover page including the title “Works Report”, the Project title, date of the report, issuance date, version date, and the version number of the relevant Works Schedule, an applicable Recovery Schedule or Progress Works Schedule;
 - (b) an executive summary;
 - (c) design status, including input from the Service Provider team;
 - (d) Works Schedule Progress Report:
 - (i) a narrated report (the “**Works Schedule Progress Report**”) documenting the overall progress and schedule performance, the variances between Project Schedules where such variance is greater than 10 Working Days, and any related risks or issues;
 - (ii) The Works Schedule Progress Report shall include the following content:
 - (1) a cover page including the title “Works Schedule Progress Report”, the Project title, date of the report, issuance date, version date, and the version number of the relevant Works Schedule, Recovery Schedule or Progress Works Schedule, and the Project Co Representative signature approving the report;
 - (2) “1. Overview”, including a narrated executive summary on progress, any noteworthy milestones achieved or schedule variances, and issues or risks that has or may impact the schedule;
 - (3) “2. General Assumptions”, including assumptions used by Project Co to generate the schedule including but not limited to any known or foreseeable constraints or restrictions such as weather, traffic, environmental, utilities, etc.
 - (4) “3. Schedule analysis”, including at least:
 - (a) the forecast Scheduled Substantial Completion Date, each Fit-Out Works Scheduled Phase Completion Date, and Key Works Milestones;
 - (b) the overall progress expressed as a percentage of the physical work completed;

- (c) a summary schedule indicating the current critical path as calculated using the Current Progress Works Schedule;
 - (d) “Critical path risk”, including a narrative in tabular form describing the risks to completing the critical path activities to achieve Substantial Completion and each Fit-Out Works Phase Completion and Project Co’s strategy to mitigate or avoid these risks;
- (5) “3.Variances” including:
- (a) a narrative explaining the basis for any required changes to the sequencing of the Works, interdependencies, or original activity durations as set out in the Works Schedule or current Recovery Schedule, as applicable, which changes, for clarity, shall be incorporated into the Progress Works Schedule;
 - (b) a table “Milestone and Critical path Variances”, listing all Key Works Milestones, Primary Works Milestones and all critical path activities, and for each, only if the variance between the current reporting period and the previous reporting period is greater than 5 Working Days, listing:
 - (i) the activity or milestone ID and name;
 - (ii) the baseline start and end date in accordance with the Works Schedule or current Recovery Schedule, as applicable;
 - (iii) the previous period’s planned start and end date in accordance with the previous Progress Works Schedule;
 - (iv) the forecast start and end date in accordance with the Current Progress Works Schedule, clearly indicating any milestones to be achieved in the following 12 week period;
 - (v) the actual start and end date where applicable;
 - (vi) the physical percentage completion;
 - (c) a table “Schedule logic changes” listing any:
 - (i) Addition, deletion or changes to activity relationships;

- (ii) Addition or deletion of activities;
 - (iii) Changes or release of schedule constraints, and if so, what constraints were removed?
 - (iv) Changes to activity durations; and
 - (v) Changes to milestones, and any other changes;
- (6) “4. Potential Delay Events” including a register of all potential Delay Events pursuant to Section 37.1(a) of the Project Agreement and for each a short description, the date on which the notice required pursuant to Section 37.2(b) and 37.2(d) of the Project Agreement was provided to Contracting Authority, the mitigation strategy implemented by Project Co, and the current status;
- (7) “5. Contracting Authority Submittal Review”, including an updated Review Procedure Activities Register;
- (8) progress photos. Photos are to be taken from different views to indicate the progress of the Work in digital format, indicating the date and location of the photograph; and
- (9) any other information specifically requested by Contracting Authority on the progress of the Works;
- (e) Progress Works Schedule with version number;
 - (f) Look-Ahead Schedule with version number;
 - (g) Works Submittals register pursuant to Schedule 10 – Review Procedure;
 - (h) Request for Information (RFI) Log;
 - (i) Variation Log;
 - (j) health and safety, including:
 - (i) lost time due to injuries;
 - (ii) accidents with no lost time; and
 - (iii) near misses;
 - (k) contractual outstanding decisions;
 - (l) LEED status;

- (m) quality assurance and quality control, including:
 - (i) an update on all quality assurance and control processes;
 - (ii) quality control process prior to any closing in of any walls or ceilings or of any building envelope;
 - (iii) an update on street cleaning;
 - (iv) an update on site dust control;
 - (v) an update on adherence to noise by-laws, as applicable;
 - (vi) an update on neighbourhood interactions; and
 - (vii) status of corrective actions previously identified;
- (n) organization / staffing changes and additions for Project Co and Construction Contractor;
- (o) status of Security Clearance Checks performed and pending;
- (p) progress update on Condition Assessments (as defined in Schedule 33 – Existing Facilities Repairs and Independent Assessor);
- (q) in accordance with Schedule 33 – Existing Facilities Repairs and Independent Assessor, the description and status of all of the Prescribed Repairs and Additional Repairs completed and remaining to be completed as part of the Works
- (r) Subcontract status, including:
 - (i) consultants;
 - (ii) Subcontracts awarded;
 - (iii) tenders;
 - (iv) Shop Drawings submittals status and also shown on the Current Progress Works Schedule; and
 - (v) labour report (average workforce);
- (s) financial status, including:
 - (i) all requirements of Schedule 19 – Construction Period Payments;
 - (ii) progress and Variations;

- (iii) insurance summary;
- (iv) Construction Contractor default status; and
- (v) cash flow projection (capital cost components) and updated cash flow report and projections in conjunction with the Current Progress Works Schedule including a cash flow graph that depicts actual cash flow against projected cash flow;
- (t) risk management, including:
 - (i) permits and regulatory approvals;
 - (ii) claims;
 - (iii) liens;
 - (iv) environmental issues;
 - (v) labour;
 - (vi) market conditions;
 - (vii) outstanding disputes;
 - (viii) operational risks; and
 - (ix) other risks;
- (u) status of cash allowances, including:
 - (i) a progress update on investigations relating to potential Additional Repair Cash Allowance Items;
 - (ii) potential cash allowance quotes under review;
 - (iii) itemized and aggregate amounts (A) committed to date and (B) spent to date for each and all of the Cash Allowance Items;
 - (iv) confirmation when itemized and aggregate amounts committed to date or spent to date for any of the Cash Allowance Items is equal to or greater than 70 percent of the corresponding Cash Allowance Amount; and
 - (v) the projected cost of each remaining Cash Allowance Item and the projected effect of such costs on the Cash Allowance Account, including whether any projected payment requirements of Project Co for a Cash Allowance Item(s) (including applicable HST) will or will likely exceed the corresponding Cash Allowance Amount(s) or all of the Cash

Allowance Amounts such that Contracting Authority will or will likely be obligated to make a deposit(s) into the Cash Allowance Account pursuant to Section 18.12(b)(v) of the Project Agreement;

- (v) commissioning, occupancy and completion, including:
 - (i) commissioning status;
 - (ii) training status;
 - (iii) a detailed description and update on the process for turning over the relevant portion of the Facility to Contracting Authority upon Substantial Completion and, in respect of the Fit-Out Works, each Fit-Out Works Phase Completion, which shall include, but not be limited to, a description of any and all matters related to each turn-over that may impact or otherwise be relevant to the commencement of Contracting Authority's operations at such portion of the Facility, such as all relevant anticipated or actual Minor Deficiencies and Fit-Out Works Phase Minor Deficiencies and the timing and process for Project Co providing to Contracting Authority all keys and pass-cards to such portion of the Facility;
 - (iv) occupancy status;
 - (v) deficiency review/rectification status; and
 - (vi) completion status;
- (w) FF&E status, including:
 - (i) planning and design;
 - (ii) procurement progress of FF&E; and
 - (iii) installation and commissioning progress;
- (x) Fit-Out FF&E status, including:
 - (i) planning and design;
 - (ii) procurement progress of Fit-Out FF&E; and
 - (iii) installation and commissioning progress; and
- (y) with respect to the Community Benefits Plan:
 - (i) the status of the finalization of the Community Benefits Plan;

- (ii) an update on the progress towards achieving the objectives, targets and initiatives set out in the Community Benefits Plan; and
- (iii) an estimate of the costs incurred as a result of the implementation of, and to be incurred to implement, the Community Benefits Plan.

SCHEDULE 35

SITE

For the purpose of the Project Agreement:

- (a) **“880 Bay/60 Grosvenor Lands”** has the meaning given in Appendix 1 to this Schedule 35;
- (b) **“Lands”** means, collectively, the following lands, including all buildings, structures, installations, fixtures, services and any other such improvements thereon and therein (including, for greater certainty, the applicable portions of the Existing Facilities thereon and therein):

- (i) **PIN 21415-0012 (LT)**

- Pcl A-1 Sec A698E; Pt Blk A Pl 698E Toronto Pt 1 R328; Toronto, City of Toronto

- Registered Owner:** Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services;

- (ii) **PIN 21415-0088 (LT)**

- Lt 28-33 Pl D18 Toronto except CT52218; City of Toronto

- Registered Owner:** Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services;

- (iii) **PIN 21415-0089 (LT)**

- Lt 160-165 Pl 159 Toronto; City of Toronto

- Registered Owner:** Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services; and

- (iv) **PIN 21415-0090 (LT)**

- Lt 166-182 Pl 159 Toronto; Lt 5 Pl D248 Toronto; Lane Pl D248 Toronto N of Lt 5 closed by EP61087; Pt Lt 1-4 Pl D248 Toronto as in EP123686; Lane Pl 159 Toronto second W of Bay St extending N from Grosvenor St (lying to the E of Lts 169-173); Lane Pl 159 Toronto first W of Bay St extending NLY from Grosvenor St (E of Lts 160 & 182); Breadalbane St, Surrey Pl 159 Toronto btn Surrey Place & Bay St; St Cuthberts St Pl D3 Toronto aka Surrey Place btn Grosvenor St & Wellesley St W all as closed by EP132024; Lane Pl 159 Toronto first N of Grosvenor St extending WLY from the Lane first W of Bay St (S of Lts 174-182); City of Toronto

Registered Owner: Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services.

- (c) **“Site”** means, at any time and from time to time:
- (i) in respect of the Works and at all times subject to and in accordance with Sections 1.3.1 and 1.3.2 of Part 1 of Schedule 15 – Output Specifications and the Phasing Requirements, those portions of the Lands on, in or above which Project Co or any Project Co Party will be, is or was engaged in the performance of the Works, including but not limited to, any portions of the Lands (A) required for construction or Demolition activities; (B) required for access, loading, construction staging and laydown area purposes; and (C) that are hoarded, cordoned, or otherwise fenced off by Project Co or any Project Co Party for the purpose of the Works and, as required by Good Industry Practice, any Lands immediately surrounding such hoarding, cordons or fencing; and
 - (ii) in respect of all Project Operations other than the Works, those portions of the Lands that are required by Project Co for the performance of such Project Operations, which, for clarity, during the Operational Term, exclude the portions of the Lands identified in Appendix 2 to this Schedule 35, save and except for any portions of such excluded Lands described in Schedule 15 – Output Specifications on, in, above or below which Project Co is required to provide Maintenance Work or Lifecycle Replacement and Refurbishment Services. For greater certainty, nothing in Appendix 2 to this Schedule 35 limits any obligation of Project Co under the Project Agreement to perform any Project Operations, including under Schedule 15 – Output Specifications.
- (d) **“Whitney Block”** means the lands, including all buildings, structures, installations, fixtures, services and any other such improvements thereon and therein (including, for greater certainty, the applicable portions of the Existing Facilities thereon and therein) located at 23 Queens Park Crescent East, Toronto, Ontario and legally described in Section (b)(ii).

