



**PROJECT AGREEMENT
(Execution Version)**

**ONTARIO PROVINCIAL POLICE
MODERNIZATION PHASE 2 PROJECT**

CONFIDENTIAL

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SCHEDULES

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Schedule 2	- Completion Documents
Schedule 3	- INTENTIONALLY DELETED
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Construction Contractor's Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Subcontractor's Direct Agreement
Schedule 8	- Project Co Parties
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Design Quality Plan and Construction Quality Plan
Schedule 12	- Performance Guarantee of Construction Guarantor
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Outline Commissioning Program
Schedule 15	- Output Specifications
Schedule 16	- Title Encumbrances
Schedule 17	- Works Report Requirements
Schedule 18	- Communications
Schedule 19	- Works Scheduling Requirements
Schedule 20	- INTENTIONALLY DELETED
Schedule 21	- INTENTIONALLY DELETED
Schedule 22	- Variation Procedure
Schedule 23	- Compensation on Termination
Schedule 24	- Financial Model
Schedule 25	- Insurance and Performance Security Requirements
Schedule 26	- Record Provisions
Schedule 27	- Dispute Resolution Procedure
Schedule 28	- Contractor Site Specific Safety Manual Requirements
Schedule 29	- Refinancing
Schedule 30	- Insurance Trust Agreement
Schedule 31	- Project Co Information
Schedule 32	- Trust Account Agreement
Schedule 33	- List of Facilities
Schedule 34	- List of Sites
Schedule 35	- Reports
Schedule 36	- Construction Procedures Agreement

THIS PROJECT AGREEMENT is entered into as of the 16th day of August, 2018

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Infrastructure as represented by the 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:

BIRD CAPITAL OMP PROJECT CO INC., [REDACTED]

(“Project Co”)

WHEREAS:

- A. MCSCS, with the assistance of Contracting Authority, wishes to procure the design, construction and financing of the Facilities (the **“Project”**).
- B. Contracting Authority commenced the procurement process for the Project, as hereinafter defined, by issuance of a Request for Qualifications for the Project on January 26, 2017.
- C. 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 Works.
- D. 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”**).
- E. 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.

- F. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
- G. 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	-	INTENTIONALLY DELETED
Schedule 4	-	Lenders’ Direct Agreement
Schedule 5	-	Construction Contractor’s Direct Agreement
Schedule 6	-	Independent Certifier Agreement
Schedule 7	-	Subcontractor’s Direct Agreement
Schedule 8	-	Project Co Parties
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Design Quality Plan and Construction Quality Plan
Schedule 12	-	Performance Guarantee of Construction Guarantor
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
Schedule 16	-	Title Encumbrances
Schedule 17	-	Works Report Requirements
Schedule 18	-	Communications
Schedule 19	-	Works Scheduling Requirements
Schedule 20	-	INTENTIONALLY DELETED
Schedule 21	-	INTENTIONALLY DELETED
Schedule 22	-	Variation Procedure

Schedule 23	-	Compensation on Termination
Schedule 24	-	Financial Model
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Contractor Site Specific Safety Manual Requirements
Schedule 29	-	Refinancing
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Trust Account Agreement
Schedule 33	-	List of Facilities
Schedule 34	-	List of Sites
Schedule 35	-	Reports

- (c) The documents comprising this Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co's proposal which are 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 Works, 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.
- (g) The organization of the Output Specifications into divisions, sections and parts shall not control Project Co in dividing the Works among the Project Co Parties or in establishing the extent of the Works to be performed by a trade.

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 15 – Output Specifications;
 - (vii) Schedule 25 – Insurance and Performance Security Requirements;
 - (viii) Schedule 22 – Variation Procedure;
 - (ix) Schedule 10 – Review Procedure;
 - (x) Schedule 14 – Outline Commissioning Program;
 - (xi) Schedule 11 – Design Quality Plan and Construction Quality Plan;
 - (xii) Schedule 29 – Refinancing;
 - (xiii) Schedule 23 – Compensation on Termination;
 - (xiv) Schedule 26 – Record Provisions;
 - (xv) the other Schedules in the order in which they are listed in Section 1.1(b); and
 - (xvi) 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 Works, the provision that applies to the specific part of the Works shall govern for that specific part of the Works.
- (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 ambiguities, conflicts or inconsistencies between this Project Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail. Notwithstanding the forgoing, if there is any right or remedy in favour of Contracting Authority set out in the Lenders’ Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency.

1.4 Legal Requirements

- (a) Whenever standards of Applicable Law differ, the most stringent standards shall govern.

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1.1, 1.2, 1.4, 2.1, 2.2, 2.3, 2.4, 3.1, 4.15 to 4.21, 5 to 15, 16.5, 17 to 23, 25 to 29, and 39 to 50 and Schedules 1, 2, 8 to 13, 16, 18, 19, 22, and 24 to 28 of this Project Agreement will come into effect on the date of this Project Agreement (“**Commercial Close**”). All other provisions and schedules will come into effect only on Financial Close.

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 Letters of Credit from multiple Letter of Credit Providers in accordance with Section 9.1(2) of the Request for Proposals, Project Co acknowledges and agrees that:
 - (i) Contracting Authority may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified rateable amount;

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

2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to Contracting Authority drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the Financial Close Target Date:
 - (i) Project Co shall deliver to Contracting Authority the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
 - (ii) Contracting Authority shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If Project Co fails to deliver to Contracting Authority any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Contracting Authority of its obligations under Section 2.3(b)(ii)) and Contracting Authority does not waive such requirement, Contracting Authority will be entitled to draw on the Standby Letter of Credit and to retain the lesser of (A) the full amount of the Standby Letter of Credit, and (B) the total of all costs reasonably incurred by Contracting Authority to procure and enter into binding agreements with another person or party to undertake the Project, and 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. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Contracting Authority as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not Contracting Authority incurs or mitigates its damages, and that Contracting Authority shall not have any obligation to mitigate any such damages.

- (d) If Contracting Authority fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written notice having immediate effect.

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) the 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 (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 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 and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals process.

3. GUARANTEED PRICE

3.1 Guaranteed Price and Adjustments

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST, is [REDACTED], and is equal to the sum of the Cost of the Works and the Cost of the Financing. The Cost of the Works and the Cost of the Financing are as set out in the Financial Model.
- (b) Project Co represents and warrants that the Project Debt Interest Cost is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted once on, or within the 2 Business Days immediately prior to, Financial Close on the basis of the actual increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward in the Interest Reference Rate as compared to the Interest Reference Rate as at the RFP Submission Deadline.
- (c) The Parties:
 - (i) acknowledge that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 3.1(b) as at the date set out in Section 3.1(b); and
 - (ii) acknowledge and agree that subject to adjustments made in accordance with the provisions of this Project Agreement, the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and the final adjusted Cost of the Works as of the date set out in Section 3.1(b).
- (d) Subject to the provisions of Section 3.1(c), the Parties agree that the Guaranteed Price will not be subject to adjustment despite changes in the Works, unless such changes in the Works arise pursuant to a Variation Confirmation. The Parties further agree that the Guaranteed Price will only be adjusted where the Project Agreement specifically and expressly refers to an adjustment to the Guaranteed Price, and no claim for an adjustment to the Guaranteed Price on any legal or equitable basis outside of the specific and express rights to an adjustment of the Guaranteed Price set out in the Project Agreement will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Variation Confirmation under Schedule 22 – Variation Procedure.

3.2 Cash Allowances

- (a) Project Co shall open the Cash Allowance Account, deposit the Cash Allowance Amount into the Cash Allowance Account on the dates and in the amounts set out in the Financial Model and shall manage the Cash Allowance Account in accordance with Section 3.2(b).
- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:
 - (i) Project Co will hold and manage all monies in the Cash Allowance Account in trust for, for the benefit of and as directed by Contracting Authority;

- (ii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account and will be for the benefit of Contracting Authority;
 - (iii) Project Co shall provide a reconciliation of the Cash Allowance Account to Contracting Authority on a monthly basis;
 - (iv) subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section 3.2(a), Contracting Authority shall make deposits into the Cash Allowance Account in the event that the payment requirements for Cash Allowance Items, including applicable HST, for invoices approved by Contracting Authority that exceed the Cash Allowance Amount, for clarity, determined on an aggregate basis across all Cash Allowance Items, prior to approving any such invoices;
 - (v) if, on the earlier of (A) Final Completion and (B) the Termination Date, there exists a positive balance in the Cash Allowance Account, such balance will be the property of Contracting Authority and will be paid by Project Co to Contracting Authority or as Contracting Authority directs; and
 - (vi) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (c) Project Co shall provide monthly reports to the Contracting Authority Representative that include the following information:
- (i) itemized and aggregate amounts committed to date for all Cash Allowance Items;
 - (ii) itemized and aggregate amounts spent to date for all Cash Allowance Items; and
 - (iii) the projected cost of each remaining Cash Allowance Item and the projected effect of such costs on the Cash Allowance Account.
- (d) In addition to the monthly reports described in Section 3.2(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;
 - (ii) evidence that the commitment by Project Co to purchase 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 3.2. If Contracting Authority withholds its approval pursuant to this Section 3.2(e) and subsequently receives the information that Contracting Authority requires, acting reasonably, to discharge its obligations under this Section 3.2, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, Contracting Authority's approval for the invoices set out in the aforementioned Request for Payment Approval.
- (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 Amount will be deposited and the Cash Allowance Account will be managed 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.

4. PAYMENT

4.1 General

- (a) Subject to the provisions of the Project Agreement (including, for clarity Section 3.1(d)) and in accordance with and subject to Applicable Law respecting holdbacks, Contracting Authority shall make the payments set out in this Article 4.
- (b) For the purpose 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 other details of the transfer.

4.2 Acknowledgement by Project Co

- (a) Project Co acknowledges and agrees with Contracting Authority that Contracting Authority is not responsible for the payment of any base progress payments pursuant to the Design and Construction Contract nor any legislative holdbacks in respect thereof.

4.3 Lump Sum Payments

- (a) Subject to Sections 4.4(a) and 4.9, Contracting Authority covenants and agrees to pay to Project Co the Substantial Completion Payment and the applicable HST on the Substantial Completion Payment Date.
- (b) On the later of the Substantial Completion Date and the date on which Project Co has completed the procurement, installation and commissioning of all Equipment and Existing Equipment in accordance with Section 21, Contracting Authority shall pay to Project Co the Not-In-Contract Equipment Fee.
- (c) On the later of the Substantial Completion Date and the date that is 2 Business Days following the date upon which Project Co has completed the final Transition (including, for greater certainty, the transfer and installation of all Existing Equipment) in accordance with Section 24.17, Contracting Authority shall pay to Project Co the Transition Services Fee.