APPENDIX 1

880 BAY/60 GROSVENOR LANDS

- (a) For the purpose of the Project Agreement, the “**880 Bay/60 Grosvenor Lands**” means, collectively, the following lands, including all buildings, structures, installations, fixtures, services and any other such improvements thereon and therein:
- (i) **Part of PIN 21415-0090**, as generally described in Section (b);
Registered Owner: Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services; and
 - (ii) **PIN 21415-0089 (LT)**, being Lots 160-165 Pl 159 Toronto, City of Toronto, and as generally described in Section (b);
Registered Owner: Her Majesty the Queen in Right of Ontario as represented by the Minister of Government and Consumer Services.
- (b) The boundaries of the 880 Bay/60 Grosvenor Lands at grade are generally illustrated on the diagram on the following page and are:
- (i) the property line at the south and east;
 - (ii) the northern boundary is described by dimension ‘A’ which is one metre south of any existing below grade structural retaining wall;
 - (iii) the west boundary is described by dimension ‘A’ which is one metre east of any existing below grade structural retaining wall; and
 - (iv) the west boundary is further described by dimension ‘B’ which is one metre east of the existing below grade storm sewer.

ILLUSTRATION OF THE 880 BAY/60 GROSVENOR LANDS

[REDACTED]

APPENDIX 2

LANDS EXCLUDED FROM SITE DURING OPERATIONAL TERM

[REDACTED]

SCHEDULE 36

ENERGY MATTERS

1. DEFINITIONS

- 1.1 **“Actual Consumption”** means the actual consumption of all Energy at the Facility as invoiced by the relevant Utility Company for each Energy Year.
- 1.2 **“Adjusted Annual Energy Target”** means the Annual Energy Target derived from the Aggregate Energy Model after adjusting pursuant to Sections 2.3 and 2.4 for the respective Energy Year in accordance with this Schedule 36.
- 1.3 **“Adjusted Discrete Annual Energy Target”** or **“ADAET”** means the Discrete Energy Target derived from the Aggregate Energy Model after adjusting pursuant to Sections 2.3 and 2.4 for the respective Energy Year in accordance with this Schedule 36.
- 1.4 **“Aggregate Energy Model”** or **“AEM”** means the energy model submitted by Project Co pursuant to the Request for Proposals as referred to in Section 1.2(c) of Attachment A of Part 1 of Schedule 3 to the Request for Proposals, as may be adjusted pursuant to this Schedule 36 from time to time.
- 1.5 **“Annual Energy Target”** or **“AET”** means the annual consumption of Energy in respect of the Facility Load and the Secondary Facility Load, as set out in the Final Energy Target Letter.
- 1.6 **“Annual Review Date”** means each anniversary of the end of the Initial Period.
- 1.7 **“Annual Review Meeting”** has the meaning set out in Section 8.4.
- 1.8 **“Contract Month”** has the meaning given in Schedule 20 – Payment Mechanism.
- 1.9 **“Contract Year”** has the meaning given in the Project Agreement.
- 1.10 **“Discrete Average Unit Cost”** means the average cost by Energy type to Contracting Authority of each Unit of Energy purchased by Contracting Authority during the relevant Energy Year, calculated in accordance with Section 5 of this Schedule 36.
- 1.11 **“Discrete Energy Service Actual Consumption”** means the actual consumption of an individual Energy Service at the Facility as invoiced by the relevant Utility Company for each Energy Year.
- 1.12 **“Discrete Energy Service Actual Consumption Net End User Load”** means the Discrete Energy Service Actual Consumption for an individual Energy Service at the Facility minus the metered End User Load consumption of such Energy Service.

- 1.13 “**Discrete Energy Target(s)**” or “**DET**” means the annual consumption of an individual Energy Service in respect of the Facility Load and the Secondary Facility Load, as set out in the Final Energy Target Letter.
- 1.14 “**District Energy**” means any energy in the form of chilled water, hot water or steam that is delivered to the Site, or generated at the Site, by a third party.
- 1.15 “**End User Equipment Ratio**” means the ratio of the increases or decreases in gains or reductions of the Facility Load to the corresponding End User Load consumption which caused the increase or decrease in the Facility Load as determined pursuant to Section 2.4(c).
- 1.16 “**End User Load**” means the metered provision of Energy other than the Facility Load and the Secondary Facility Load, including, but not limited to, any receptacle loads, central computer servers, kitchen equipment, communications and IT equipment and any built-in audio visual systems provided by Contracting Authority and not by Project Co. All loads that are not directly metered or sub-metered but would otherwise be End User Loads shall be deemed to be part of the Facility Load.
- 1.17 “**Energy**” means energy/power, including electricity, natural gas, fuel oil, District Energy and any other energy source used at the Facility measured at the utility connection.
- 1.18 “**Energy Analysis Report**” is described in Section 8.11 of this Schedule 36.
- 1.19 “**Energy Models**” means the Forecast Energy Model and the Aggregate Energy Model.
- 1.20 “**Energy Service**” means any metered provision of Energy in respect of the Facility Load, the Secondary Facility Load and the End User Load at the utility connection.
- 1.21 “**Energy Year**” means the period of 12 months beginning on the day after the expiry of the Initial Period and ending on the first Annual Review Date and each subsequent period of 12 months beginning on the day after an Annual Review Date.
- ~~1.22~~ “**Facility Load**” means provision of Energy at the utility for the base building systems and equipment, and any other Energy consuming systems designed, provided, maintained and lifecycle by Project Co for the basic functioning of the Facility, where by all such consumption is directly or indirectly Project Co’s responsibility. Such uses include, but are not limited to, humidification, space cooling, dehumidification, space heating, ventilation loads, fans, hardwired lighting (i.e. non-plug load lighting), HVAC pumping, HVAC equipment, domestic water pumping, domestic water heating, security systems, IT server room cooling and controls, vertical transportation systems, and built-in AV systems, all AV systems except those within A1.01 spaces.
- 1.23 “**Final Energy Target Letter**” means the letter delivered by Project Co to Contracting Authority pursuant to Schedule 2 to the Project Agreement.

- 1.24 “**Forecast Energy Model**” or “**FEM**” means the energy model submitted by Project Co pursuant to the Request for Proposals as referred to in Section 1.2(b) of Attachment A of Part 1 of Schedule 3 to the Request for Proposals.
- 1.25 “**Gainshare Adjustment**” means the gainshare adjustment calculated in accordance this Schedule 36.
- 1.26 “**GHG Emissions Factor**” means the most recent emissions factor estimates, expressed in terms of kilograms of carbon-dioxide equivalent per Unit of Energy:
- (a) for electricity, as set out in the quarterly Ontario Energy Report published by the Independent Electricity System Operator (IESO) or, in the event that such report is no longer published during the Project Term, as set out in any other report covering the same or a similar subject matter agreed to by the Parties; and
 - (b) for all other fuel types, as set out in the National Inventory Report published by Environment and Climate Change Canada or, in the event that such report is no longer published during the Project Term, as set out in any other report covering the same or a similar subject matter agreed to by the Parties.
- 1.27 “**High Cost Measures**” means, in respect of an Energy Year, energy saving measures that incur capital expenditure with a Simple Payback of greater than 36 months.
- 1.28 “**Initial Period**” means the period beginning on the first day of the first full calendar month immediately after the Substantial Completion Date and ending one year thereafter.
- 1.29 “**Low Cost Measures**” means in respect of an Energy Year, energy saving measures that incur capital expenditure with a simple payback less than 36 months and are considered to be revenue items as opposed to capital investment items.
- 1.30 “**Monthly Energy Report**” shall have the meaning given to it in Section 4.1 of Appendix B of this Schedule 36.
- 1.31 “**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.
- 1.32 “**Painshare Adjustment**” means the painshare adjustment calculated in accordance with this Schedule 36.
- 1.33 “**Quarterly Monitoring Meeting**” has the meaning set out Section 2.2 of Appendix B of this Schedule 36.
- 1.34 “**Secondary Facility Load**” means the provision of Energy at the utility for base building loads that is in response to and entirely dependent on the End User Loads. The Secondary Facility Load is a type of Facility Load which is included in the Adjusted Annual Energy Targets and is a product of the End User Equipment Ratios and End User Loads.

- 1.35 “**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.
- 1.36 “**Unit of Energy**” means one equivalent kilowatt-hour (ekWh).
- 1.37 “**Utilities Management Subcommittee**” has the meaning set out in Section 2.3 of Appendix B of this Schedule 36.
- 1.38 “**Weather Data**” means meteorological data as reported by Environment Canada and provide in format CTMY2 for the location Pearson Airport, Toronto, Ontario.

2. CALCULATION OF ANNUAL ENERGY TARGET

2.1 Purpose

- (a) The Annual Energy Target and the Discrete Energy Target(s) shall be established from time to time in respect of the entire Facility pursuant to Section 2.3. The Adjusted Annual Energy Target and the Adjusted Discrete Annual Energy Target upon which any painshare or gainshare calculations are made shall be based upon making any adjustments pursuant to Sections 2.3 and 2.4 for the respective Energy Year.
- (b) For the purposes of and notwithstanding anything to the contrary in the Project Agreement, including for greater certainty this Schedule 36:
- (i) District Energy consumption at the Facility shall not be a part of and shall be excluded from the calculation of any Gainshare Adjustment and Painshare Adjustment under this Schedule 36, and, for greater certainty, Project Co shall not be subject to a Gainshare Adjustment or a Painshare Adjustment with respect to District Energy consumption at the Facility under the Project Agreement; and
- (ii) all costs and expenses of any District Energy consumed at the Facility shall be components of the Annual Service Payments – Service Portion calculated pursuant to Schedule 20 – Payment Mechanism.

2.2 Annual Energy Target

- (a) The initial Annual Energy Target and the initial Discrete Energy Target(s) are as set out in the Final Energy Target Letter.
- (b) At the end of the Initial Period, Project Co shall appoint a third party auditor, subject to Contracting Authority’s approval, to assess the Facility’s Energy performance relative to the Aggregate Energy Model and provide the report to Contracting Authority. Project Co shall take corrective action to improve the energy

performance of the Facility, if so required, to ensure that the Annual Energy Target and the Discrete Energy Target(s) as outlined in the Aggregate Energy Model are met.

- (c) The Annual Energy Target and the Discrete Energy Target(s) shall be adjusted in accordance with this Schedule 36.

2.3 Program or Variation Adjustments to the Annual Energy Target

- (a) At any time commencing after the first anniversary of the Substantial Completion Date, either Project Co or Contracting Authority may request an energy audit as contemplated in Section 2.3(c), and Project Co and Contracting Authority shall, acting reasonably, agree to make any adjustments to the Annual Energy Target and the Discrete Energy Target(s) only in the event of:
 - (i) Variations implemented in accordance with the Project Agreement that would cause Facility Load and/or Secondary Facility Load changes or other changes in Energy usage; or
 - (ii) Variations in the utilization of the Facility from that described in the Project Agreement, but not including changes in End User Load consumption.
- (b) Pursuant to Section 2.3(a), Project Co may elect to propose a correction to the Annual Energy Target and the Discrete Energy Target(s).
- (c) The Party requesting an amendment to the Annual Energy Target and the Discrete Energy Target(s) as a result of either Section 2.3(a) or (b) shall appoint, subject to the other Party's approval (acting reasonably) and pay for a complete energy audit to be conducted by a third party auditor. The energy audit shall include a detailed computer simulation of Energy use by function and a comprehensive evaluation of Energy use patterns. The energy auditor shall prepare a report making a recommendation regarding amendments to the Annual Energy Target and Discrete Energy Target(s). Both Contracting Authority and Project Co shall have 20 days following receipt of such report to agree to the amended Annual Energy Target and Discrete Energy Target(s). If there is no agreement within a further 10 day period, then either Party may refer the matter to the Dispute Resolution Procedure.

2.4 Annual Adjustments to the Annual Energy Target

- (a) By no later than 30 days after the Energy Year, Project Co shall provide to Contracting Authority a certificate showing the Actual Consumption, the Discrete Energy Service Actual Consumption and the metered End User Loads in each calendar month during the Energy Year expressed as a number of Units of Energy and measured in accordance with Section 8.

- (b) Project Co and Contracting Authority shall obtain the Weather Data from Environment Canada. Project Co and Contracting Authority shall then adjust the Aggregate Energy Model by revising the following input data:
- (i) the only inputs to be adjusted in Weather Data shall be dry bulb temperature and dew point temperature. Hourly values for each Energy Year shall be obtained for weather station Pearson Airport, Ontario from Environment Canada. To adjust the weather file, start with the Energy Plus weather file for the same location as specified for Weather Data (.epw extension). Convert this file to a .csv file and import into Excel. Adjust the Dry Bulb Temperature and Dew Point Temperature as per the Environment Canada weather data and save. Convert this file back to .epw. Use the program eQ_WthProc (available from www.doe2.com) to convert the new .epw file into a .bin file for use with the model.
- (c) The End User Equipment Ratios shall be calculated and agreed upon between Project Co and Contracting Authority at the end of the Initial Period. The End User Equipment Ratio will be equal to the average ratio of the sum of increases or decreases in gains or reductions of the Facility Loads that are solely attributable to the increases or decreases in the End User Load consumption to the corresponding sum of the metered End User Loads or based on the manufacturer's data, as the case may be. The End User Equipment Ratios are used to ensure that any internal gains or reduction resulting from the change in End User Load consumption are adequately represented. If manufacturer's data is not available for specific pieces of such equipment, a ratio will be chosen and agreed upon between Project Co and Contracting Authority for such equipment. The product of the End User Equipment Ratios multiplied by the corresponding metered End User Load, will be represented in the Aggregate Energy Model as Secondary Facility Load, so that the internal gains or losses associated with the changes in the End User Load consumption are appropriately captured in the Annual Energy Target. When equipment that is used exclusively by Contracting Authority is added to or removed from the Facility, the End User Equipment Ratios may be adjusted, on an annual basis following the Initial Period upon the written consent of both Contracting Authority and Project Co, to account for the changes in equipment. The Parties acknowledge that internal gains may increase or decrease through these changes, depending on the specific changes to the End User Load. Project Co shall provide metering such that End User Loads are on separate meters from other Facility Loads. Project Co and Contracting Authority shall then adjust the Annual Energy Target to account for the impact of End User Loads on the Secondary Facility Load accordingly.
- (d) Each End User Load shall be metered or sub-metered at the Facility by Project Co, provided that Project Co shall provide Contracting Authority with End User Load Energy consumption using metered data only.
- (e) If the End User Load consumption as per the metered data provided by Project Co increases or decreases from the assumed values for such consumption in the

Aggregate Energy Model for a given Energy Year, then the new End User Load consumption shall be entered into the Aggregate Energy Model and shall adjust the Annual Energy Target with regards to the Secondary Facility Load.

- (f) Any other modifications to the Aggregate Energy Model are subject to the procedure outlined in Section 2.3(c) of this Schedule 36.
- (g) Contracting Authority may, in its sole discretion, appoint an auditor to audit Project Co's adjustments (including all input data) in accordance with Section 2.3(c), above. If the audit concludes that Project Co has overestimated the adjustments to the Aggregate Energy Model, then Project Co shall reimburse Contracting Authority for its costs incurred in respect of the audit.

2.5 Any amendment to the Annual Energy Target and the Discrete Energy Target(s) shall only affect the Monthly Service Payment (as a result of any Painshare Adjustments or Gainshare Adjustments) from the date on which the amendment is effective and shall not, for greater certainty, have a retrospective effect on any other previous Monthly Service Payments.

3. COMPARING ACTUAL CONSUMPTION OF ENERGY WITH TARGET

3.1 Comparing Annual Energy Target

- (a) Subject to Section 2.1(b), after the acceptance of the Energy Analysis Report as described in Section 8.11 for each Energy Year, the Discrete Energy Service Actual Consumption Net End User Load for each Energy Service shall be compared to the Adjusted Discrete Annual Energy Target for each Energy Service, where applicable, and:
 - (i) if the Discrete Energy Service Actual Consumption Net End User Load in respect of any discrete Energy Service is greater than **[REDACTED]**% of the Adjusted Discrete Annual Energy Target in respect of such Energy Service then Project Co shall calculate the Painshare Adjustment set out in Section 4.1(b) and credit Contracting Authority's Monthly Service Payments accordingly in accordance with Schedule 20 - Payment Mechanism; or

Illustration **[REDACTED]**

- (ii) if the Discrete Energy Service Actual Consumption Net End User Load in respect of any Energy Service is less than **[REDACTED]**% of the Adjusted Discrete Annual Energy Target in respect of such Energy Service, then Project Co shall calculate the Gainshare Adjustment set out in Section 4.1(b).

Illustration [REDACTED]

- (b) If Project Co is subject to a Painshare Adjustment with respect to an Energy Year, then Project Co shall submit a detailed remediation plan to Contracting Authority within 14 days of the calculation of the Painshare Adjustment to explain how it will reduce the relevant Discrete Energy Service Actual Consumption Net End User Load such that it will not exceed the [REDACTED]% threshold established in Section 3.1(a)(i), above, for the subsequent Energy Year. If Project Co is not successful in its remediation plan such that the Painshare Adjustment in Section 3.1(a)(i) is applied with respect to such Discrete Energy Service Actual Consumption Net End User Load for such Energy Year, then the Painshare Adjustment set out in Section 4.1(b) will apply.

4. CALCULATION OF GAINSHARE ADJUSTMENT OR PAINSHARE ADJUSTMENT

4.1 Subject to Section 2.1(b), the formulae to calculate the Gainshare Adjustment and the Painshare Adjustment for each Energy Service are:

- (a) For the purposes of Section 4.1(b):

A = the Discrete Energy Service Actual Consumption Net End User Load during the relevant year for a particular Energy Service in Units of Energy.

B = the Adjusted Discrete Annual Energy Target for the relevant year for a discrete Energy Service in Units of Energy. In respect of every year following the Substantial Completion Date:

- (b) In respect of every Energy Year following the Substantial Completion Date:

[REDACTED]

5. CALCULATION OF DISCRETE AVERAGE UNIT COST

5.1 The Discrete Average Unit Cost shall be calculated in accordance with the following formula for each Energy type:

$$DAUC = (SC + US)/U$$

Where:

“DAUC” is the Discrete Average Unit Cost;

“SC” is the aggregate of all standing charges, levies, taxes and all other sums invoiced to Contracting Authority by its suppliers in respect of the supply of Energy during the relevant Energy Year, being sums which do not vary solely according to the amount of Units of Energy actually supplied;

“US” is the aggregate of all sums invoiced to Contracting Authority by its suppliers in respect of the supply of Units of Energy during the relevant Energy Year, being, in respect of each form of Energy, a price per Unit multiplied by the number of Units of that type of Energy actually supplied; and

“U” is the Actual Consumption in respect of the Facility in the course of the relevant Energy Year. For clarity, Actual Consumption must include all invoiced Energy consumption at the Facility, including all End User Loads.

6. APPLICATION OF GAINSHARE OR PAINSHARE ADJUSTMENT

- 6.1 Where it is established in accordance with Sections 2, 3 and 4 that a Gainshare Adjustment or a Painshare Adjustment arises pursuant to Sections 3 and 4, the relevant net adjustment shall be given effect by way of (in the case of a Gainshare Adjustment) an increase to a Monthly Service Payment equal to the amount of the Gainshare Adjustment or (in the case of a Painshare Adjustment) by way of a decrease to a Monthly Service Payment equal to the amount of the Painshare Adjustment. In each case the relevant Monthly Service Payment to be adjusted shall be that which is due in respect of the Contract Month in which it is established that the relevant adjustment is required. In the event that a relevant adjustment arises in respect of the final Contract Year, the adjustment shall be made to the final Monthly Service Payment.
- 6.2 The making of any Gainshare Adjustment or Painshare Adjustment shall not affect the Annual Service Payment for the purposes of the application of Escalation Factor to the Project Agreement.
- 6.3 The Parties confirm that the Financial Model contains no provision for the cost or expense of purchasing Energy, save and except with respect to the costs and expenses of purchasing any District Energy, which, if purchased, shall be components of the Annual Service Payments – Service Portion calculated pursuant to Schedule 20 – Payment Mechanism.

7. SUPPLY OF ENERGY

- 7.1 Other than with respect to District Energy, Contracting Authority shall from time to time as required enter into contracts with Energy suppliers for the supply of Energy to the Facility and shall be responsible for all payments due pursuant to such supply contracts.
- 7.2 The Parties agree that it is important to maintain an appropriate balance between (i) on the one hand, ensuring the efficient use of Energy and minimizing the level of emissions of greenhouse gases and harmful substances caused by the use of Energy (regardless of where the Energy is generated) and (ii) on the other hand, minimizing the monetary cost of Energy usage.
- 7.3 Without limiting the provisions of Schedule 22 – Variation Procedure, Project Co shall not, without the prior written consent of Contracting Authority, modify the Facility or the Project Co Services if any such modification could or will result in an increase of more

than [REDACTED]% of the total ADAET for any Energy Service (including, for clarity, any District Energy service), as calculated based on the actual Energy consumption of such Energy Service in the preceding Energy Year.

- 7.4 Subject to Section 7.5, if the proportions of Energy or Energy Service actually consumed at the Facility differ by more than [REDACTED]% from the agreed proportions in respect of the Discrete Energy Targets and such increase is the result of any change made by Project Co without the agreement of the Contracting Authority Representative, any resultant increase in the cost to Contracting Authority of purchasing Energy or Energy Service and/or to Project Co shall be for Project Co's account and shall take effect by way of a reduction to Monthly Service Payments.
- 7.5 Section 7.4 shall not apply to the extent that a change in the proportions of Energy actually consumed results from a Variation or from an increase or decrease from time to time in Contracting Authority's requirements for usage of a particular type of Energy, for example, because of an increase in the amount of End User Load which could result in an increase in the use of utility which may, in turn, change the overall percentage mix of Energy usage.

8. MEASUREMENT

- 8.1 Without prejudice to Schedule 15 – Output Specifications or anything else in this Schedule 36, Project Co shall measure the amount of Actual Consumption and Discrete Energy Service Actual Consumption for the Facility in respect of each calendar month beginning at the start of the Initial Period and ending on the expiry or earlier termination of the Project Agreement.
- 8.2 Without prejudice to Schedule 15 – Output Specifications or anything else in this Schedule 36, Project Co shall provide to Contracting Authority a summary of Actual Consumption and Discrete Energy Service Actual Consumption in respect of each type of Energy at the Facility, at the end of each month, in the form of a certificate. The first such month shall begin on the first day of the Energy Year. For greater certainty, End User Loads, Facility Loads and Secondary Facility Loads should be set out separately in the certificate.
- 8.3 Project Co shall provide for Contracting Authority's review a draft Energy Analysis Report within 75 days following the end of each Energy Year, which report shall include copies of all working papers to fully support the draft Energy Analysis Report. The draft Energy Analysis Report shall be consistent with the format and content requirements set out in Section 8.11 of this Schedule 36.
- 8.4 Within 10 Business Days of the expiry of the 75 day period set out in Section 8.3, if Project Co either (i) fails to submit a draft Energy Analysis Report or (ii) fails to submit a draft Energy Analysis Report in accordance with the requirements of this Schedule 36 and, in Contracting Authority's opinion, such failure prevents the accurate calculation of any applicable Painshare Adjustment or Gainshare Adjustment related to period covered by the draft Energy Analysis Report, one or more Energy Failures shall arise and one or more

Deductions shall apply in accordance with Section 10 (Utilities Management Services) of Part 6 of Schedule 15 – Output Specifications and Schedule 20 – Payment Mechanism.