4.4 Directions of Payments

- (a) Project Co hereby irrevocably directs Contracting Authority to make any Substantial Completion Payment, together with applicable HST, to the Lenders' Agent or as the Lenders' Agent may direct. Contracting Authority shall pay the Substantial Completion Payment as directed by Project Co in accordance with this Section 4.4(a) and shall not accept any redirection without the consent of the Lenders' Agent. Contracting Authority will pay the amounts that Project Co is entitled to hereunder once the conditions for payment set out in this Project Agreement, if any, have been satisfied. Project Co acknowledges and agrees that payment by Contracting Authority of the Substantial Completion Payment to the Lenders' Agent in accordance with this Section 4.4(a) constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Substantial Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

4.5 Payment of Legislative Holdback

- (a) Subject to Section 4.9, Contracting Authority covenants and agrees with Project Co to pay to Project Co the Legislative Holdback on the Legislative Holdback Payment Date or

pay to such party as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. Contracting Authority agrees to pay the Legislative Holdback as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by Contracting Authority of the Legislative Holdback in accordance with this Section 4.5 as Project Co may direct, constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Legislative Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

- (b) After the issuance of the Substantial Completion Certificate under Section 24.4, Project Co shall:
 - (i) submit an application for payment of the Legislative Holdback amount;
 - (ii) submit a written request for release of the Legislative Holdback, including a declaration that no written notice of lien arising in relation to the performance of the Works has been received by it that has not been withdrawn by the lien claimant;
 - (iii) submit a Statutory Declaration CCDC Form 9A (2001); and
 - (iv) submit an original WSIB Certificate of Clearance.
- (c) After the later of (i) the receipt of the documents set out in Section 4.5(b), and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the CLA, the Independent Certifier shall issue a certificate for payment of the Legislative Holdback.
- (d) Prior to the date of the release of the Legislative Holdback, Project Co shall have removed from the Sites, the Facilities and the Existing Facilities all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion or to correct any remaining Minor Deficiencies.
- (e) Subject to the provisions of Section 17.3 and the removal of claims for lien preserved or perfected pursuant to the CLA arising in relation to the performance of the Works, the Legislative Holdback amount authorized by the certificate for payment of the Legislative Holdback amount is due and payable on the second Business Day following the receipt of the certificate for payment of the Legislative Holdback amount pursuant to Section 4.5(c).

4.5A Payment of Finishing Holdback

- (a) Subject to Section 4.9, Contracting Authority covenants and agrees with Project Co to pay to Project Co the Finishing Holdback on the Finishing Holdback Payment Date or pay to such party as otherwise directed by Project Co and shall not accept any redirection

without the consent of the person to whom payment is directed. Contracting Authority agrees to pay the Finishing Holdback as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by Contracting Authority of the Finishing Holdback in accordance with this Section 4.5A(a) as Project Co may direct, constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Finishing Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payment under Section 7 of the CLA pursuant to Section 10 of the CLA.

- (b) Upon the date Project Co considers that the Finishing Holdback in respect of an applicable component of the Works may be released, Project Co shall:
 - (i) submit an application for the payment of the Finishing Holdback amount;
 - (ii) submit a written request for the Finishing Holdback, including a declaration that no written notices of lien arising from the performance of the Works have been received by it;
 - (iii) submit a Statutory Declaration CCDC 9A; and
 - (iv) submit an original WSIB Certificate of Clearance.
- (c) After the later of (i) the receipt of the documents set out in Section 4.5A(b), and (ii) the date that all liens that may have been claimed against the Finishing Holdback in respect of the applicable component of the Works have expired as provided in Part V of the CLA, or have been satisfied, discharged or provided for under Section 44 of the CLA, the Independent Certifier shall issue a certificate for payment of the Finishing Holdback.
- (d) Subject to the provisions of Section 17.3 and the removal of claims for liens preserved or perfected pursuant to the CLA arising in relation to the performance of the Works, the Finishing Holdback amount authorized by the certificate for payment of the Finishing Holdback amount pursuant to Section 4.5A(c) is due and payable by Contracting Authority on the second Business Day following the receipt of such certificate for payment.

4.6 Completion Holdback

- (a) Contracting Authority covenants and agrees with Project Co to pay to Project Co (or to such other person as Project Co otherwise directs) the Completion Holdback, together with all interest accrued thereon and applicable HST, in accordance with and on the date set out in Section 24.10(b) and to not accept any redirection without the consent of any such other person to whom payment is directed. Project Co acknowledges and agrees that payment by Contracting Authority of the Completion Holdback together with all interest accrued thereon and applicable HST, in accordance with this Section 4.6(a) constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting

Authority's obligation to pay the Completion Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

4.7 INTENTIONALLY DELETED

4.8 Establishment of Trust Account and Manner of Payment

- (a) Contracting Authority agrees that it will make commercially reasonable efforts to establish the Trust Account in conjunction with Project Co on or before Financial Close, but if not so established, then within 90 days of Financial Close. All costs and expenses associated with the establishment, maintenance and administration of the Trust Account shall be borne solely by Project Co.

4.9 Compensation on Termination

- (a) If this Project Agreement is terminated pursuant to Sections 34.3(a), 35.2(a)(ii), 36.1, 36.2 or 36.3, then:
 - (i) Schedule 23 - Compensation on Termination shall apply and Contracting Authority shall pay Project Co any applicable compensation on termination; and
 - (ii) the provisions of Sections 4.3 through 4.6, inclusive, shall no longer apply.
- (b) Project Co hereby irrevocably directs Contracting Authority to make any Compensation Payment to the Lenders' Agent, or as the Lenders' Agent may direct. Contracting Authority shall pay the Compensation Payment as directed by the Lenders' Agent and shall not accept any redirection without the consent of Lenders' Agent. Contracting Authority will pay the Compensation Payment in accordance with the provisions of Schedule 23 – Compensation on Termination. Project Co acknowledges and agrees that payment by Contracting Authority of the Compensation Payment to the Lenders' Agent in accordance with this Section 4.9 constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Compensation Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

4.10 Payment Due under Insurance Policies

- (a) In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made in accordance with the provisions of the Insurance Trust Agreement.

4.11 HST

- (a) Contracting Authority covenants and agrees to pay to Project Co the HST that may be exigible with respect to any payments made by Contracting Authority to Project Co hereunder.

4.12 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, any amounts (including, without limitation, any amounts payable in accordance with Article 44) that (A) are due to Contracting Authority by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to the Performance Guarantee of the Construction Guarantor 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 Article 44) 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.

4.13 Effect of Payment

- (a) Subject to Section 38.2, 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.

4.14 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.

4.15 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 Sites, the Facilities 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.

4.16 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 to the extent not already addressed in this Agreement.

4.17 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 4.17, 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 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 4.17, 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 to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

4.18 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 in accordance with this Project Agreement and payable by Contracting Authority to Project Co from time to time.

4.19 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.

4.20 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 to have (or result in Contracting Authority 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 Ancillary Document.

4.21 Taxes – Indemnity

- (a) If (i) Project Co becomes a Non Resident, or (ii) Contracting Authority 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 under the Project Agreement or under any of the Project Documents, then Contracting Authority 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 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 under this Project Agreement or under any other Ancillary 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 is or becomes required by Applicable Law to deduct and 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 under the Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless Contracting Authority for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by Contracting Authority in respect of any amounts paid or credited by Contracting Authority to Project Co or any Project Co Party under this Project Agreement or under any other Ancillary Document as a result of either of the foregoing items less any amount withheld or deducted by Contracting Authority 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 4.12 against any amounts owing under this indemnification.

5. SCOPE OF AGREEMENT

5.1 Scope of Agreement

- (a) Project Co shall undertake the Project and perform the Works 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.

6. REPRESENTATIONS AND WARRANTIES

6.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Contracting Authority that as of the date of this Project Agreement:
- (i) Project Co is a corporation incorporated and validly existing under the laws of the Province of Ontario, is in good standing with the Ministry of Government and Consumer Services of Ontario with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (ii) **[REDACTED]**, collectively, have extensive experience and are knowledgeable in the design and construction of infrastructure projects similar to the Project in scale, scope and complexity and have the required ability, experience, skill and capacity to perform the Works in a timely and professional manner as set out in this Project Agreement;
 - (iii) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
 - (iv) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
 - (v) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
 - (vi) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:

- (A) its constating, formation or organizational documents, including any by-laws;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no Project Co Event of Default has occurred and is continuing;
 - (viii) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;
 - (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co’s knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
 - (x) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of Contracting Authority, and, to Project Co’s knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Works in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
 - (xi) Project Co is able to meet its obligations as they generally become due;
 - (xii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is **[REDACTED]**;
 - (xiii) the Scheduled Phase Completion Dates are each realistic dates and are achievable by Project Co performing the Works in accordance with the Project Agreement;
 - (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) Project Co has obtained all necessary Project Co Permits, Licences, Approvals and Agreements required to commence the Works;

- (xvii) the manager or supervisory personnel Project Co has assigned to the Project are highly experienced;
- (xviii) Project Co has a sufficient staff of qualified and competent personnel to replace its designated supervisors, subject to Contracting Authority's approval, in the event of death, incapacity or resignation;
- (xix) Project Co and certain of the Project Co Parties have conducted inspections of the Sites prior to Commercial Close and an investigation and examination of the Project Agreement, the Background Information and any other documents made available to Project Co by Contracting Authority so as to ascertain the nature or location of the Works and the Sites, the physical conditions of the Sites and protocols, rules and regulations if any, conditions relating to the transportation, handling and storage of materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the Works;
- (xx) Project Co has secured the Financing and is in a position to complete the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing financing for projects similar to the Project;
- (xxi) 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 or in relation to the operation, management and ownership of the Project;
- (xxii) to the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project; and
- (xxiii) 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
- (xxiv) 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.

6.2 Contracting Authority Representations and Warranties

- (a) Contracting Authority represents and warrants to Project Co that as of the date of this Project Agreement:
- (i) Contracting Authority is a non-share capital corporation incorporated and validly existing under the laws of the Province of Ontario, is in good standing with the Ministry of Government Services (Ontario) with respect to the filing of annual reports and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (ii) Contracting Authority has the requisite power, authority and capacity to execute, deliver and 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;
 - (iii) no steps or proceedings have been taken or are pending to supersede or amend Contracting Authority's constating documents, letters patent or by-laws in a manner that would impair or limit its ability to perform its obligations under this Project Agreement;
 - (iv) 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; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
 - (v) the execution, delivery, and performance by Contracting Authority of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating or organizational documents;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;

- (vi) no Contracting Authority Event of Default has occurred and is continuing;
- (vii) to the knowledge of Contracting Authority, there are no actions, suits, proceedings, or investigations pending or threatened (in writing) against Contracting Authority or, to Contracting Authority's knowledge, any Contracting Authority Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which Contracting Authority has received written notice and 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 Contracting Authority or in any impairment of its ability to perform its obligations under this Project Agreement, and Contracting Authority 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;
- (viii) Contracting Authority is able to meet its obligations as they generally become due;
- (ix) Contracting Authority has rights of use and access to, on and over the Sites and the Facilities 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 16.1;
- (x) Contracting Authority is the registered owner of the Sites and has good title thereto in fee simple, subject only to the Title Encumbrances; and
- (xi) the contemplated uses of the Facilities are permitted by the existing official plan, zoning and other land use restrictions.