- 8.5 As soon as practicable and in any event within 80 days following the end of each Energy Year (or on such other date as may be agreed between Contracting Authority and Project Co), Project Co and Contracting Authority shall convene an annual review meeting to be attended by the Project Co Representative, the Contracting Authority Representative and such other individuals as may be agreed to by the Parties (the “**Annual Review Meeting**”). At the Annual Review Meeting, Project Co shall present the draft Energy Analysis Report to Contracting Authority, and Contracting Authority and Project Co shall discuss the Actual Consumption and the Discrete Energy Service Actual Consumption for each discrete Energy Service for the preceding Energy Year and discuss Energy Services.
- 8.6 Project Co shall assist the Contracting Authority Representative and provide the Contracting Authority Representative such information and access to the Facility, building management system records, utility meters and FM Help Desk (as such services are described in Schedule 15 – Output Specifications) and by other means as may reasonably be required for the Contracting Authority Representative to confirm the draft Energy Analysis Report provided by Project Co to determine for the Energy Year the Actual Consumption, the Discrete Energy Service Actual Consumption for each separate Energy Service at the Facility and the Discrete Energy Service Actual Consumption Net End User Load for each separate Energy Service at the Facility.
- 8.7 Contracting Authority shall promptly notify Project Co if, in Contracting Authority’s opinion, all or any aspect of the draft Energy Analysis Report is not in compliance with the requirements of this Schedule 36. In such an event, Project Co shall submit a revised draft Energy Analysis Report that satisfies the requirements of this Schedule 36 within 30 days of the date of such notice. If Project Co fails to submit such report within 10 Business Days of the expiry of such 30 day period, one or more Energy Failures shall arise and one or more Deductions shall apply in accordance with Section 10 (Utilities Management Services) of Part 6 of Schedule 15 – Output Specifications and Schedule 20 – Payment Mechanism.
- 8.8 In the event that (a) an Energy Failure arises and is continuing, (b) Contracting Authority applies Deductions pursuant to Section 8.4 or Section 8.7, and (c) the events underlying the Energy Failure impact the calculation of a Painshare Adjustment or Gainshare Adjustment pursuant to this Schedule 36, then Contracting Authority, in its sole discretion, may either (i) continue to apply such Deductions in accordance with such Section during the period of time the Energy Failure is continuing or (ii) calculate the applicable Painshare Adjustment or Gainshare Adjustment using a third party consultant retained by Contracting Authority at Project Co’s sole cost and expense. Project Co shall, in good faith, cooperate and promptly provide to any such third party consultant all information requested by Contracting Authority or such third party consultant. In the event that Contracting Authority retains any such third party consultant, Contracting Authority shall (A) promptly provide notice to Project Co identifying the third party consultant retained by Contracting Authority and setting out all of the information that the third party consultant requires to

calculate the applicable Painshare Adjustment or Gainshare Adjustment, and (B) cease making such Deductions in the Contract Month immediately following the Contract Month within which the third party consultant receives all such information from Project Co to Contracting Authority's satisfaction.

- 8.9 Any applicable Painshare Adjustment or Gainshare Adjustment related to the period covered by the Energy Analysis Report and the cost of any third party consultant described in Section 8.8 shall be directly deducted from or added to, as the case may be, the Monthly Service Payment immediately following the Contract Month when Contracting Authority approves the final report of the third party consultant setting out the applicable Painshare Adjustment or Gainshare Adjustment.
- 8.10 Subject to Section 8.7, within 20 days following each Annual Review Meeting, or within such period as may be otherwise agreed between the Contracting Authority Representative and the Project Co Representatives, acting reasonably:
- (i) Contracting Authority shall review the Energy Analysis Report; and
 - (ii) Subject to Sections 2 and 3, Project Co and Contracting Authority shall agree to any adjustments to the Annual Energy Target and the Discrete Energy Target(s) after taking into account load or usage changes as a result of any changes in occupancy.
- 8.11 Content and Format of the Energy Analysis Report
- (a) The Energy Analysis Report shall present findings of Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service for the relevant Energy Year and shall include the following:
 - (i) a summary of actual usage and breakdown by utility in equivalent megawatt-hours (eMWh) and cubic meters, or other utility rate units. Also include the actual usage and breakdown by Energy utility in the Unit of Energy. The summary should also highlight any exceptional changes in consumption or pattern of use since any previous survey;
 - (ii) accurate and precise consumption data; and
 - (iii) identification of potential cost savings in respect of Energy usage at the Facility 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 Contracting Authority of projected Energy usage at the Facility for the next five years and cost projections in respect of such projected

Energy usage along with pricing trends and potential risks associated with each.

- 8.12 The objectives of the Energy Analysis Report are to present the Energy performance of the Facility and to confirm Actual Consumption and Discrete Energy Service Actual Consumption for each individual Energy Service at the Facility in the relevant Energy Year and to provide data to calculate Adjusted Annual Energy Target and Adjusted Discrete Annual Energy Target for each individual Energy Service.
- 8.13 Consistent with the objectives set out in Section 8.12 of this Schedule 36, Project Co shall ensure that each Energy Analysis Report has the following components:
- (a) presentation of the Actual Consumption, the Discrete Energy Service Actual Consumption for each individual Energy Service, the Discrete Energy Service Actual Consumption Net End User Load for each individual Energy Service, and the Adjusted Annual Energy Target;
 - (b) correlated Energy Weather Data graph;
 - (c) establishment of a basis for continued monitoring of Energy and Utility consumption and adjustments to the Annual Energy Target and/or the Discrete Energy Targets;
 - (d) the utility data collected by Project Co described in Appendix A to this Schedule 36 shall be presented in a table in the form set out in Appendix A;
 - (e) detailed analysis of metered uses:
 - Lighting systems and controls;
 - Heating, cooling, chilled water, hot water and steam;
 - HVAC distribution pump energy;
 - Air handling systems – fan energy;
 - Air handling systems - cooling energy;
 - Air handling systems - heating energy;
 - Natural gas, hot water and steam – tenants;
 - Domestic water use – public, administration;
 - Domestic water use - tenant;

- Domestic water use – irrigation (if applicable);
- Domestic water use – process;
- Domestic water distribution pump energy;
- Service Water Heating;
- Building related process energy and equipment;
- IT server room and associated cooling;
- Vertical transportation systems;
- Security Systems;
- Electrical energy – tenants;
- End User Loads;
- Secondary Facility Loads;
- Any additional system(s) required to obtain LEED v4 Credit: Advanced Energy Metering; and
- Any other metered systems.

The sub-metered Energy (including, for greater certainty, District Energy) consumption for the various end uses as specified in Section 8.13(e) shall be aggregated for each category of end use and reported separately for the Facility Loads and the End User Loads, as categorized in the following table:

End User Load Type	Energy Utility		Examples
	Electricity	Natural Gas	
Receptacle Loads	X		Personal computers, task lighting, office equipment
Retail Facilities	X	X	Restaurant gas and electric appliances, food services equipment (e.g. refrigerators)
IT Equipment	X		Data servers located in IT/computer rooms

Communication Systems	X	Networking equipment located in communications rooms
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- (f) reporting of total Facility greenhouse gas emissions, as well as greenhouse gas emissions associated with each Energy Service. Greenhouse gas emissions shall be calculated by multiplying the Discrete Energy Service Actual Consumption (including, for greater certainty, the District Energy actually consumed at the Facility) by the GHG Emissions Factor;
- (g) a detailed description of building systems:
 - variable frequency drive operation;
 - air and water economizer and heat recovery cycles;
 - air distribution static pressures and ventilation air volumes; and
 - any other pertinent information regarding system performance as it affects Energy consumption;
- (h) outline any outstanding issues from any previous Energy Analysis Report;
- (i) adjustments to the Annual Energy Target and Discrete Energy Target(s), complete with detailed explanations of any changes made to the Aggregate Energy Model (a copy of digital file of the Aggregate Energy Model shall be submitted together with annual Energy Analysis Report);
- (j) a table showing the percentage variation in Actual Consumption against the Adjusted Annual Energy Target, the Adjusted Discrete Energy Target(s), the Discrete Energy Service Actual Consumption for each discrete Energy Service and the Discrete Energy Service Actual Consumption Net End User Load for each discrete Energy Service;
- (k) tables and graphs showing the consumption, unit costs, and total costs for all purchased Energy for the previous 12 months. Breakdown of Energy types and costs for each energy use described in this Schedule 36 and any other major energy use for the previous 12 months;
- (l) appendices - the appendices shall include weather data, utility bills, graphs, calculations and miscellaneous data that are relevant to the Energy Analysis Report. The appendices shall also include a summary of assumptions made in the Energy Analysis Report that are not otherwise provided in the Project Agreement, including but not limited to the application of generally accepted industry standards

not specified in the Project Agreement, or estimation of sub-metered loads in the event of inadequate or missing sub-metering data;

- (m) summary tables from all previous Energy Analysis Reports delivered by Project Co to Contracting Authority; and
- (n) the completion of an annual energy performance report using the standardized template in Microsoft Excel set out in Appendix C hereto.

8.14 Project Co agrees to comply with the provisions of Appendix B hereto.

8.15 Project Co acknowledges and agrees that operational meters and sub-meters are essential to the application of this Schedule 36 and other applicable provisions of the Project Agreement. In the event that Project Co fails to comply with any of the requirements of Section 10 (Utilities Management) of Part 6 of Schedule 15 – Output Specifications, an Energy Failure shall arise and Deduction(s) shall apply in accordance with such requirements and Schedule 20 Payment Mechanism.

9. ENERGY MODEL INTELLECTUAL PROPERTY OWNERSHIP AND LIABILITIES

9.1 Intellectual Property

- (a) For greater certainty, the provisions of Article 48 – Intellectual Property of the Project Agreement shall apply in respect of all Energy Models, Energy Analysis Reports and Monthly Energy Reports delivered to Contracting Authority pursuant to this Schedule 36.
- (b) For greater certainty, Project Co acknowledges and agrees that Contracting Authority shall not be liable to Project Co for, and Project Co shall not seek to recover from Contracting Authority or any Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Energy Models, the Energy Analysis Reports or the Monthly Energy Reports.

APPENDIX A

[REDACTED]

APPENDIX B

ENERGY PROTOCOL

1. PROTOCOL OBJECTIVES

1.1 Contracting Authority and Project Co seek to minimize energy usage and costs within the parameters described within the Project Agreement through the design, construction, operation and efficient occupancy of the Facility.

2. UTILITIES MANAGEMENT SUBCOMMITTEE AND CONTINUAL ADVICE

2.1 Project Co shall provide an energy monitoring, energy targeting and energy management service to Contracting Authority in accordance with this Appendix B.

2.2 A joint working group responsible for the management of the energy provisions within this Schedule 36 shall convene a meeting each quarter (the “**Quarterly Monitoring Meeting**”) throughout the Operational Term to analyze, review and discuss the monitoring of and record taking from plant and equipment (carried out by Project Co in accordance with Attachment 1 hereto (Outline of Energy Monitoring Procedures)) to ensure continued optimum performance.

2.3 The joint working group shall be composed of three representatives nominated by Project Co and three representatives nominated by Contracting Authority (the “**Utilities Management Subcommittee**”). Project Co will propose a detailed format and agenda for such Quarterly Monitoring Meetings at least two weeks prior to each meeting (see Attachment 2 hereto for an example agenda). At the start of each Quarterly Monitoring Meeting, the representatives shall appoint one of their number to act as chairperson, ensuring that the position is held by a Project Co representative and then a Contracting Authority representative on an alternating basis.

2.4 In connection with the ongoing monitoring, Project Co will also be expected to provide quarterly projections for the consumption of energy for the forthcoming 12 months. Such projections will then be used by Contracting Authority for financial planning requirements.

2.5 Without prejudice to Project Co’s obligations as articulated in the Project Agreement, prime energy usage monitoring must be undertaken on a Utility by Utility basis by the provision of metering which must be data logged, the results of will be reviewed at the Quarterly Monitoring Meetings. Further information as to the methods of monitoring is contained in Attachment 1 hereto (Outline of Energy Monitoring Procedures).

2.6 Project Co shall ensure that representatives of the Service Provider attend the Quarterly Monitoring Meetings.

2.7 At the Quarterly Monitoring Meetings, Project Co will report on Scheduled Maintenance, Unscheduled Maintenance and Emergency Maintenance Work undertaken and being

- undertaken relevant to Energy consumption to ensure best operating efficiencies for the Facility and the Utilities Management Subcommittee will review and provide feedback on such report.
- 2.8 Project Co shall update and alter the Scheduled Maintenance following receipt of feedback from the Utilities Management Subcommittee.
- 2.9 Project Co will be proactive at the Quarterly Monitoring Meetings and shall undertake regular value management reviews for the Facility to ascertain whether minor design alterations, technology changes or other technological enhancements will benefit lifecycle costings and further improved energy performance of the installations to the joint and equal benefit of the Parties. Contracting Authority may, but shall not be obliged to invoke the Variation Procedure, as outlined in Schedule 22 - Variation Procedure to the Project Agreement, in respect of any such suggestion.
- 2.10 In the event that the Parties and/or the Utilities Management Subcommittee are unable to reach agreement on any of the matters covered in this Appendix B, such matter shall be determined using the Dispute Resolution Procedure as set out in Schedule 27 - Dispute Resolution Procedure.
- 2.11 Project Co (acting through the Utilities Management Subcommittee) will advise Contracting Authority in relation to the following measures which it will expect Contracting Authority and Contracting Authority Parties to implement and Project Co shall implement and shall ensure that Project Co Parties implement the same:
- (a) control and efficient use of space heating and cooling;
 - (b) control and efficient use of lighting;
 - (c) control and efficient use of domestic hot water;
 - (d) control and efficient use of plugged-in equipment;
 - (e) any energy awareness campaigns; and
 - (f) all other relevant Energy consumption advice.

3. INITIAL MONITORING

- 3.1 Throughout the Initial Period, Project Co shall ensure that all necessary energy management procedures and energy optimization initiatives are undertaken in accordance with Attachment 1 hereto.
- 3.2 Energy measurements and meter readings shall be undertaken by Project Co on a calendar month basis during the Initial Period and Project Co shall provide a report on the measurements and readings to Contracting Authority.

4. REPORTING SERVICES

- 4.1 From the commencement of the Operational Period, Project Co shall provide to Contracting Authority a monthly report of the energy efficiency performance (each a “**Monthly Energy Report**”).
- 4.2 Each Monthly Energy Report following the completion of the Monitoring Period shall compare actual performance to date with the performance targets as required by this Schedule 36 and monthly monitoring of the Facility shall include data on the thermal efficiency of the entire plant and equipment and operational efficiency of distribution systems to ensure continued optimum performance. It will also include trend analysis that will indicate malfunctions.

5. ENERGY MONITORING

- 5.1 All energy supplied to and used within the Facility shall be monitored using the building management system, capable of verification by Contracting Authority.

6. COMPLIANCE

- 6.1 Contracting Authority is entitled from time to time to appoint an energy consultant of its choice and at its cost to monitor and check Project Co’s compliance with the provisions of this Appendix B. Project Co must co-operate with any such consultant and must allow such access to the Facility, all energy records and all facilities management maintenance data as such consultant may reasonably require.

7. CONTRACTING AUTHORITY AND PROJECT CO’S UNDERTAKINGS

- 7.1 Contracting Authority shall assist, and shall encourage the Contracting Authority Parties to assist, Project Co to achieve the Energy consumption targets through the adoption of good housekeeping techniques, to be determined by the Utilities Management Subcommittee in respect of lighting, water, office equipment and space heating and air conditioning, to be achieved through management and involvement of Contracting Authority staff. Contracting Authority will ensure that Contracting Authority Parties involve management in energy efficiency focus in order to incorporate good practice as part of Contracting Authority and Contracting Authority Parties’ overall activities.
- 7.2 Contracting Authority and Project Co recognize that the Energy consumption targets can only be achieved with the co-operation of their staff and therefore respectively undertake that their commitment to and the commitment of Contracting Authority staff and Project Co staff, service providers and other relevant parties (as the case may be) to energy efficiency will be adopted throughout their respective organizations, to ensure that staff are aware of and have been encouraged to practise the energy saving policy so that Contracting Authority, Contracting Authority staff, Project Co and Project Co staff, service providers and other relevant parties will prevent excessive energy usage. This will include without limitation:

- (a) providing their respective staff with information about why energy conservation is important, describing practical and environmental benefits;
 - (b) stressing that most energy is used by building occupants;
 - (c) informing staff of the minimum legal/design operation temperature requirements;
 - (d) including energy efficiency briefing within staff familiarization, training and new staff inductions;
 - (e) switching off equipment not in use or not required, including discouraging the leaving of equipment in standby mode where technically appropriate;
 - (f) sharing departmental energy use information with departmental managers;
 - (g) obtaining feedback from staff on measures to improve energy efficiency;
 - (h) appointing departmental/unit managers, and energy monitors to implement good housekeeping measures as set out in Section 7.1 hereof; and
 - (i) distributing appropriate promotional and publicity material to raise awareness of energy efficiency measures and achievements
- 7.3 The Parties shall, for consideration by the Utilities Management Subcommittee, produce annual reports summarizing the above measures and including recommendations and suggestions received from staff to enhance energy efficiency at the Facility.
- 7.4 Specific service specification documents shall be amended to reflect any changes to the organization and management of energy services agreed through the Utilities Management Subcommittee.
- 7.5 Contracting Authority shall advise each quarterly meeting of the Utilities Management Subcommittee of any departmental operational changes, which may affect Utilities usage. This would include changes to the assumptions on which Project Co's original Energy consumption figures were calculated, including, material increases in occupancy levels, department opening times and equipment levels.
- 7.6 Project Co shall undertake regular value management reviews for the services installations to ascertain whether minor design alterations, involving use of in-house resources, technology changes or other technological enhancements will benefit lifecycle costings and further improve energy performance of the installations. Any outputs of such value management exercises, which have the support of the Utilities Management Subcommittee, will be considered by Project Co and Contracting Authority at the Facilities Management Committee, which will then ascertain whether minor capital works are needed to continue to ensure best possible performance targets are achieved. Should work be required to increase energy efficiency then this will be dealt with through the Variation Procedure.

- 7.7 Project Co undertakes that it shall not intentionally alter the proportions of different types of energy consumed from the agreed proportions referred to within this Appendix B without the prior agreement of the Utilities Management Subcommittee.

ATTACHMENT 1 – OUTLINE OF ENERGY MONITORING PROCEDURES

1. INTRODUCTION

The purpose of this Attachment 1 is to outline how Energy consumption will be monitored and measured at the Facility.

2. ENERGY MONITORING

Project Co has provided, as a minimum, the metering required pursuant to Schedule 15 – Output Specifications and this Schedule 36 (including Section 8.13) and the following metering within the Facility:

- (a) electrical consumption;
- (b) natural gas consumption;
- (c) any District Energy;
- (d) fuel oil consumption; and
- (e) other Energy consumption and metering points as described in contract documents.

The metering will be an integral part of the building management system, which will have the ability to record and log data regarding the Energy consumption.

The data will be collected and presented in spreadsheet format or trend graphing allowing trends to be identified in the Monthly Energy Reports.

Once a database of monthly consumptions has been established any significant change which is apparent will be investigated.

3. VARIATION DUE TO WEATHER AND CLIMATE DATA

Project Co will obtain external temperature profiles from the Environment Canada local weather office and the building management system in furtherance of Section 2.3(c) of this Schedule 36. The temperature profiles will be used to assist in the evaluation of quarterly energy trends particularly in the event that excessive summertime temperatures have been experienced. However, the Environment Canada local weather office data will be the prime source of Weather Data. Any trends in climate change will be noted and included in the Monthly Energy Reports.

4. VARIATIONS DUE TO END USERS' CONSUMPTION

Project Co will use available information to determine usage and where appropriate investigate the cause of any excess consumption.

This will require a period of operation under steady state conditions to allow collection of a representative database.

A summary of the database will be included in the Monthly Energy Report.

Project Co will evaluate all deviations as part of its duties to the Utilities Management Subcommittee as defined in Appendix B to this Schedule 36. The results will be logged as either:

- (a) deficient maintenance requiring rectification;
- (b) external influences outside Project Co's control (e.g. abnormal weather conditions);
- (c) deviations subject to Schedule 22 - Variation Procedure to the Project Agreement;
- (d) incidence of misuse of energy by Contracting Authority; and
- (e) incidence of misuse of energy by Project Co or any Project Co Party.

All deviations will be reviewed at the next Quarterly Monitoring Meeting where appropriate actions will be agreed.

In the event that the Utilities Management Subcommittee is unable to agree on the cause or magnitude of the deviation, the matter shall be determined using the Dispute Resolution Procedure.

5. ENERGY MANAGEMENT

Project Co will evaluate Energy consumption patterns. This will maximize the benefit of the database and trend logging and enable the focus of energy awareness matters particularly where less than efficient use is suspected.

6. TOTAL ENERGY CONSUMPTION

Total Energy consumption for the Facility will be recorded on a monthly basis and will be included in the Monthly Energy Report. This will be identified separately as fossil (gas), electricity, and water consumption using industry standard units of measurement.

7. ONGOING VALUE ENGINEERING

Project Co will continue to evaluate new and existing technologies in respect of rising energy costs and advise where further investment could provide cost effective energy reductions.