7. BACKGROUND INFORMATION

7.1 No Liability

- (a) Except as expressly provided in Sections 7.4, 18.2 and 18.3, none of Contracting Authority, any Contracting Authority Party or any Government Entity shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from Contracting Authority, any Contracting Authority Party or any Government Entity, 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.

7.2 No Warranty

- (a) Except as expressly provided in Sections 7.4, 18.2 and 18.3:
 - (i) neither Contracting Authority nor any Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and,

specifically (but without limitation), neither Contracting Authority nor any Government Entity warrants that the Background Information represents all of the information in its possession or power (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 Government Entity 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.

7.3 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 7.4, 18.2 and 18.3, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against Contracting Authority, any Contracting Authority Party or any Government Entity (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 ground.

7.4 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 Contracting Authority Party 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 Works or materially adversely affects Project Co's cost of performing the Works, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) For the purposes of Section 7.4(a), “to the actual knowledge of Contracting Authority” means to the actual knowledge of the president and chief executive officer of Contracting Authority or the project manager – project delivery for the Project.

8. PROJECT DOCUMENTS

8.1 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. 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.

8.2 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 25A.3, 47.3 and 48.2 or otherwise to prevent or 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 to 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, if any such breach (or

waiver, exercise or lapse) would 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 8.2(a)(i),

without the prior written consent of Contracting Authority, not to be unreasonably withheld or delayed, provided that, where consent is requested pursuant to Section 8.2(a)(i) or 8.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 8.2(a)(i) or 8.2(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 8.2(a)(i), or the entering into of any agreement replacing all or part of any Ancillary Document as described in Section 8.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 47.3.

- (b) 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 delivered or received by Project Co under any of the Ancillary Documents.

8.3 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 the liability of Contracting Authority whether actual or potential, unless such action is a Permitted Borrowing or a Refinancing effected in accordance with the provisions of Schedule 29 - Refinancing.

8.4 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.

9. CONTRACTING AUTHORITY RESPONSIBILITIES

9.1 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) obtain, maintain, and, as applicable, renew Contracting Authority Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms; and
 - (iv) 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.
- (b) Contracting Authority shall, and shall cause all Contracting Authority Parties to, take reasonable steps to minimize undue interference with the provision of the Works by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of Contracting Authority or any Government Entity in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude Contracting Authority's board of directors from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of Contracting Authority's board of directors from time to time, subject to Section 29.1(b).

10. PROJECT CO RESPONSIBILITIES – GENERAL

10.1 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.

10.2 Complete and Operational Facilities

- (a) Project Co shall design, engineer, construct and commission each Facility so as to provide Contracting Authority with a complete and operational Facility in accordance

with the Output Specifications and the Project Co Proposal Extracts, all in accordance with and subject to the terms of this Project Agreement.

10.3 General Responsibilities and Standards

- (a) Project Co shall, at its own cost and risk, perform and complete the Works:
- (i) in accordance with the Works Schedule and, in this regard, shall commence the Works no later than the day following Financial Close and, subject to adjustment as provided for in the Project Agreement, (A) achieve each Phase Completion by the applicable Scheduled Phase Completion Date; (B) achieve Substantial Completion by the Scheduled Substantial Completion Date; and (C) achieve Final Completion by the Scheduled Final Completion Date;
 - (ii) in compliance with Applicable Law;
 - (iii) so as to satisfy the Output Specifications;
 - (iv) 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;
 - (v) in accordance with Good Industry Practice and to meet the standards followed by professionals, manufacturers, contractors and trades who are experienced in work on infrastructure projects that are comparable to the Facilities;
 - (vi) in a manner consistent with Quality Plans and Project Co Proposal Extracts;
 - (vii) in a timely and professional manner;
 - (viii) with due regard to the health and safety of persons and property;
 - (ix) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of Contracting Authority, any of the Contracting Authority Parties or any Government Entity to comply with Applicable Law; and
 - (x) in accordance with all other terms of this Project Agreement.
- (b) Project Co shall 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.

10.4 Security Clearance Check

- (a) Except as otherwise agreed by the Parties, Project Co shall, and shall cause each Project Co Party and Subcontractor to submit to a Security Clearance Check, which may be

carried out on Contracting Authority’s behalf by OPP or by any other entity selected by OPP in its sole discretion, prior to each Security Clearance Check Date and, in any event, prior to Project Co or such Project Co Party or Subcontractor performing any of the Works. For greater certainty, Project Co shall cause the Chief Security Officer to be the first person to be subject to a Security Clearance Check.

- (b) Except as otherwise agreed by the Parties, Project Co shall cause each Designated Project Co Employee to submit to a Security Clearance Check, which may be carried out on Contracting Authority’s behalf by OPP or by any other entity selected by OPP in its sole discretion, prior to each Security Clearance Check Date and in any event, prior to such Designated Project Co Employee performing any of the Works.
- (c) Contracting Authority shall direct Project Co to submit the information relating to Project Co and each Project Co Party, Subcontractor and Designated Project Co Employee required in order for the Security Clearance Checks to be carried out on Project Co, each Project Co Party, each Subcontractor and each Designated Project Co Employee. Project Co shall, and shall cause all Project Co Parties, Subcontractors and Designated Project Co Employees, to cooperate with OPP or any other entity selected by OPP, as applicable, for the purpose of carrying out the Security Clearance Checks and to obtain all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to Contracting Authority and OPP.
- (d) OPP has implemented an access level system based on the outcome of a Security Clearance Check as follows:

Access Level	Description	Example	Investigation conducted
Access 1	No building access	Paving, landscaping, roofing	Level 2
Access 2	Inside building (escorted)	Any contractor with limited access	Level 2
Access 3	Inside building (unescorted)	Any contractor with full access	Level 2
Access 4	Inside critical/sensitive infrastructure	Computer & phone technicians janitorial staff	Up to Level 5

(each, an “**Access Level**”).

If Project Co or a Project Co Party, Subcontractor or Designated Project Co Employee fails to meet the appropriate minimum Access Level required to perform its respective portion of Project Co’s responsibilities under this Project Agreement or its respective portion of the Works, Project Co or such Project Co Party, Subcontractor or Designated Project Co Employee will be denied access to all classified information or technology of OPP; confidential information of OPP; people, property, information, resources or assets of OPP; and the Facilities and Sites. Project Co and a Project Co Party, Subcontractor or Designated Project Co Employee is unable to perform its respective portion of Project

Co's responsibilities under this Project Agreement or its respective portion of the Works if the Access Level granted to such person does not permit such person to access the Facilities or Sites in any manner.

- (e) Notwithstanding Section 10.4(b), in an Emergency situation only (as determined by Contracting Authority, in its sole discretion) and, where practicable, subject to the prior approval of OPP, a Designated Project Co Employee who has not submitted to a Security Clearance Check in accordance with Section 10.4(b) may be permitted access to any Site and/or in any Facility provided that such person, while on the Site or in the Facility, is accompanied at all times by an OPP representative or employee.
- (f) Contracting Authority may require the renewal of the Security Clearance Check(s) with respect to Project Co or a Project Co Party, Subcontractor or Designated Project Co Employee, any class of Designated Project Co Employee, or all Designated Project Co Employees, at such times and/or intervals as Contracting Authority or OPP may reasonably direct.
- (g) Project Co shall obtain, maintain and renew, as applicable, a written consent and associated release, on prescribed Government of Ontario or OPP forms, as applicable, from Project Co and each Project Co Party, Subcontractor and each Designated Project Co Employee, authorizing the conduct of a Security Clearance Check.
- (h) Subject to Applicable Law, Contracting Authority may, in its sole discretion, direct that any person shall not be:
 - (i) employed or engaged by Project Co or any Project Co Party or Subcontractor with respect to the performance of any of Project Co's responsibilities under this Project Agreement; or
 - (ii) otherwise have access to the Sites, the Existing Facilities or the Facilities,where such person,
 - (A) refuses to submit to a Security Clearance Check or fails to provide the required consent to permit such a check to be conducted; or
 - (B) is otherwise considered to constitute a security risk in the opinion of Contracting Authority and/or OPP.

For greater certainty, Contracting Authority's discretion under Section 10.4(h) shall be interpreted to be absolute and unrestricted, subject to Applicable Law.

- (i) Where Contracting Authority has exercised its rights under Section 10.4(h), the affected person may request,

(i) that a further inquiry be made to determine whether a subsequent pardon or acquittal on appeal has not been properly recorded in the records maintained by CPIC; or

(ii) that the alleged record be verified by way of a fingerprint search through CIPC,

and Contracting Authority may, at its sole discretion, withdraw its objection with respect to any such person who is exonerated or vindicated as a result of that inquiry or verification.

(j) Where a person liable to a Security Clearance Check is not an individual, a Security Clearance Check may be required of each of such person's partners, trustees, members, officers or directors (the "**Individual Representatives**") provided that Contracting Authority will only require a Security Clearance Check if,

(i) the Individual Representative has or will have access to the Sites; or

(ii) the Individual Representative has or will have access to Confidential Information of Contracting Authority, OPP or a Contracting Authority Party.

No later than 10 days following Commercial Close, Project Co shall provide Contracting Authority and OPP with a list of Individual Representatives that are liable to a Security Clearance Check pursuant to this Section 10.4(j), which list shall include a description of the Individual Representative's role on the Project and, if the individual has, or will have, access to Confidential Information of Contracting Authority, OPP or a Contracting Authority Party, a brief description of such Confidential Information, and shall update such list from time to time as Individual Representatives become liable to a Security Clearance Check.

(k) Any Personal Information collected by OPP or by any other entity selected by OPP, in connection with a Security Clearance Check will be used solely for the purposes of processing and conducting the applicable Security Clearance Check, as authorized by the *Police Services Act*, R.S.O., Section 41, as well as provincial and federal privacy legislation. Personal Information collected in connection with a Security Clearance Check shall be destroyed after two years following the date of the applicable Security Clearance Check, and will not be used or retained for any purpose other than to conduct the Security Clearance Check.

(l) The Chief Security Officer shall be responsible for:

(i) liaising directly with all persons subject to a Security Clearance Check pursuant to this Section 10.4;

(ii) gathering all appropriate consent forms, verified identification or other information as may be requested by OPP or Contracting Authority for the purposes of conducting Security Clearance Checks, from all persons subject to a Security Clearance Check;

- (iii) submitting all information collected and required to complete a Security Clearance Check to OPP, or to any other entity selected by OPP in its sole discretion, for processing;
- (iv) receiving results of all Security Clearance Checks from OPP, or from an entity selected by OPP in its sole discretion;
- (v) advising each person subject to a Security Clearance Check of the results and expiry dates of such Security Clearance Check;
- (vi) track the results of each Security Clearance Check, including expiry dates;
- (vii) coordinate appropriate Security Clearance Check renewals, as required by this Section 10.4; and
- (viii) retain original hardcopy consent forms and copies of identification of all persons required to complete a Security Clearance Check for two years, plus the current year.

For clarity, a Security Clearance Check is required to be conducted on the Chief Security Officer in accordance with this Section 10.4.

- (m) At any time when Project Co or a Project Co Party, Subcontractor or Designated Project Co Employee attends a Site, Facility or Existing Facility, OPP may request that Project Co or such Project Co Party, Subcontractor or Designated Project Co Employee, as applicable, present photographic identification to verify such person's identity. The OPP staff requesting identification will query Project Co's or the Project Co Party's, the Subcontractor's or Designated Project Co Employee's, as applicable, name on OPP's internal record management system to verify valid security clearance and the Access Level granted to such person.
- (n) Project Co is responsible for notifying the Chief Security Officer, and the Chief Security Officer shall subsequently notify Contracting Authority and OPP, in writing, (i) as it relates to Project Co or the Construction Contractor, within five Business Days of any of the following changes, or (ii) as it relates to any other Project Co Party, within five Business Days of Project Co becoming aware of any of the following changes, but in any event no later than within 10 Business Days of any of the following changes:
 - (i) changes in ownership, company directors, officers and/or assigned workers, subsequent to the last conducted Security Clearance Check relating to Project Co or the applicable Project Co Party, Subcontractor or Designated Project Co Employee;
 - (ii) new charges that have been laid against Project Co or a Project Co Party, Subcontractor or Designated Project Co Employee including, for clarity, the Chief Security Officer;

- (iii) the disposition of any previously unresolved charges with respect to Project Co or a Project Co Party, Subcontractor or Designated Project Co Employee;
- (iv) any information that Project Co believes may cause the OPP to review any Security Clearance Check; or
- (v) a change in employment status of anyone possessing a valid Security Clearance Check including, for example, circumstances where Project Co or a Project Co Party, Subcontractor or Designated Project Co Employee has been terminated, suspended from, or has otherwise left his or her employment or position.

10.5 Change in Security Clearance Check Requirements

- (a) Any change in Security Clearance Check requirements or further instructions on how to proceed with a Security Clearance Check from those in existence on the RFP Submission Deadline shall, to the extent such change materially adversely interferes with Project Co's ability to perform the Works or materially adversely affects Project Co's cost of performing the Works, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

10.6 Effect of Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party, Subcontractor or Designated Project Co Employee to, ensure that no person who:
 - (i) discloses that he or she has been arrested during the Project Term;
 - (ii) discloses that he or she has been detained for immigration purposes during the Project Term;
 - (iii) discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the completion of a Security Clearance Check; or
 - (iv) discloses that he or she has been charged with an offence that could lead to a Relevant Conviction (in all cases, for which Project Co or a Project Co Party is aware or ought to be aware),

is allowed access to the Sites and/or the Facilities or is allowed to perform any of the Works, without the prior written consent of Contracting Authority, in its sole discretion.

10.7 Notification of Detention, Incarceration or Convictions

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that Contracting Authority is kept advised at all times of any person employed or engaged by Project Co, or any Project Co Party, who, subsequent to the commencement of employment or engagement,

- (i) has been arrested;
- (ii) has been detained for immigration purposes;
- (iii) receives a Relevant Conviction; or
- (iv) is charged with an offence that could lead to a Relevant Conviction (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.

11. PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION

11.1 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of each Facility and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 11.1.
- (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) 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) [REDACTED]% 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**”); and
 - (ii) [REDACTED]% and [REDACTED]% 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) Permit, Licence, Approval and Agreement drawings (phased, if applicable); and
 - (iv) all other documentation required pursuant to Schedule 10 – Review Procedure.

- (d) 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 11.1(c).
- (e) The Design Data and other items listed in Section 11.1(c) 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 Representative 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.
- (f) All design review meetings held by Project Co which Contracting Authority wishes to attend shall be held in Orillia, Ontario unless Contracting Authority otherwise agrees in writing.
- (g) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of a 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 Sites, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (h) Neither Contracting Authority nor any Contracting Authority Party will have any liability:
 - (i) if a document submitted by Project Co and reviewed by Contracting Authority, the Contracting Authority Representative or the Contracting Authority Design Team 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.
- (i) 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 constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.

- (j) 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 Representative as soon as practicable following receipt of a written request from the Contracting Authority Representative.
- (k) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and Contracting Authority may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

11.2 Start-Up Meeting

- (a) Within 10 Business Days of the date of this Project Agreement, 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 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, Existing Equipment, occupant signage and wayfinding;
 - (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Representative to allow sufficient time for review of each Works Submittal by the Contracting Authority Design Team, 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 approach to timing, construction, adjustment and user feedback on required mock-ups; and

- (vii) 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.

11.3 Design 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 user group design workshops (the “**Design Workshops**”) upon the following terms:
 - (i) the Project Co Representative shall arrange the Design Workshops in consultation with the Contracting Authority Representative;
 - (ii) the Parties shall cooperate to develop a reasonable schedule for the Design Workshops respecting user availability issues inherent in an operating a facility similar to the Facilities and the scheduling parameters set out in Section 11.3(a)(iii), and shall incorporate such schedule into the Works Schedule;
 - (iii) Project Co shall circulate to the Contracting Authority Representative an agenda for each of the Design Workshops no later than 10 Business Days prior to the relevant Design Workshop;
 - (iv) the Design Workshops shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
 - (v) Project Co shall maintain minutes of the Design Workshops, including possible design solutions and changes in design, and, within two Business Days after each Design Workshop, Project Co shall provide to the Contracting Authority Representative 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 Workshop;
 - (vi) Contracting Authority and Project Co agree that the subject matter of the 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 Workshops;
 - (vii) 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 19 – Works Scheduling Requirements; and
 - (viii) 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 [REDACTED]% Design Development Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co or Contracting Authority, acting reasonably:
- (i) site plans and storm water management;
 - (ii) floor plans of all levels, including roof and penthouses;
 - (iii) cross-functional issues related to:
 - (A) vertical/horizontal circulation diagrams; and
 - (B) elevator configuration;
 - (iv) envelope systems including:
 - (A) exterior elevations, including materials, finishes and colours; and
 - (B) roofing systems; and
 - (C) wall sections and details;
 - (v) foundation systems including mitigating approach to the water table and methane gas;
 - (vi) steel superstructure and details;
 - (vii) room layouts;
 - (viii) reflected ceiling plans;
 - (ix) interior elevations
 - (x) millwork/modular systems furniture;
 - (xi) door/hardware/security functionality;
 - (xii) Equipment and Existing Equipment, including coordination and other details;
 - (xiii) information/communications strategy;
 - (xiv) security strategy;
 - (xv) audio/visual systems and integration;
 - (xvi) interior and exterior colour/material presentation;
 - (xvii) mechanical and electrical systems, including plant layouts and functionality;

- (xviii) energy efficiency considerations;
- (xix) approach to life cycle and warranties;
- (xx) approach to commissioning;
- (xxi) physical mock-ups for the Contracting Authority Design Team and user review;
and
- (xxii) sustainability considerations and LEED requirements.

Prior to the [REDACTED]% and [REDACTED]% Construction Documents Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co or Contracting Authority, acting reasonably;

- (xxiii) millwork details;
 - (xxiv) ceiling details;
 - (xxv) Equipment and Existing Equipment coordination details;
 - (xxvi) detailed engineering system solutions;
 - (xxvii) signage and wayfinding;
 - (xxviii) energy efficiency considerations;
 - (xxix) approach to life cycle and warranties; and
 - (xxx) approach to commissioning.
- (c) The purpose of the Design Workshops is to facilitate the incorporation of the Contracting Authority Design Team and user input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

11.4 INTENTIONALLY DELETED

11.5 Performance of Design Obligations

- (a) In the design and engineering of the Project, 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, Output Specifications and codes, and as otherwise required by Applicable Law.

11.6 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, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by Contracting Authority pursuant to Schedule 10 – Review Procedure.

11.7 Documents at the Sites

- (a) Project Co shall keep one copy of the current digital files of the Project Agreement, Project Documents, Project Schedule, submittals, reports, Variation Confirmations, Project Co Variation Notices, Variation Directives, partnering documents, records of meetings and all other documents necessary for the administration of the Project at each Site, all in good order and available to Contracting Authority, Lenders' Consultant and Contracting Authority Representative. Project Co shall keep a daily log available to Contracting Authority, Lenders' Consultant and Contracting Authority Representative at all times.
- (b) Project Co shall, where practical, keep one copy of current standards and manufacturers' literature specified in the Project Documents at each Site in good order and available to Contracting Authority Representative and Lenders' Consultant and their representatives for the duration of the Works.

11.8 General Construction Obligations

- (a) Without limiting Section 10.3:
 - (i) Project Co is solely 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 Facilities, and all other performance of the Works.
 - (ii) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
 - (A) construct the Works diligently, expeditiously and in a thorough and workman-like manner;

- (B) ensure that no works other than the Works under this Project Agreement are constructed on the Sites or the Facilities by Project Co, any Project Co Party or any person for whom Project Co is responsible at law;
 - (C) protect the Works from all of the elements, casualty and damage;
 - (D) in respect of plant, equipment, Products and materials incorporated in the Works, use plant, equipment, Products and materials that:
 - (I) are of a kind that are consistent with the Output Specifications;
 - (II) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice, including, with respect to health and safety, so as not to be hazardous or dangerous; and
 - (III) where they differ from the Output Specifications, have been substituted with Contracting Authority's prior written consent in accordance with Section 11.18.
- (iii) Without limiting Project Co's obligations pursuant to Section 11.12, the Phasing Requirements or Project Co's indemnity pursuant to Section 44.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing the Sites to prevent access onto any Site and any Facility of any persons not entitled to be there, and the licence granted to Project Co pursuant to Section 16.1 shall include rights for Project Co to do so.

11.9 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 Works;
 - (ii) except for those obligations which are identified as Contracting Authority obligations in Appendix A of Schedule 1 – Definitions and Interpretation, assume all of the obligations of Contracting Authority under the Contracting Authority Permits, Licences, Approvals and Agreements (and for greater certainty, the Development Approvals); and
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.
- (b) Where any Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on Contracting Authority or any Contracting Authority Party, Project Co shall not obtain or renew such Permits, Licences,

Approvals and Agreements without the prior written consent of Contracting Authority not to be unreasonably withheld or delayed, provided that neither Contracting Authority nor any Contracting Authority Party shall be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence, Approval and Agreement or for the failure of Project Co to renew any Contracting Authority Permit, Licence, Approval and Agreement. Contracting Authority shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on Contracting Authority or any Contracting Authority Party by the requirements of any Permit, Licence, Approval and Agreement obtained with Contracting Authority consent under this Section 11.9(b).

- (c) Contracting Authority shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Permits, Licences, Approvals and Agreements. In respect of Section 11.9(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 documents under the applicable the Contracting Authority Permits, Licences, Approvals and Agreements which Applicable Law dictates that only Contracting Authority can execute.