ATTACHMENT 2 – QUARTERLY MONITORING MEETING AGENDA

Meeting Title: Quarterly Monitoring Meeting of the Utilities Management
Subcommittee For The Period

Date of Meeting: _____

Venue: _____

Those Present: Project Co Representatives
Contracting Authority Representatives
Representative of the Service Provider

Item 1 Apologies for absence

Item 2 Recorded energy consumption for the quarter

Any District
Energy: _____

Gas: _____

Electricity: _____

Fuel Oil: _____

Contracting Authority Integrated Services Metering Points:

Other Metering Points:

Item 3 Report on Weather Data for corresponding period

Item 4 Contracting Authority Variations under Schedule 22 - Variation
Procedure

Item 5 Actual energy consumption compared against target

Item 6 Review Painshare and Gainshare mechanisms

Item 7 Report on Procedures

Item 8 Report on plant and systems performance and review of future planned
maintenance program

Item 9 Review of energy trends and recommendations for improved energy
efficiency and training

Item 10 Asset management and lifecycle issues

Item 11 New technologies and issues for consideration under ongoing value
engineering

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- Item 12** Rolling 12 month annual energy totals
- Item 13** Disputes subject to Schedule 27 - Dispute Resolution Procedure
- Item 14** AOB and date of next meeting

**APPENDIX C
ENERGY REPORTING TEMPLATE**

[REDACTED]

SCHEDULE 37

[INTENTIONALLY DELETED]

SCHEDULE 38

REPORTS

For the purpose of the Project Agreement, the following terms shall have the following meanings:

1. **“Environmental Reports and Designated Substance Reports”** means, collectively:
 - (a) Phase One Environmental Site Assessment, Macdonald Block Reconstruction – Construction Area, 900 Bay Street, Toronto, Ontario, prepared for Infrastructure Ontario, dated February 8, 2018;
 - (b) Phase One Environmental Site Assessment, Macdonald Block Reconstruction – Construction Staging Area, Toronto, Ontario, prepared for Infrastructure Ontario, dated February 8, 2018;
 - (c) Phase Two Environmental Site Assessment, Macdonald Block Reconstruction – Construction Staging Area, Toronto, Ontario, prepared for Infrastructure Ontario, dated February 9, 2018;
 - (d) Phase Two Environmental Site Assessment, Macdonald Block Reconstruction Project – Construction Area, 900 Bay Street, Toronto, Ontario, prepared for Infrastructure Ontario, dated February 9, 2018;
 - (e) Pre-Renovation Designated Substance and Hazardous Material Survey, Macdonald Block Reconstruction Project, Macdonald Block Complex 900 Bay Street, Toronto, Ontario, dated January 31, 2018; [ECOH Project No. 17131]
 - (f) Pre-Renovation Designated Substance and Hazardous Material Survey, Macdonald Block Reconstruction Project, Macdonald Block Complex 900 Bay Street, Toronto, Ontario – Appendix 5, dated January, 2018; [ECOH Project No. 17131]
 - (g) Supplemental Survey for Designated Substances and Hazardous Materials, Macdonald Block Reconstruction – Ceramic Tile Materials Bulk Sampling, Queen’s Park Complex, 900 Bay Street, Toronto, Ontario, dated June 29, 2018; [ECOH Project No. 17131]
 - (h) Supplemental Survey for Designated Substances and Hazardous Materials, Hearst Block Exterior Bulk Sampling, MacDonal Block Reconstruction Project, Queen’s Park Complex, 900 Bay Street, Toronto, Ontario, dated June 28, 2018; [ECOH Project No. 17131]
 - (i) Supplemental Survey for Designated Substances and Hazardous Materials, Hepburn Block Exterior Bulk Sampling, MacDonal Block Reconstruction Project, Queen’s Park Complex, 900 Bay Street, Toronto, Ontario, dated June 28, 2018; [ECOH Project No. 17131]

- (j) Supplemental Survey for Designated Substances and Hazardous Materials, Mowat Block Exterior Bulk Sampling, MacDonald Block Reconstruction Project, Queen's Park Complex, 900 Bay Street, Toronto, Ontario, dated June 28, 2018; [ECOH Project No. 17131]
- (k) Supplemental Survey for Designated Substances and Hazardous Materials, Ferguson Block Exterior Bulk Sampling, MacDonald Block Reconstruction Project, Queen's Park Complex, 900 Bay Street, Toronto, Ontario, dated September 3, 2018; [ECOH Project No. 17131]
- (l) Summary Report, Mowat Tower, 5th Floor, 900 Bay Street, Toronto, Ontario, dated September 10, 2018, Pinchin File: 218614;
- (m) Revised Summary Report, Hearst Tower, 3rd Floor, 900 Bay Street, Toronto, Ontario, dated July 9, 2018, Pinchin File: 218614;
- (n) Letter Report – Additional Environmental Investigations, Macdonald Block Reconstruction Project – Construction Area, Southwest Corner of Bay Street and Wellesley Street West, Toronto, Ontario, addressed to Alex Lye, dated November 30, 2018;
- (o) Asbestos, Lead, and PCB Test Results Report, 900 Bay Street, Toronto, Ontario, dated December 18, 2018, Pinchin File: 232303; and
- (p) Exterior Wall Intrusive Investigation Field Summary Reports, prepared by OHE Consultants, dated January 2018, OHE Project No.: 20059,

and, individually, each is an “**Environmental Report and Designated Substance Report**”.

2. “**Geotechnical Reports**” means, collectively:

- (a) Geotechnical Investigation Report, Macdonald Block Reconstruction Project – Construction Area Northwest of Bay Street & Grosvenor Street, Toronto, Ontario, prepared for Infrastructure Ontario, dated December 19, 2017;
- (b) Updated Hydrogeological Assessment, MacDonald Block Reconstruction Project – Construction Area, Northwest of Bay Street & Grosvenor Street, Toronto, Ontario, prepared for Infrastructure Ontario, dated July 6, 2018;
- (c) Updated Hydrogeological Assessment, MacDonald Block Reconstruction Project – Construction Staging Area, Northwest of Bay Street & Grosvenor Street, Toronto, Ontario, prepared for Infrastructure Ontario, dated July 6, 2018;
- (d) Geothermal Thermal Conductivity Report, 60 Grosvenor St., Toronto, Ontario, Geosource Energy Inc., dated March 22, 2017;

- (e) Geotechnical Investigation Report Macdonald Block Reconstruction Project – Construction Staging Area Northwest of Bay Street & Grosvenor Street, Toronto, Ontario, prepared for Infrastructure Ontario, dated December 19, 2017;
- (f) Memorandum – Remediation of Impacted Soil and Groundwater – Macdonald Block Reconstruction Project, addressed to Alex Lye, dated February 12, 2018;
- (g) Letter Report – Coring Concrete Foundation Walls and Slab Restoration at Macdonald Block Complex – Underground Parking Garage (B2) Macdonald Block Reconstruction Project – Construction Area Northwest of Bay Street & Grosvenor Street, Toronto, Ontario, prepared for Infrastructure Ontario, dated February 1, 2018; and
- (h) Letter Report – Foundation Drainage System and Stormwater Collection System Sampling Macdonald Block Reconstruction Project – Construction Area Northwest of Bay Street & Grosvenor Street, Toronto, Ontario, addressed to Muhammad Arshad, dated February 16, 2018;

and, individually, each is a “**Geotechnical Report**”.

SCHEDULE 39

COMMUNITY BENEFITS

Contracting Authority has identified two types of community benefits initiatives in this Schedule 39 (collectively, the “**Community Benefits**”), which are as follows and are further detailed below in this Schedule 39:

- (a) **Workforce Development:** such as employment and training opportunities, including apprenticeships to members of disadvantaged communities and local residents; and
- (b) **Social Procurement:** such as purchasing goods and services from local businesses and social enterprises.

The Community Benefits is an important deliverable for the Project, and will require significant partnership between Project Co, Contracting Authority, government ministries, Stakeholders and business, community, labour, education, training and other organizations. Cooperation and collaboration will be a critical ingredient for success.

The Community Benefits Plan developed by Project Co shall provide detailed information on how Project Co shall, as part of the Works and prior to Substantial Completion, at minimum, achieve all of the important Community Benefits initiatives described in this Schedule 39 and deliver success to Contracting Authority on such initiatives.

1. PROJECT CO COMMUNITY BENEFITS LEAD

- (a) On or before Commercial Close, Project Co shall appoint a representative (the “**Project Co Community Benefits Lead**”) to (A) lead the performance of Project Co’s obligations under and ensure Project Co’s compliance with the obligations of Project Co set out in Sections 18.13 to 18.15 (inclusive) of the Project Agreement and this Schedule 39; and (B), until the Substantial Completion Date, liaise with, amongst other persons, Contracting Authority, members of the Community Benefits Working Group, other Stakeholders and other local community groups in respect of the Community Benefits.
- (b) The Project Co Community Benefits Lead shall be an individual having a minimum of five years’ experience with major construction projects of a similar size and complexity and experience relevant to the scope of work required by Sections 18.13 to 18.15 (inclusive) of the Project Agreement and this Schedule 39.

2. COMMUNITY BENEFITS PLAN

- (a) Project Co shall collaborate with Contracting Authority, government ministries, Stakeholders and business, community, labour, education, training and other organizations to deliver a Community Benefits Plan that meets the objectives of the Community Benefits generally described above.
- (b) Project Co will be responsible for ongoing data collection to track and report on progress towards achieving each of the requirements described within the three Community Benefits initiatives outlined in Section 2(c). Project Co will also be responsible for providing regular program status updates to Contracting Authority and the Community Benefits Working Group.
- (c) The Community Benefits Plan shall set out a plan for Project Co to deliver the Community Benefits initiatives in accordance with the following requirements, and, as part of the Community Benefits Plan, Project Co shall, at a minimum, be required to submit:

I. Workforce Development Initiative:

(A) *Apprenticeship and Journeyman Opportunities*

- (i) a detailed approach to meeting or exceeding an aspirational target of [REDACTED]% of all trade or craft working hours on a trade-by-trade basis to be performed by qualified apprentices or journeymen from historically disadvantaged communities or equity seeking groups in which the Project is located;
- (ii) a description of specific objectives and methods for training and apprenticeship opportunities for the Project on a trade-by-trade basis;
- (iii) an estimation of the number of apprentices to be employed for the Works, which shall be in accordance with journeyman to apprenticeship ratios established in Section 60 of the *Ontario College of Trades and Apprenticeship Act, 2009*, S.O. 2009, c. 22, or any successor legislation thereto;
- (iv) confirmation that apprenticeships will be registered with the Ministry of Training, Colleges and Universities and the Ontario College of Trades, as applicable;
- (v) a description of initiatives to support qualified apprentices on the Project to complete their apprenticeships prior to Substantial Completion and, for those whose apprenticeships are not complete

by the Substantial Completion Date initiatives to support apprentices, on a commercially reasonable basis, to complete their apprenticeships after the Substantial Completion Date; and

- (vi) a description of initiatives to enhance community awareness of employment opportunities that are available as a result of the Project, including employment opportunities available to the local workforce;

(B) *Educational Opportunities*

- (i) a description of how Project Co will develop experiential learning, and cooperative education and other training opportunities for Ontario post-secondary students in relevant disciplines to the scope of the Works, through partnerships with local universities and colleges;
- (ii) a description of how Project Co will deliver 10 half-day on-site educational programs in various topics to students before Substantial Completion in order to use the Project as a learning lab for students interested in construction related fields; and
- (iii) an estimation of the number of students to be engaged as part of the Community Benefits initiatives prior to Substantial Completion.

II. Social Procurement Initiative:

- (i) a description of how Project Co will utilize local businesses and social enterprises for goods and services during the construction of the Project.

APPENDIX “A”

OUTLINE COMMUNITY BENEFITS PLAN

The Project will involve the extensive reconstruction of the Macdonald Block Complex, which includes the Macdonald Block Podium, Hearst, Hepburn, Mowat and Ferguson towers in Toronto.

Project Co has prepared this Community Benefits Plan Outline to outline its initial steps to help leverage workforce development and social procurement to deliver additional value to the surrounding communities.

The Community Benefits Plan is an important deliverable for the Project, and will require significant partnership between Project Co, Contracting Authority, government ministries, Stakeholders and business, community, labour, education, training and other organizations. The plan is achievable; however, we encourage Contracting Authority and associated Stakeholders to collaboratively work together to identify strengths to optimize value to the community, as this will be a critical ingredient for success.