11.10 Protection of Work and Property

- (a) Project Co shall protect the Works and the property of Contracting Authority at each Site, including property adjacent to each Site and 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 damage which occurs as a result of acts or omissions by Contracting Authority or any Contracting Authority Party.
- (b) Should Project Co, in the performance of this Project Agreement, damage the Works or the property of Contracting Authority at any Site, including property adjacent to any Site and 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 at any Site, including property adjacent to any Site and the Existing Facilities, for which Project Co is not responsible, as provided in Section 11.10(a), Project Co shall Make Good such damage to the Works and, if Contracting Authority so directs, to the property of Contracting Authority and the Guaranteed Price, each applicable Scheduled Phase Completion Date and the Scheduled Substantial Completion Date shall be adjusted in accordance with Schedule 22 – Variation Procedure.
- (d) Project Co shall not undertake to repair and/or replace any damage whatsoever to adjoining property without first consulting Contracting Authority and receiving written instructions as to the course of action to be followed.

- (e) Notwithstanding Section 11.10(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.
- (f) If any Project Co Party has caused damage to the work of another contractor related to the Project, Project Co agrees upon due notice to settle with the other contractor by negotiation or arbitration in accordance with Section 11.13(e) and Schedule 27 – Dispute Resolution Procedure. If the other contractor makes a claim against Contracting Authority on account of damage alleged to have been so sustained, the dispute shall be dealt with in substantially the same manner as contemplated in Section 11.13(e) and Schedule 27 – Dispute Resolution Procedure.

11.11 Liability Unaffected

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the retainer or appointment of any Project Co Party, and Project Co shall cause each Project Co Party, to the extent such Project Co Party performs, or is specified hereunder to perform, the Works, to comply with the obligations of Project Co to Contracting Authority in the same manner and to the same extent as Project Co.
- (b) No inspection, review, comment, approval, verification, confirmation, certification, acknowledgement or audit pursuant to the provisions of this Project Agreement by Contracting Authority, the Contracting Authority Representative, or Lenders' Consultant, or anyone on their behalf, nor any failure of any of them to do so, shall relieve Project Co from performing or fulfilling any of its obligations under this Project Agreement or be construed as an acceptance of the Works or any part thereof.

11.12 Safety

- (a) From Financial Close until Final Completion, Project Co shall:
 - (i) keep the Sites, the Works and the Facilities in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Sites, in the Facilities and in the immediate vicinity of the Sites;
 - (ii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Sites and the Facilities of any persons or creatures not entitled to be there;
 - (iii) comply with Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
 - (iv) 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, each Contracting Authority Party and each Government

Entity against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;

- (v) provide Contracting Authority with a certificate of good standing from WSIB or any successor thereto once every 90 days; and
 - (vi) cause the Construction Contractor to deliver at least one (1) 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 to 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 applicable Site until the Final Completion Date.
- (b) At any time that the Works are being carried out in or around the Existing Facilities Project Co shall at all times:
- (i) ensure that it complies with all safety requirements set out in the Project Agreement, including those set out in Section 11.12(a) above; and
 - (ii) keep the Existing Facilities in a safe and orderly state, as appropriate and in accordance with Good Industry Practice, to avoid any danger to employees, visitors and other persons attending the Existing Facilities.

11.13 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 11.13(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 Sites;
 - (iii) enter into separate contracts with Additional Contractors containing terms and provisions which are (A) 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 11.13(a), require Additional Contractors to comply with all directions of Project Co in respect of any matter regarding 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 Sites;

- (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 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 at each Site, Project Co shall:
- (i) to the extent that Contracting Authority has assigned responsibility for such matters to Project Co pursuant to Section 11.13(a), and subject to the performance by Contracting Authority of its obligations under Sections 11.13(b)(i) and 11.13(b)(iii), direct the methods and means of construction of the Additional Works, coordinate and schedule the Additional Works with the Works 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 Section 11.13(b)(i) and 11.13(b)(iii), 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 Sites, including all the responsibilities of the ‘constructor’ under the *Occupational Health and Safety Act* (Ontario) in accordance with such Act 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 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 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, 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 at each Site:
- (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 11.13(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 are not as a result of Project Co's failure to perform any of its obligations under Section 11.13(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 Article 30, be treated as a Delay Event and, subject to and in accordance with Article 31, 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 Section 8 of 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 binding 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 adverse effect on Project Co's ability to perform any of the Works, 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 11.13(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 11.13(f)(i) for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (iv) where Contracting Authority has, under Section 11.13(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 11.13(f)(i)) and will not result in any material negative effect (including material additional costs) on Project Co's ability to perform any of the Works 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 11.13(d) or as expressly described in any Variation Confirmation.

11.14 Defective Works

Prior to Substantial Completion:

- (a) Project Co shall promptly Make Good any deficiency, defect or error in the Works or failure of the Works to conform to the Project Agreement, or any deficiency, defect or error in relation to any Product (collectively, a “**Construction Defect**”) whether or not such Construction Defect has been incorporated into a Facility and whether or not the Construction Defect is the result of poor workmanship, use of defective Products or In-Contract Equipment or damage through carelessness or other act or omission of Project Co. The correction of Construction Defects shall be at Project Co’s sole cost and expense. Project Co shall Make Good, in a manner acceptable to the Independent Certifier, all Construction Defects, whether or not they are specifically identified by the Independent Certifier, and Project Co shall prioritize the correction of any Construction Defects so as not to interfere with or derogate from the Works Schedule, provided that Project Co shall prioritize the correction of any Construction Defects that in the sole discretion of Contracting Authority is determined to adversely affect the day to day operation of Contracting Authority.
- (b) Project Co shall Make Good promptly other contractors’ work destroyed or damaged by such rectifications at Project Co’s expense.
- (c) If in the opinion of the Independent Certifier it is not expedient for Project Co to correct any Construction Defects, Contracting Authority may deduct from the amount of the Guaranteed Price the difference in value between the Works as performed and that called for by the Project Agreement. If Contracting Authority and Project Co do not agree on the difference in value, they shall refer the matter to the Independent Certifier for a determination and the determination will be issued as a Variation.

11.15 Warranty Obligations

- (a) Project Co represents, warrants and covenants that:
 - (i) the Works shall conform to the requirements of this Project Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Ontario;
 - (ii) the Works shall be free of defects, including design defects, errors and omissions; and
 - (iii) materials and equipment shall be of good quality and in compliance with this Project Agreement.
- (b) During each Warranty Period and subject to Section 11.15(c), Project Co shall promptly, at its sole cost and expense, correct and Make Good all Construction Defects arising in respect of the Works. For greater certainty, Project Co is required to correct and Make Good Construction Defects related to any Product and any In-Contract Equipment during the applicable Warranty Period despite Project Co having obtained on Contracting Authority’s behalf industry-standard or other equipment warranties in accordance with Section 11.15(f). For all work to correct Construction Defects, the applicable Warranty

Period shall be extended for a further one year from the date of the last work completed in respect of such corrective Works. For clarity, any extension of a Warranty Period for the purposes of a correction shall only apply to the relevant Construction Defect and not the Works as a whole.

- (c) In addition to the obligation to correct and Make Good Construction Defects during each Warranty Period, Project Co shall at its expense correct and Make Good any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Works (“**Construction Latent Defect**”), provided Contracting Authority gives Project Co written notice of the Construction Latent Defect within the time frame applicable to such Construction Latent Defect pursuant to the *Limitations Act*, 2002 (Ontario).
- (d) The warranties described in this Section 11.15 shall cover labour and material, including, the costs of removal and replacement of covering materials. The warranties shall not limit extended warranties on any Product or item of In-Contract Equipment called for elsewhere in the Output Specifications or otherwise provided by any manufacturer of such Product or item of In-Contract Equipment.
- (e) If Project Co fails to correct and Make Good any Construction Defects or Construction Latent Defects in accordance with Sections 11.15(b) and 11.15(c) and in the time period specified in Section 11.16(a) or Section 11.16(b), as applicable, without prejudice to any other right or remedy Contracting Authority may have, Contracting Authority may correct such Construction Defects or Construction Latent Defects at Project Co’s sole cost and expense.
- (f) Project Co shall obtain warranties from the manufacturers of each of the Products and items of In-Contract Equipment for the duration(s) and in accordance with the applicable requirements specified in the Output Specifications in the name of and to the benefit of both Project Co and Contracting Authority. Where, in respect of a Product warranty or In-Contract Equipment warranty, the Output Specifications do not specify a specific duration and/or other requirements, Project Co shall obtain industry-standard warranties from the applicable manufacturers in the name of and to the benefit of Project Co and Contracting Authority which shall extend no less than one year from the Substantial Completion Date. Each Product warranty and In-Contract Equipment warranty shall be issued by the applicable manufacturer and delivered to Project Co no later than 30 days prior to each Phase Completion Date, with respect to each applicable Phase of the Works, and the Substantial Completion Date. Project Co shall ensure that each Product warranty and In-Contract Equipment warranty, including any Product warranty or In-Contract Equipment warranty extended under this Section 11.15(f), is fully assigned to Contracting Authority, at no cost or expense to Contracting Authority, at the end of each Warranty Period, as such applicable Warranty Period may be extended in accordance with Section 11.15(b).

11.16 Prompt Repair of Warranty Work

- (a) Project Co acknowledges that the timely performance of warranty work is critical to the ability of Contracting Authority to maintain effective operations of each Facility. Project Co shall use commercially reasonable efforts to respond to any requirement by Contracting Authority to correct Construction Defects and Construction Latent Defects within the time periods required by Contracting Authority (which, for certainty, may, in respect of an Emergency, require immediate correction). Project Co further acknowledges that if Contracting Authority is unable to contact Project Co and/or the corrective work is not commenced within such time period as may be required by Contracting Authority (including, for clarity, immediately in the event of an Emergency), Contracting Authority's own forces may take such emergency steps as are reasonable and appropriate to correct such Construction Defects and Construction Latent Defects, at Project Co's sole cost and expense and, except in the case of damage caused by Contracting Authority's own forces, such emergency steps taken by Contracting Authority's own forces shall not invalidate any warranties in respect of such portion of the Works affected by such corrective actions of Contracting Authority's own forces.
- (b) Subject to Section 11.16(a), Project Co shall promptly, and in any event not more than 30 days after receipt of written notice thereof from Contracting Authority, Make Good any Construction Defects which may develop within the applicable Warranty Period and any Construction Latent Defects, and also Make Good any damage to other Works caused by the correction of such Construction Defects and Construction Latent Defects. All such corrective work shall be at Project Co's sole cost and expense and shall not be treated as, or entitle Project Co to request or form the basis of a claim for, a Variation, additional compensation or damages. The above-noted time period of 30 days shall be subject to the following:
- (i) If the corrective work cannot be completed in the 30 days specified, Project Co shall be in compliance if Project Co:
- (A) commences and is diligently proceeding with the corrective work within the specified time;
 - (B) provides Contracting Authority with a schedule acceptable to Contracting Authority for such correction;
 - (C) reports to Contracting Authority on the status and the progress of the corrective work on an ongoing basis (including on a daily basis if requested by Contracting Authority); and
 - (D) Makes Good the Construction Defects, Construction Latent Defects or damage, as the case may be, or in accordance with such schedule.
- (c) If Project Co fails to correct and Make Good Construction Defects, Construction Latent Defects and/or damages, as the case may be, in the time specified in Section 11.16(a) or

Section 11.16(b), as applicable, or subsequently agreed upon, without prejudice to any other right or remedy Contracting Authority may have, Contracting Authority may correct such works and deduct the cost and expense thereof from Completion Holdback or from any payment then or thereafter due to Project Co.

- (d) The performance of corrective work and Making Good of Construction Defects, Construction Latent Defects and/or damages, as the case may be, for which Project Co is responsible shall be commenced and completed as expeditiously as possible in accordance with Section 11.16(a) or Section 11.16(b), as applicable, and shall be executed at times convenient to Contracting Authority and this may require work outside normal working hours at Project Co's expense. Any extraordinary measures required to complete such Work, as directed by Contracting Authority to accommodate the operation of each Facility or other aspects of the Project as constructed, shall be at Project Co's sole cost and expense.
- (e) The foregoing express warranties shall not deprive Contracting Authority of any action, right or remedy otherwise available to Contracting Authority at law or in equity for breach of any of the provisions of the Project Agreement or any Ancillary Document by Project Co, and the periods referred to in this Section 11.16, shall not be construed as a limitation on the time in which Contracting Authority may pursue such other action, right or remedy.

11.17 Minimize Disturbance and Works in Existing Facilities

- (a) Project Co acknowledges that in addition to the use of Good Industry Practice, this Project Agreement includes instructions as to the manner in which the Works are to be performed in order to minimize disturbance to the Existing Facilities, including with respect to noise, dust control, access to the Sites and the particular requirements in respect of those portions of the Works which are to be carried out within the Existing Facilities and in respect of those portions of the Works where connections are being made to the Existing Facilities. In addition, Project Co acknowledges that it has familiarized itself with the facility and/or building operations of the Existing Facilities and will perform the Works taking into account the requirements of Contracting Authority to maintain normal facility and/or building operations of the Existing Facilities. Project Co further acknowledges that the Cost of the Works 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 carrying on of Contracting Authority Activities during construction is a priority for Contracting Authority and acknowledges that it has reviewed the Project Documents. Project Co shall use all methods required to comply with the instructions set out in this Project Agreement during the performance of the Works. Project Co shall fully cooperate with Contracting Authority in complying with said instructions during the performance of the Works. Any costs incurred by Project Co in complying with said instructions shall be part of the Guaranteed Price.

- (c) Project Co acknowledges that the Project Agreement includes the Phasing Requirements and other specifications which include instructions respecting Contracting Authority's use of the Existing Facilities and infection control procedures. Project Co acknowledges having read and understood the said instructions and agrees to comply with the procedures set out therein. Project Co shall be responsible for any costs and expenses resulting in its failure to comply with these procedures.

11.18 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.

11.19 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 Facilities, 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 11.19 shall not apply where a change in a technical standard is also a Change in Law.

11.20 Subcontractors and Suppliers

- (a) Project Co shall preserve and protect the rights of the Parties under this Project Agreement with respect to the works to be performed under Subcontract, and shall:
 - (i) enter into Subcontracts or written agreements with Project Co Parties to require them to perform their work as provided in the Project Agreement;
 - (ii) incorporate the relevant terms and conditions of the Project Agreement into all contracts or written agreements with Project Co Parties; and

- (iii) be as fully responsible to Contracting Authority for acts and omissions of the Project Co Parties as for acts and omissions of persons directly employed by Project Co.
- (b) Attached in Part 1 of Schedule 8 – Project Co Parties is a list of all Project Co Parties that Project Co has engaged or caused to be engaged for the performance of the Work as of the date of execution of this Project Agreement. Project Co agrees to update such list from time to time as additional Project Co Parties are engaged. Any of these named Project Co Parties listed by Project Co may be changed by Project Co upon prior notice to (but without the approval of) the Contracting Authority Representative, provided however, that if the Contracting Authority Representative reasonably objects to any change to a mechanical or electrical Subcontractor that is a Project Co Party, then Project Co shall select an alternative replacement mechanical or electrical Subcontractor to which the Contracting Authority Representative does not reasonably object.
- (c) Project Co hereby agrees to contractually obligate the Construction Contractor to enter into the Construction Contractor’s Direct Agreement and, subject to Section 11.20(d), to cause the Construction Contractor to cause each of the other Project Co Parties, including Suppliers leasing any construction machinery and equipment, to enter into the Subcontractor’s Direct Agreement, to evidence, among other things, that Contracting Authority shall have the right to cure any default by the Construction Contractor under the Subcontract.
- (d) With the exception of the Subcontracts specifically listed in items (a) through (r) in Part 2 of Schedule 8 – Project Co Parties, none of Project Co, the Construction Contractor or the applicable Project Co Party are obliged to enter into a Subcontractor’s Direct Agreement in respect of Subcontracts having a total estimated cost of \$1,000,000 or less.
- (e) Subject to Section 11.20(d), Project Co agrees to deliver to Contracting Authority the Subcontractor’s Direct Agreements by the applicable due dates set out in Part 2 of Schedule 8 – Project Co Parties. If, following the date that 100% Construction Document Submittals are submitted to Contracting Authority in accordance with Schedule 10 – Review Procedure, Project Co is required to enter into any additional Subcontractor’s Direct Agreement pursuant to this Section 11.20, Project Co shall deliver such Subcontractor’s Direct Agreements to Contracting Authority within 30 days of execution.

11.21 Apprenticeship Plan and Program

- (a) No later than six months after Financial Close, Project Co shall provide a plan setting out Project Co’s Project-specific approach to maximizing apprenticeship opportunities on the Project (the “**Apprenticeship Plan**”) for review and approval by Contracting Authority. The Apprenticeship Plan shall include,
 - (i) specific objectives for apprenticeship opportunities for the Project on a trade-by-trade basis;

- (ii) apprenticeship opportunities for each trade required on the Project;
 - (iii) a confirmation that apprenticeships will be registered with the Ministry of Training, Colleges and Universities and the Ontario College of Trades, as applicable;
 - (iv) a program to ensure the required supply of apprentices to meet Project Co's Apprenticeship Plan targets and requirements;
 - (v) a program to support apprentices on the Project, to complete their apprenticeships during the Project Term and, for those whose apprenticeships are not complete by the end of the Project Term a program to support apprentices to complete their apprenticeships after the end of the Project Term; and
 - (vi) a focused program for youth-at-risk, local communities, and military veterans.
- (b) Project Co shall implement the approved Apprenticeship Plan.
- (c) Project Co shall provide an annual report to Contracting Authority on the implementation of the Apprenticeship Plan which report shall include,
- (i) statistics on the number of apprentices involved in the Project relative to the number of journeypersons, for each month of the Project; and
 - (ii) detailed information setting out Project Co's progress toward achieving the objectives set out in the Apprenticeship Plan, including an identification of an barriers that prevented Project Co from achieving its objectives.
- (d) Contracting Authority may require Project Co to amend its Apprenticeship Plan if, in its opinion, acting reasonably, Project Co is failing to maximize apprenticeship opportunities on the Project pursuant to the then current Apprenticeship Plan.
- (e) Contracting Authority may, in its sole discretion, release Project Co's Apprenticeship Plan to the public. Project Co's Apprenticeship Plan shall not be Confidential Information.

11.22 INTENTIONALLY DELETED

11.23 COR Certification

- (a) Project Co shall, at its own cost and risk, at all times during the performance of the Works, cause a COR-Qualified Construction Project Co Party or COR-Certified Construction Project Co Party, as the case may be, to:
- (i) to the extent a COR-Qualified Construction Project Co Party has not obtained COR Certification prior to Financial Close,

- (A) use best efforts to obtain its COR Certification no later than 18 months following Financial Close. In the event that Contracting Authority is satisfied, in its sole discretion, that the COR-Qualified Construction Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 11.23 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 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 Contracting Authority 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 11.24(a); and
 - (D) arrange to have conducted a H&S Construction Re-Inspection in accordance with Section 11.24(d), if required; or
- (vii) within 5 Business Days of receipt of the Notice from Contracting Authority under Section 11.23(b)(iv) or (v):
 - (A) produce and deliver to 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 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 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 11.24(a); and
- (D) arrange to have conducted a H&S Construction Re-Inspection in accordance with Section 11.24(d), if required.

11.24 Health and Safety Inspections

- (a) Subject to Section 11.24(b), Project Co shall cause the Construction Contractor, in respect of each Site, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems on an annual basis until Final Completion or as otherwise required in accordance with Sections 11.23(b)(vi)(C) and 11.23(b)(vii)(C) (a “**H&S Construction Inspection**”), which such 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 any Site at which the Works are being conducted, including, but not limited to, the Contractor Site Specific Safety Manual, and
 - (B) a review of Project Co’s job hazard analysis documentation on any Site which could endanger or put at risk the safety of any person working at any Site.

- (b) The first H&S Construction Inspection shall occur no later than the ninetieth (90th) day following Financial Close or, if that day is not a Business Day, on the Business Day immediately succeeding such day.
- (c) Project Co shall cause the results of each H&S Construction Inspection in respect of the Construction Contractor, the COR-Certified Construction Project Co Party or the COR-Qualified Construction Project Co Party, as the case may be, and the Works (such results referred to as the “**H&S Construction Inspection Report**”) to be delivered to Contracting Authority and the Works Committee not more than 5 Business Days from the date on which a H&S Construction Inspection is completed. A H&S Construction Inspection Report arising from a 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.
- (d) To the extent a H&S Construction Inspection Report discloses any non-compliance by the Construction Contractor, 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 Construction Contractor, 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 as Contracting Authority, acting reasonably, believes is necessary to correct any non-compliance, and Project Co shall cause the Construction Contractor, 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 Contracting Authority in respect of actions required to be taken to correct any such non-compliance;
 - (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, a “**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 Contracting Authority with respect to the correction of each identified non-compliance is completed to the satisfaction of Contracting Authority, acting reasonably; and
 - (iii) to cause the results of each H&S Construction Re-Inspection in respect of the Construction Contractor, the COR-Certified Construction Project Co Party or the COR-Qualified Construction Project Co Party, as the case may be, and the Works (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. A H&S Construction Re-Inspection Report arising from a 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.

11.25 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 at each Site, Project Co shall:
 - (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 plan 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:

- (i) not in compliance with the Demolition Requirements; or
- (ii) 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:

- (A) 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;
- (B) cease all work in respect of such Demolition; and
- (C) within 5 Business Days of receipt of a notice of a Demolition Default Event produce and deliver to the Contracting Authority Representative:
 - (I) a report identifying the reasons for the occurrence of the Demolition Default Event; and
 - (II) 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 Party 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 a 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.

12. REPRESENTATIVES

12.1 The Contracting Authority Representative

- (a) Subject to the limitations set out in Section 12.1(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 12.1(a) and 12.1(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.

12.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 12.2(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, not to be unreasonably withheld or delayed.
- (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 12.2(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 12.2(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.

12.3 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.

12.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in 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) 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 and of equal or better quality and experience than the individual being replaced.
- (c) 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 of 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 and of equal or better quality and experience than the individual being replaced.