The following outlines Project Co’s project-specific approach to providing Community Benefits in connection with the performance of the Works in compliance with the requirements of Schedule 39 – Community Benefits of the Project Agreement:

- Community Benefits Plan
- Community Benefits Working Group
- Community Benefits Working Group Terms of Reference
- Community Benefits Reporting
- Project Co Community Benefits Lead

1. Community Benefits Plan

No later than 150 days following Financial Close, Project Co will submit a draft Community Benefits Plan to Contracting Authority for Contracting Authority’s review and written approval, acting reasonably, pursuant to Section 18.13 of the Project Agreement.

When the Community Benefits Plan (including any and all updates thereto) is approved in writing by Contracting Authority, Project Co will immediately implement the Community Benefits Plan and will perform the Works in accordance therewith until the Substantial Completion Date.

Project Co will collaborate with Contracting Authority, government ministries, Stakeholders and business, community, labour, education, training and other organizations to deliver a Community Benefits Plan that meets the objectives of the Community Benefits generally described in Schedule 39 – Community Benefits of the Project Agreement.

The Community Benefits Plan will provide detailed information on how Project Co will, as part of the Works and prior to Substantial Completion, at minimum, achieve all of the important Community Benefits initiatives described in Schedule 39 – Community Benefits of the Project Agreement and deliver success to Contracting Authority on such initiatives.

Project Co’s strategic goal associated with the Community Benefits Plan is to maximize the social and economic opportunities associated with the Project. The Community Benefits Plan will identify strategies for Project Co to liaise with the local communities affected by the work and to plan and execute events that will improve the affected community’s awareness of job opportunities and opportunities to provide

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goods and services to the Project. The Community Benefits Plan will be based on the following guiding principles:

1. Promote social and economic inclusion
2. Engage and involve the local community
3. Achieve accountability

The Community Benefits Plan will encompass various initiatives that will benefit the local community and will have ripple effects for years to come. Such initiatives include:

- **Workforce Development Initiatives:** creating access to quality jobs, training, and apprenticeship opportunities, particularly for residents of historically disadvantaged communities and members of employment quality-seeking groups
- **Local Economic Development Initiatives:** creating opportunities for local businesses and social enterprises to benefit from the Project
- **Community Initiatives:** designed to support and improve the communities in close proximity to the Project
- **Environmental Initiatives:** increasing green space, protecting and enhancing natural environments and the public realm, reducing carbon production, and addressing environmental contaminants

These initiatives could benefit many communities in the Greater Toronto Area. However, Project Co recognizes the unique employment barriers facing certain neighbourhood improvement areas which are in close proximity to the Project, and easily accessible via public transit. Such communities include:

- Regent Park
- Thorncliff Park
- Flemingdon Park
- Victoria Village

Following consultation with Stakeholders, other communities can be prioritized.

a) Workforce Development Initiative:

i) Apprenticeship and Journeyperson Opportunities

Engagement will be driven through local agencies, associations and community groups via job fairs, postings and community consultation meetings where Project opportunities will be shared and feedback (regarding potential business and labour interests) incorporated into procurement plans.

Project Co's Community Benefits Plan will be carried through to trades who will incorporate these goals into their own strategic recruitment and skills development plans.

Language will be included in each Subcontract obligating each Subcontractor to participate in the Community Benefits Plan, similar to the following:

“Project Co is a proud supporter of the Province’s Community Benefits program and is partnering with government and community stakeholders to develop a Community Benefits Plan. Each subcontractor is required to participate in the plan and meet its objectives, most importantly an aspirational target of [REDACTED]% of all trade or craft working hours on a trade-by-trade basis to be performed by qualified apprentices or journeypersons from historically disadvantaged communities or equity seeking groups in which the Project is located”.

In the Community Benefits Plan, Project Co will outline:

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- its approach to working with Stakeholders to meet an aspirational target of [REDACTED]% of all trade or craft working hours on a trade-by-trade basis to be performed by qualified apprentices or journeypersons from historically disadvantaged communities or equity seeking groups in which the Project is located;
- specific objectives and methods for partnering with Stakeholders to provide training and apprenticeship opportunities for the Project on a trade-by-trade basis;
- an estimation of the number of apprentices to be employed for the Works, in accordance with journeyperson to apprenticeship ratios established in Section 60 of the *Ontario College of Trades and Apprenticeship Act, 2009, S.O. 2009, c. 22*, or any successor legislation thereto [**based on collective bargaining agreements with trade unions**];
- confirmation that apprenticeships will be registered with the Ministry of Training, Colleges and Universities and the Ontario College of Trades, as applicable;
- initiatives to be undertaken to support qualified apprentices on the Project to complete their apprenticeships prior to Substantial Completion and, for those whose apprenticeships are not complete by the Substantial Completion Date initiatives to support apprentices, on a commercially reasonable basis, to complete their apprenticeships after the Substantial Completion Date; and
- initiatives to enhance community awareness of employment opportunities that are available as a result of the Project, including employment opportunities available to the local workforce.

Project Co will partner with local workforce development agencies and community organizations to support the Community Benefits Plan and establish tools, policies, and protocols to deliver on its objectives. Such potential community organizations include, but are not limited to the following:

- Toronto Community Benefits Network;
- Access Employment;
- George Brown College;
- Good Jobs for All Coalition;
- Miziwe Biik Aboriginal Employment and Training;
- The Career Foundation;
- YWCA Toronto;
- Working for Change;
- Carpenters Local 27;
- LiUNA Local 506 & 183;
- Operating Engineers Local 793; and
- Central Ontario Building Trades and its affiliates.

ii) Educational Opportunities

The Construction Contractor offers cooperative experiences in a variety of fields, with student positions ranging from four to 12 months in duration. In 2018 alone, the Construction Contractor provided 700 students the opportunity to take their education to the next level through hands-on work, mentorship, networking and more.

In the Community Benefits Plan, Project Co will provide further detail to address:

- how Project Co will develop experiential learning, and cooperative education and other training opportunities for Ontario post-secondary students in relevant disciplines to the scope of the Works, through partnerships with local universities and colleges;

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- the provision of 10 half-day on-site educational programs in various topics to students before Substantial Completion in order to use the Project as a learning lab for students interested in construction related fields; and
- an estimation of the number of students to be engaged as part of the Community Benefits initiatives prior to Substantial Completion.

b) Social Procurement Initiative:

When working in communities, Project Co's goal is to maximize the use of local resources and businesses to boost the local economy. To help this process, Project Co will collaborate with local businesses to gain understanding of the capabilities and capacity of local resources and use this information to help shape manageable scopes of work that can be executed safely.

On provision of the Community Benefits Plan, Project Co will describe how it will utilize local businesses and social enterprises for goods and services during the construction of the Project. The Community Benefits Plan will demonstrate our commitment, structure, approach and metrics for determining success.

2. Community Benefits Working Group

Within 45 days following Financial Close, a committee (the “**Community Benefits Working Group**”) shall be established consisting of:

- two representatives of Project Co, including:
 - the Project Co Community Benefits Lead; and
 - such other representative appointed by Project Co from time to time;
- two representatives appointed by Contracting Authority from time to time;
- two representatives of the Province appointed by Contracting Authority from time to time; and
- a minimum of one representative of each relevant Stakeholder appointed by Contracting Authority from time to time.

The Community Benefits Working Group will support and promote the successful implementation of the community benefits initiatives described in Sections 18.13 to 18.15 (inclusive) of the Project Agreement and Schedule 39 – Community Benefits of the Project Agreement, to be set out in the Community Benefits Plan, and to be performed by Project Co prior to Substantial Completion, by:

- providing a regularly scheduled forum for dialogue, collaboration, and, as required, issues resolution;
- facilitating communication, coordination and relationship-building between Project Co and the Stakeholders and other Project stakeholders;
- outlining clearly defined roles and responsibilities, and opportunities for collaboration, for each of the community benefits initiatives;
- defining work plan priorities for each of the community benefits initiatives; and
- providing transparent oversight for monitoring progress and tracking results towards the successful implementation of the Community Benefits Plan.

Members of the Community Benefits Working Group may invite, on prior notice to the co-chairs of the Community Benefits Working Group, such advisors, consultants, Stakeholders or representatives of government ministries as any of them may require from time to time to attend meetings or to provide briefings to the Community Benefits Working Group.

Once established and until the Substantial Completion Date, the Community Benefits Working Group will meet as follows:

- at least once each calendar month until the later of (A) the date the Community Benefits Working Group Terms of Reference are finalized or otherwise approved pursuant to Section 18.14(f) of the Project Agreement, and (B) the date that the Community Benefits Plan is approved by Contracting Authority pursuant to Section 18.13(a) of the Project Agreement; and
- following the later of (A) the date the Community Benefits Working Group Terms of Reference are finalized or otherwise approved pursuant to Section 18.14(f) of the Project Agreement, and (B) the date that the Community Benefits Plan is approved by Contracting Authority pursuant to Section 18.13(a) of the Project Agreement, at least once each calendar quarter.

3. Tactics

The Community Benefits Plan will focus on the importance of liaising with identified prioritized communities (as referred to above) and to plan and execute events that will improve the community's awareness of job opportunities and the potential to supply goods and services. The following provides a summary of some of the tactics that will be used to deliver on the Community Benefits objectives:

- Meet and partner with local workforce networks;
- Schedule consultations to build awareness of and promote the Community Benefits Plan;
- Skills development and social purchasing workshops in partnership with local agencies;
- Quarterly updates on employment opportunities and procurement needs;
- Project Co staff to participate in volunteer initiatives that support the local community;
- Project Co staff training sessions to ensure all staff are aware of the Community Benefits obligations; and
- Media relations support.

4. Community Benefits Working Group Terms of Reference

No later than 45 days following Financial Close, Project Co will deliver to the Community Benefits Working Group a draft of the terms of reference for the Community Benefits Working Group substantially in the form set out in Schedule 41 – Community Benefits Working Group Terms of Reference of the Project Agreement. Following the delivery of such draft terms of reference, Project Co will use reasonable commercial efforts to finalize such terms of reference with the other members of the Community Benefits Working Group by a date that is no later than 90 days following Financial Close.

5. Community Benefits Reporting

As part of the Community Benefits Plan, Project Co will collect data to track and report progress towards achieving each of the requirements described within the two Community Benefits initiatives outlined in Section 1 above. Project Co will also provide regular program status updates to Contracting Authority and the Community Benefits Working Group.

a) Works Report Community Benefits Update (Monthly)

Until the Substantial Completion Date, in each Works Report, Project Co will provide the reporting in respect of Community Benefits Plan set out in Schedule 34 – Works Report Requirements.

b) Community Benefits Quarterly Update

On the first Business Day of each Contract Year quarter from Financial Close until the Substantial Completion Date, Project Co will provide a written quarterly progress update report to Contracting Authority and the Community Benefits Working Group on the status of the implementation of the Community Benefits Plan (each is a “**Community Benefits Quarterly Update**”). Each Community

Benefits Quarterly Update will include information setting out Project Co's progress toward achieving the objectives set out in the Community Benefits Plan, including an identification of any barriers that prevented Project Co from achieving such objectives.

c) Community Benefits Annual Report

On or about December 15 of each Contract Year until the Substantial Completion Date (on which date the last submission under Section 18.15(c) of the Project Agreement shall be made), Project Co shall provide an annual report to Contracting Authority and the Community Benefits Working Group on the status of the implementation of the Community Benefits Plan, which reports must include (pursuant to Section 18.15(c) of the Project Agreement):

- detailed information setting out Project Co's progress toward achieving the objectives set out in the Community Benefits Plan, including an identification of any barriers that prevented Project Co from achieving such objectives; and
- an assessment of lessons learned on the Project.

d) Edits to Community Benefits Updates and Reports

Project Co will amend its Community Benefits Plan, any Community Benefits Annual Report or any Community Benefits Quarterly Update as required by Contracting Authority, if, in Contracting Authority's opinion, acting reasonably, Project Co is failing to maximize community benefits opportunities on the Project pursuant to the Community Benefits Plan.

e) Release of the Community Benefits Updates and Reports

It is understood that Contracting Authority may, in its sole discretion, release the Community Benefits Plan and any or all Community Benefits Quarterly Updates and Community Benefits Annual Reports to the public or require Project Co to publish for the public the Community Benefits Plan or any and all Community Benefits Quarterly Updates and Community Benefits Annual Reports. None of the Community Benefits Plan, any Community Benefits Quarterly Update or any Community Benefits Annual Report (or any part thereof) will be considered Confidential Information under the Project Agreement.