13. WORKS SCHEDULE AND WORKS REPORT

13.1 Completion of the Works

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

13.2 The Works Schedule

- (a) From Financial Close until the Draft Works Schedule becomes the Works Schedule pursuant to Section 13.2(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: Sections 3.2(a), 3.2(g)(iv), 10.3(a)(i), 11.2(b)(v), 11.7(a), 11.13(d), 11.14(a), 13.3(a), 13.3(b), 13.4(a),

13.6(a), 14.2(d), 21.1(d), 21.1(e), 21.2(b), 21.7(b), 21.8(c), 21.8(d), 21.8(f), 24.18(c), 25.1(a) and 30.2(o); the definition of “Critical Non-Conformance” set forth in Schedule 1 – Definitions and Interpretation; Sections 2.1, 2.2, 2.4, 2.5 and 2.6 of, and Section 4.2 of Appendix A to, Schedule 10 – Review Procedure, Section 3.3 of Schedule 14 – Outline Commissioning Program, Section 1(d) of Schedule 17 – Works Report Requirements; and Section 1.6(b) of Schedule 22 – Variation Procedure.

- (b) Project Co shall, in accordance with Schedule 19 – Works Scheduling Requirements prepare and submit to Contracting Authority and the Independent Certifier:
- (i) within 45 calendar days of Financial Close, the Draft Works Schedule and a report indicating the differences between the Proposed Works Schedule and the Draft Works Schedule;
 - (ii) every month within 10 Business Days following the end of each calendar month from Financial Close until Final Completion, a Progress Works Schedule;
 - (iii) every month within 10 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, a Look-ahead Schedule;
 - (iv) within 10 calendar days following the written request from Contracting Authority, acting reasonably, a Works Area Micro-Schedule for any specific area, and every two weeks thereafter an updated Works Area Micro-Schedule for the specific area until the Works in the area is complete;
 - (v) within 15 calendar days of the Final Completion Date, the As-built Works Schedule and the final Works Report; and
 - (vi) at any time prior to Substantial Completion, within 5 calendar days following the written request by Contracting Authority, existing current or past versions of the Works Schedule or Works Report

each meeting the requirements of Schedule 19 – Works Scheduling Requirements to the satisfaction of Contracting Authority that support the completion of the Works in accordance with Section 13.1.

- (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 31.5(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 13.2(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 13.2(b)(iv) and Schedule 19 – 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 to 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 19 – Works Scheduling Requirements.
- (j) Project Co and Contracting Authority shall comply with the provisions of Schedule 19 – 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 30.1(a) of the Project Agreement shall not constitute any acknowledgement or acceptance of the potential delay.

13.3 Changes to the Works Schedule

- (a) Any changes to the Works Schedule which affects a Scheduled Phase Completion Date, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date must be approved in writing by Contracting Authority. Subject to the terms of Schedule 22 – Variation Procedure, any Contracting Authority approval of such changes to the Works Schedule does not entitle Project Co to a Variation, an extension of time or an addition to the Guaranteed Price.
- (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.

13.4 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Article 30, 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 one or more Phase Completions by the applicable Phase Completion Date;
- (C) Project Co will not achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (D) Project Co will not achieve Substantial Completion by the Longstop 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 13.4(a)(ii) or 13.4(a)(iii)(D), of notice from Contracting Authority, 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 19 – Works Scheduling Requirements, except that:
 - (B)
 - (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,
 - (C) and, if applicable, the Recovery Schedule shall show the new strategy or steps that are to be taken by Project Co to eliminate or reduce the delay to:

- (I) achieve Phase Completion(s) by the applicable Phase Completion Date(s);
 - (II) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (III) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
- (D) a report (the “**Recovery Schedule Report**”) which shall comply with all requirements of a Works Schedule Progress Report as set forth in Section 1(d) of Schedule 17 – Works Report Requirements, except that:
- (I) its title shall be “Recovery Schedule Report”;
 - (II) the Recovery Schedule Report shall describe in narrative form:
 - a) all variances between the Works Schedule and the Recovery Schedule, or, if applicable, between the current Recovery Schedule and a new Recovery Schedule; and
 - b) 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:
 - i) achieving Phase Completion(s) by the applicable Phase Completion Date(s);
 - ii) achieving Substantial Completion by the Scheduled Substantial Completion Date; or
 - iii) achieving Substantial Completion by the Longstop Date, as applicable,
- (v) if applicable, bring the progress of the Works back on schedule in accordance with the deliverables provided for in Section 13.4(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 13.4 and is not in default under Section 34.1(a)(iii), the failure to achieve a Phase Completion by the applicable Scheduled Phase Completion Date or Substantial Completion by the Scheduled Substantial Completion Date on its own shall not be a Project Co Event of Default for the purposes of 34.1(a)(vi).

13.4A Notification of Early Phase Completion

- (d) Unless Project Co obtains the prior written consent of Contracting Authority, in its sole discretion, Project Co shall not be entitled to a Phase Completion Certificate prior to, and a Phase Completion Date shall not be earlier than, the applicable Scheduled Phase Completion Date.
- (e) If Project Co advises Contracting Authority that it expects to be able to achieve a Phase Completion prior to the applicable Scheduled 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 such Phase Completion would be so as to enable Contracting Authority to consider at its sole discretion:
 - (i) whether to agree to an earlier Scheduled Phase Completion Date; and
 - (ii) what modifications, if any, shall be required to this Project Agreement in order to accommodate such earlier Scheduled Phase Completion Date.

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

13.5 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 Substantial Completion Payment 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 Scheduled Substantial Completion Date; and

- (ii) what modifications, if any, shall be required to this Project Agreement in order to accommodate such earlier Scheduled Substantial Completion Date.
- (c) All costs associated with any such modifications to this Project Agreement shall be borne by Project Co.

13.6 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within 10 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the Contracting Authority Representative and the Independent Certifier a works report (each, a “**Works Report**”), which will include:
 - (i) an executive summary describing the general status of the Works and progress made over the relevant month;
 - (ii) Current Progress Works Schedule and a Look-ahead Schedule, all in accordance with Schedule 19 – 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 14.6(g), in accordance with Schedule 27 – Dispute Resolution Procedure or otherwise;
 - (v) an update on those matters set out in Schedule 17 – 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 11 – Design Quality Plan and Construction Quality Plan, Schedule 22 – Variation Procedure and Schedule 17 – Works Report Requirements and other processes as determined by Contracting Authority in its sole discretion.

14. WORKS COMMITTEE

14.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
 - (i) 3 representatives appointed by MCSCS from time to time;
 - (ii) the following 3 representatives appointed by Contracting Authority:
 - (A) the Contracting Authority Representative; and
 - (B) 2 other representatives appointed by Contracting Authority from time to time; and
 - (iii) the following 3 representatives appointed by Project Co:
 - (A) the Project Co Representative;
 - (B) 1 representative of the Construction Contractor; and
 - (C) such other representative appointed by Project Co from time to time.
- (b) The Independent Certifier shall be required, to attend meetings as a non-voting member of the Works Committee. The Design 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 to provide briefings to the Works Committee members.
- (c) The Contracting Authority Representative shall be the chairperson of the Works Committee.

14.2 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 Equipment Steering Committee as and when required.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
 - (i) any design, construction and commissioning issues;
 - (ii) the Project Schedules;

- (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
 - (iv) any quality assurance and safety issues;
 - (v) the Works Reports;
 - (vi) the recommendations of the Transition Subcommittee;
 - (vii) any special matters referred to the Works Committee by Contracting Authority, MCSCS or Project Co;
 - (viii) any Proceeding At Risk Matters referred to the Works Committee in accordance with Section 14.6;
 - (ix) any community and media relations issues in accordance with Schedule 18 – Communications;
 - (x) monitoring each Phase Commissioning Program and the Final Commissioning Program; and
 - (xi) any other issues pertaining to the Works.
- (c) Subject to Section 14.2(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, any Scheduled Phase Completion Date, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
 - (iii) any Variation;
 - (iv) any change that may materially adversely affect Project Co’s ability to achieve Phase Completion by the applicable Scheduled Phase Completion Date, Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
 - (v) any matter with respect to which Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement.

14.3 Term of Works Committee

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

14.4 Replacement of Committee Members

- (a) Contracting Authority shall be entitled to replace any of their respective representatives on the Works Committee by written notice to Project Co. Contracting Authority will use commercially reasonable efforts to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Works Committee with the prior written consent of Contracting Authority, not to be unreasonably withheld or delayed.

14.5 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 as the members of the Works Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representatives, the Contracting Authority Representatives and any of MCSCS's representatives on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days' notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at each Site, in Toronto, Ontario, Orillia, Ontario or in such other location as may be determined by Contracting Authority in its sole discretion. 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) Two representatives appointed by Contracting Authority (one of whom shall be the Contracting Authority Representative), two representatives appointed by Project Co (one of whom shall be the Project Co Representative) and two representatives of MCSCS 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 Project Co. Project Co shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority notifies Project Co within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, MCSCS 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 Works Committee and shall make such minutes available for inspection by Contracting Authority during regular business hours.

14.6 Proceeding At Risk

- (a) If at any time:
 - (i) the Contracting Authority Representative has noted a Critical Non-Conformance; 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 14.6(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, 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; and
 - (iv) Project Co's proposal to rectify the Proceeding At Risk Matter.
- (d) Within 5 Business Days after receipt by Contracting Authority of the response from Project Co pursuant to Section 14.6(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) The Independent Certifier shall, within 30 Business Days of the Proceeding At Risk Notice, deliver to each of Contracting Authority and Project Co, its written opinion as to whether Contracting Authority acted reasonably in delivering the Proceeding At Risk Notice.
- (f) Within 15 Business Days after receipt by Contracting Authority of all deliverables contemplated by Section 14.6(c) and, if applicable, Section 14.6(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.
- (g) 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 "**PAR Meeting Expiry Date**"), 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, and the Independent Certifier's opinion delivered pursuant to Section 14.6(e) confirms that Contracting Authority acted reasonably in delivering the Proceeding At Risk Notice, Project Co shall be deemed to be "**Proceeding At Risk**" and 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 the relevant information supporting Contracting Authority's opinion that Project Co is Proceeding At Risk.

- (h) Regardless of the Independent Certifier's opinion, if the Works Committee fails to reach a final decision with respect to the Proceeding At Risk Matter by the PAR Meeting Expiry Date, either party may refer the Proceeding At Risk Matter for resolution in accordance with Schedule 27 – Dispute Resolution.
- (i) The Proceeding At Risk Notice, review, and comments made during the process set out in this Section 14.6 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.

15. QUALITY ASSURANCE

15.1 Quality Plans and Systems

- (a) Project Co shall cause all of the Works to be the subject of quality management systems, which shall include a Design Quality Plan and a Construction Quality Plan (collectively, the “**Quality Plans**”), which may be incorporated into one document.
- (b) All Quality Plans shall be consistent with the requirements of the Output Specifications, each Phase Commissioning Program and the Final Commissioning Program.
- (c) The Design Quality Plan is attached as part of Schedule 11 – 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 11 – 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) 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.
- (f) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Works in compliance with the Quality Plans, including by causing the Construction Contractor to implement the Design Quality Plan and the Construction Quality Plan.
- (g) Where any aspect of the Works is performed by more than one Project Co Party, then this Article 15, 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 Article 15

to such Project Co Party, including the Construction Contractor, shall be construed accordingly.