6. Project Co Community Benefits Lead

Project Co has appointed Chad Logan, Senior Project Manager for the Project, as the Project Co Community Benefits Lead. As the Project Co Community Benefits Lead, Chad will:

- co-chair the Community Benefits Working Group with a representative of Contracting Authority
- lead the performance of Project Co's obligations under and ensure Project Co's compliance with the obligations of Project Co set out in Sections 18.13 to 18.15 (inclusive) of the Project Agreement, and Schedule 39 – Community Benefits of the Project Agreement; and
- until the Substantial Completion Date, liaise with, amongst other persons, Contracting Authority, members of the Community Benefits Working Group, other Stakeholders and other local community groups in respect of the Community Benefits.

Chad Logan has more than five years' experience with major construction projects of a similar size and complexity to the Project and experience relevant to the scope of work required by Sections 18.13 to 18.15 (inclusive) of the Project Agreement, and Schedule 39 – Community Benefits of the Project Agreement. Such experience includes working and collaborating with stakeholders, clients, local businesses and communities, and local trades. As it relates to the experience relevant to the scope of work required by Sections 18.13 to 18.15 (inclusive) of the Project Agreement and Schedule 39 – Community

Macdonald Block Reconstruction Project

Benefits of the Project Agreement, Chad has participated in the following as required for communication of construction related activities.

- Working with local employers/suppliers;
- Stakeholder engagement; and
- Project visits/tours by external groups.

To assist Chad in the development, implementation, and monitoring of the Community Benefits program, additional resources will be provided as required. These individuals have extensive experience in dealing with local employers, unions and workers, schools, media, and more. Here is a summary of their experience:

Chris Robinson, Director of Labour Relations for Eastern Canada, PCL Construction Canada Inc. (“PCL”)

Chris has been Director of Labour Relations for Eastern Canada at PCL for the past seven years. Prior to his position with PCL, Chris held the position of Labour Relations Officer at the General Contractors Section, Toronto for five years. Chris also has education credentials relevant to the requirements related to the community benefits; he studied at the University of Toronto Mississauga – Honours, Industrial Relations.

Chris is responsible for building and maintaining relationships with trade unions, employer associations, labour, education, and other organizations. Chris is currently an active participant and/or member of the following employer associations:

- General Contractors Section, Toronto
- Construction Labour Relations Association of Ontario
- Ontario Construction Secretariat
- Construction Employer Coordinating Council of Ontario (CECCO)

In addition, Chris is currently the Chair of the Labourers International Union of North America Employer Bargaining Committee and sits on the employer bargaining committees for the United Brotherhood of Carpenters and Joiners, and the International Union of Operating Engineers.

His volunteering experience includes:

- Board of Trustees: College of Carpenters & Allied Trades
- Board of Trustees: LiUNA Local 506 Health & Welfare Training Fund
- Board of Trustees: Carpenters International Training Fund
- Board of Directors: General Contractors’ Section, Toronto

Liisa Morley, Senior Communications Specialist, PCL

Liisa is a Senior Communications Specialist at PCL Constructors Canada Inc. (Toronto). She is a trusted public relations advisor with over 15 years of professional experience, and a track-record of developing engaging content for high-profile projects to tell stories in a way that inspires audiences, by bringing strategic priorities to life through transparent communications.

With over 5 years’ experience at PCL, Liisa has overall responsibility for PCL’s Toronto’s public relations and communications portfolio, including project and client communications support, internal communications, community relations, publicity, media relations, issues and crisis communications, social media, and awards.

Liisa currently fulfills the Schedule 18 design-build agreement communications requirements for both the Mackenzie Vaughan Hospital and the CAMH Phase 1C Redevelopment projects in collaboration with Infrastructure Ontario and will perform this role for the Project.

Prior to her position with PCL, Liisa fulfilled a multi-faceted role that spanned from RFQ, through to transition and day one operations over a six-year period for one of Infrastructure Ontario's first full DBFM projects. In her role with the Niagara Health System's St. Catharines Site and Walker Family Cancer Centre project, Liisa was focused on achieving project objectives and outcomes, including project management, stakeholder/government/community/public relations, corporate communications, issues and event management - including tours and open houses.

In addition, Liisa has government ministry support experience, having consulted as a communications advisor for the Hamilton Niagara Haldimand Brant (HNHB) Local Health Integration Network that plans, integrates and funds local health care and improved access and patient experience.

Liisa's previous project experience with multidisciplinary stakeholders in the P3 environment is an asset that helps to support successful communications programs in collaboration with her peers.

SCHEDULE 40

[INTENTIONALLY DELETED]

SCHEDULE 41

FORM OF COMMUNITY BENEFITS WORKING GROUP TERMS OF REFERENCE
(the “Community Benefits Working Group Terms of Reference”)1. **Context**

The Macdonald Block Reconstruction Project (the “**Project**”) involves the extensive reconstruction of the Macdonald Block Complex which includes the Macdonald Block podium and the Hearst, Hepburn, Mowat and Ferguson Towers. The Macdonald Block Complex has never undergone a major renovation and the building’s core systems have reached the end of their useful life and must now be replaced.

The reconstructed Macdonald Block Complex will:

- (a) be an efficient, accessible and environmentally responsible workplace that will continue to serve as a critical hub of Ontario government operations for years to come; and
- (b) reduce the cost of government operations through reduced operating costs, lower energy and capital maintenance expenditures, and the reduction of third-party leases across the downtown Toronto core.

The Project includes two types of community benefits initiatives: workforce development and social procurement (collectively, the “**Community Benefits**”).

2. **Mandate**

- (a) The Project Agreement between Her Majesty the Queen in right of Ontario as represented by the Minister of Government and Consumer Services, as represented by Ontario Infrastructure and Lands Corporation (“**Contracting Authority**”) and Fengate PCL Progress Partners MBR LP [REDACTED] (“**Project Co**”) in respect of the reconstruction of the Macdonald Block Complex includes a provision for the establishment of a Community Benefits Working Group.
- (b) The Community Benefits Working Group will include Project and community stakeholders who meet regularly to support, implement and promote the Community Benefits Plan until the Substantial Completion Date.
- (c) The Community Benefits Working Group’s collaborative approach will include finalizing the terms of reference, membership, and the roles and responsibilities of its members no later than 90 days following Financial Close.
- (d) Consistent with the requirements of the Project Agreement, the purpose of the Community Benefits Working Group is to:
 - (i) provide a regularly scheduled forum for dialogue, collaboration, and, as required, issues resolution;

- (ii) facilitate communication, coordination and relationship-building between Project Co and Project stakeholders;
- (iii) outline clearly defined roles and responsibilities, and opportunities for collaboration, for each of the Community Benefits;
- (iv) to define work plan priorities for each of the Community Benefits; and
- (v) provide transparent oversight for monitoring progress and tracking results towards the successful implementation of the Community Benefits Plan.

3. Membership (Primary Partners)

- (a) The Community Benefits Working Group will be comprised of members from the following organizations:
 - (i) Project Co, MGCS, MTCU, Contracting Authority, and community stakeholders, including but not limited to, community groups, labour organizations, workforce development groups, or social and employment services providers identified by Contracting Authority.
- (b) The Project Co Community Benefits Lead shall co-chair the Community Benefits Working Group with a representative of Contracting Authority who is designated by Contracting Authority from time to time.

4. Responsibilities of Members

- (a) The members of the Community Benefits Working Group will fulfill the following responsibilities:
 - (i) Participate, as required, in meetings, initiatives and activities, where appropriate, related to the Project’s Community Benefits requirements;
 - (ii) Possess an understanding of local issues, values and aspirations, and an ability to cooperate and work as a team;
 - (iii) Seek tangible means to engage key stakeholders involved directly or indirectly with its work;
 - (iv) At all times act in good faith, with honesty and integrity and apply skills and expertise with diligence and care; and
 - (v) Refer all media inquiries to Contracting Authority.

5. Meeting Procedures

- (a) The Community Benefits Working Group shall meet monthly until the date the Community Benefits Plan is approved by Contracting Authority under the Project Agreement and, thereafter, quarterly, or more often as required, until the Substantial Completion Date.

- (b) The co-chairs of the Community Benefits Working Group are responsible for the conduct of meetings, ensuring that all voices and views are heard and procedures are consistent with this Community Benefits Working Group Terms of Reference.
- (c) Meeting agendas and appropriate materials will be provided to all members in advance of each meeting. Meeting minutes will be recorded and circulated to all members following each meeting.
- (d) As required, smaller working groups will be established.
- (e) The members of the Community Benefits Working Group will strive to make recommendations that support the Community Benefits requirements by consensus, which means general agreement of all members. Contracting Authority reserves the right to provide final direction consistent with commitments in the Community Benefits Plan and obligations to achieve Community Benefits on the Project.

6. **Accountability, Results and Transparency**

- (a) The Community Benefits Working Group agrees to ensure all relevant information and plans related to the effectiveness of the Community Benefits Working Group are shared in an open, timely and transparent manner.
- (b) The Community Benefits Working Group will receive quarterly and annual updates on the status of the implementation of the Community Benefits Plan and, subject to the Project Agreement, will strive to collaboratively determine if that information will be made public.
- (c) Consistent with the requirements of the Project Agreement, the following may be made public: the Community Benefits Plan, Community Benefits Quarterly Updates and Community Benefits Annual Reports.
- (d) The committee can decide if it will make this Community Benefits Working Group Terms of Reference public.
- (e) The committee will not make public information considered by Contracting Authority to be commercially confidential.

7. **Conflict of Interest**

- (a) Each member of the Community Benefits Working Group shall disclose to the co-chairs any perceived, potential or actual conflict of interest between him/herself or the organization she/he is representing and his/her responsibilities as a member of the Community Benefits Working Group.
- (b) In doing so, such member will reclude him/herself from the Community Benefits Working Group discussion and decision-making process on issues where a conflict of interest is determined to exist.
- (c) Decision making regarding a conflict of interest related to the activities of the Community Benefits Working Group rests with Contracting Authority.

8. **Remuneration**

- (a) There will be no remuneration provided to any member for participating on the Community Benefits Working Group.

9. **Annual Review of Community Benefits Working Group Terms of Reference**

- (a) This Community Benefits Working Group Terms of Reference shall be effective by a date that is no later than 90 days following Financial Close and will be reviewed on an annual basis by the Community Benefits Working Group until the Substantial Completion Date. Such review will ensure the Community Benefits Working Group Terms of Reference are at all times relevant to the work plan of the Community Benefits Working Group.
- (b) Contracting Authority must approve of all changes to this Community Benefits Working Group Terms of Reference.
- (c) Notwithstanding anything to the contrary in this Community Benefits Working Group Terms of Reference, nothing in this Community Benefits Working Group Terms of Reference varies, amends, supplements, restates or otherwise modifies the Project Agreement.