15.2 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 15.1, and shall amend such Quality Plans as required pursuant to Schedule 10 – Review Procedure.

15.3 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.

15.4 Quality Monitoring

- (a) Without limiting Contracting Authority’s other rights pursuant to this Project Agreement, including Section 26, 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 the Construction Contractor’s quality management systems.
- (b) Project Co shall cooperate, and shall cause the Construction Contractor 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 15.4.

16. LICENCE

16.1 Licence to Sites

- (a) Effective from [REDACTED] until the Termination Date and subject to this Article 16, Contracting Authority hereby grants or shall cause to be granted, and shall continuously until the earlier of the termination of the Project Agreement or Final Completion 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 Sites and the Facilities in accordance with the Phasing Requirements (which, for clarity, are applicable only during the Works), except such rights set out as a Project Co responsibility to obtain under the Permits, Licences, Approvals and Agreements tables attached as Appendix “A” to Schedule 1 – Definitions

and Interpretation, as are required by Project Co and such Project Co Parties and sufficient (subject to Project Co performing its obligations described in the Permits, Licences, Approvals and Agreements tables attached as Appendix “A” to Schedule 1 – Definitions and Interpretation) to allow Project Co and such Project Co Parties to perform the Works. Following Final Completion, Contracting Authority shall grant, or cause to be granted, to Project Co and all Project Co Parties such rights of use and access to, on and over the Sites and the Facilities as are required by Project Co and such Project Co Parties and sufficient (subject to Project Co performing its obligations described in the Permits, Licences, Approvals and Agreements tables attached as Appendix “A” to Schedule 1 – Definitions and Interpretation) to allow Project Co and such Project Co Parties to carry out its remaining obligations under the Project Agreement.

- (b) In consideration for the licence granted pursuant to Section 16.1(a), Project Co shall provide the Works subject to and in accordance with this Project Agreement.
- (c) Without derogating from any of Contracting Authority’s rights hereunder, in particular and subject to this Section 16.1(c), the rights of access to the Sites prior to a Phase Completion Date and the Substantial Completion Date for purposes of the applicable Phase Contracting Authority Commissioning and the Contracting Authority Commissioning, Contracting Authority acknowledges that, in respect of the Works, Project Co and the Project Co Parties require, and Contracting Authority shall provide, access to the Sites and the Facilities in accordance with the Phasing Requirements without material interference by Contracting Authority or any Contracting Authority Party from the date of Financial Close until the Termination Date. Project Co further acknowledges that following Final Completion, its access to the Sites and the Facilities shall be subject to the Contracting Authority Activities.
- (d) None of the rights granted pursuant to this Section 16.1 shall extend beyond the boundaries of the Sites, or to any lands other than the Sites, other than easements and similar interests of Contracting Authority which benefit the Sites, obtained after the date of this Project Agreement, to the extent the same are necessary for the Works. Notwithstanding the foregoing, Contracting Authority shall provide Project Co with limited access to the Existing Facilities in accordance with the Phasing Requirements, to the extent necessary to perform the Works and subject to such reasonable conditions as are imposed by Contracting Authority.
- (e) Project Co agrees to: (i) cordon off areas within the Existing Facilities where Project Co is performing the Works required under the Project Documents and as approved by the Contracting Authority Representative; and (ii) use such access to the Existing Facilities, including loading docks, freight elevators and access routes as provided in the Output Specifications and as otherwise directed by the Contracting Authority Representative.
- (f) The licence and access rights provided in this Section 16.1 shall terminate as of the Termination Date.

- (g) Project Co acknowledges that, prior to Final Completion, the 401 Site will become development lands for the 401 Extension which will be located on the 401 Site. Contracting Authority hereby grants or shall cause to be granted, and shall continuously until the earlier of the termination of the Project Agreement or the Expiry Date grant or cause to be granted, to Project Co and all Project Co Parties the right to sublicense the use and access to the Site identified as Site Two, Mississauga (Port Credit Detachment), Highway Safety Division in Schedule 34 – List of Sites (the “**Mississauga Site**”) in accordance with the Construction Procedures Agreement. The 401 Site is designated as a separate construction site and access to the Mississauga Site by 401 Project Co and its personnel during the construction of the 401 Extension may be required to be shared and coordinated with Project Co and all Project Co Parties as set out in the Construction Procedures Agreement. On or before Financial Close, each of Contracting Authority and Project Co shall be required to execute and deliver into escrow the Construction Procedures Agreement and Contracting Authority shall cause, as part of the execution of the 401 Project Agreement, 401 Contracting Authority to countersign the Construction Procedures Agreement along with 401 Project Co, as executed by each of Contracting Authority and Project Co. The executed execution pages to the Construction Procedures Agreement shall be held in escrow by IO until the earliest of:
- (i) termination of this Project Agreement;
 - (ii) execution of such executed execution pages by 401 Project Co and 401 Contracting Authority;
 - (iii) agreement by all of Contracting Authority, Project Co, 401 Contracting Authority and 401 Project Co to enter into an amended form of construction procedures agreement; and
 - (iv) written confirmation from Contracting Authority and 401 Contracting Authority to each of Project Co and 401 Project Co that a form of construction procedures agreement is no longer required for either the Project or the 401 Project.

The Construction Procedures Agreement shall be substantially in the form attached hereto as Schedule 36 – Construction Procedures Agreement, subject to necessary amendments to take into account immaterial administrative changes and changes which arise due to relevant changes to the 401 Project Agreement or this Project Agreement, as agreed to by the Parties, 401 Contracting Authority and 401 Project Co, each acting reasonably.

- (h) Project Co, and all Project Co Parties, in exercising their rights under Section 16.1(a) and 16.1(c) will do so in a manner which does not materially interfere with the access to the Site by other persons during the performance of the Works. Project Co and the Project Co Parties shall work cooperatively with 401 Project Co to prevent material adverse interference with the respective access rights of 401 Project Co and to grant 401 Project Co the required access to the Mississauga Site in the event of any Potential Interaction for

which 401 Project Co requires such access, as provided for in the Construction Procedures Agreement.

- (i) Project Co acknowledges that, notwithstanding Section 16.2(b), the interaction with 401 Project Co as contemplated by the foregoing provisions under this Section 16.1 and the Construction Procedures Agreement, shall not be cause for justifiable delay by Project Co in performance hereunder pursuant to Section 30.1(a)(vi) nor support any claim for additional compensation nor any other further cause of action against Contracting Authority.

16.2 Non-Exclusive Licence/Development of Sites

- (a) Project Co acknowledges and agrees that the 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 Sites, the Facilities and the Existing Facilities.
- (b) Without limiting Section 16.2(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 Sites or the 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 Works, such use or development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

16.3 Limited Access Areas

- (a) For purposes related to the provision of the Contracting Authority Activities, Contracting Authority may limit or restrict Project Co's access to designated portions of the Sites, the Facilities or the Existing Facilities unless a person seeking access obtains the prior written consent of Contracting Authority, which consent may be subject to such reasonable conditions as are imposed by Contracting Authority.

16.4 Naming and Signage

- (a) Project Co acknowledges that Contracting Authority reserves and retains (i) all rights to designate the name for each Facility and any part of the Facilities; (ii) all rights to signage in relation to the Sites, the Facilities and the Existing Facilities; and (iii) all rights, Trade-Marks, naming or branding regarding the Facilities and any part of the Facilities and the Existing Facilities. It is agreed, however, that, with the prior written consent of Contracting Authority, not to be unreasonably withheld or delayed and 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 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.

16.5 No Interest in Land

- (a) Project Co acknowledges and agrees that, subject to the provisions of the CLA, in accordance with the principles of the IPFP Framework, neither Project Co nor the Lenders shall acquire any estate, right, title or ownership interest in the Sites, the Facilities or the Existing Facilities or any other interest in the Sites pursuant to this Project Agreement, the Project Documents or otherwise. Notwithstanding any provision herein or in any of the Project Documents to the contrary, all fee simple interest in and freehold title to the Sites, or any part thereof, and the Project, shall at all times remain unencumbered by any interest of Project Co or the Lenders. Project Co and the Lenders shall have access to the Sites, the Facilities and Existing Facilities under and subject to the licences and access rights granted under this Article 16 and the Lenders' Direct Agreement, respectively.

16.6 Non-Disturbance Agreement

- (a) If Contracting Authority mortgages, charges or otherwise encumbers the Sites, 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 Sites permitting Project Co and the Lenders' Agent to access and use the Sites under the licence granted pursuant to this Section 16 and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee or any person claiming by or through the mortgagee. This Section 16.6 shall not apply in respect of any portion of the Sites used or developed pursuant to Section 16.2(b) if neither the licence granted pursuant to this Section 16 nor the Works pertain to such portion of the Sites.

17. TITLE ENCUMBRANCES**17.1 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 (including, for clarity, any and all obligations under the Contracting Authority Mortgages);
 - (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless such obligations are provided in the Output Specifications 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 “A” – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation provide for Contracting Authority performing.
- (b) All Works performed by or on behalf of Project Co 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 17.2 and Section 17.3, the performance of the Works shall not give rise to a right for any person to obtain title to or any interest in the Sites, the Facilities or the Existing Facilities or any part of it or them, except in accordance with the terms of this Project Agreement.

17.2 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 Sites, the Facilities or the Existing Facilities 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 Sites, the Facilities or the Existing Facilities or any part thereof or any interest therein becomes subject to any Encumbrance arising in relation to the performance of the Works which 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) Notwithstanding the provisions of this Section 17.2, the Parties acknowledge that the provisions of Section 17.3 shall apply to claims for lien made against the Sites, the Facilities or the Existing Facilities pursuant to the *CLA* and shall also apply to claims made against the Legislative Holdback.

17.3 Construction Lien Act (Ontario)

- (a) Project Co shall withhold from each Subcontractor the holdbacks required under the *CLA* and shall deal with such holdbacks in accordance with the *CLA* and, for the purposes of the *CLA*, any contract for the performance of the Works entered into by and between Project Co and any Subcontractor in relation to the performance of the Works shall be considered a “contract” as defined in the *CLA*.

- (b) In furtherance of Section 17.3(a), 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 CLA, require that a certificate of completion under Section 33(1) of the CLA 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.
- (c) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (d) Project Co and Contracting Authority agree to comply with the requirements of the CLA with respect to the Sites, the Facilities, the Existing Facilities and the Project whether or not any part of the Sites, the Facilities, the Existing Facilities or the Project is subject to the provisions of the CLA. For greater certainty, Project Co and Contracting Authority hereby covenant and agree to assume and undertake the same obligations that would exist if the Project was subject to the CLA with respect to any part or parts of the Sites, the Facilities, the Existing Facilities or Project to which the CLA does not apply.
- (e) Notwithstanding anything to the contrary in this Project Agreement, in the event that:
 - (i) a claim for a construction lien arising in relation to the performance of the Works is registered against the Sites, the Facilities or the Existing Facilities, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Contracting Authority, acting reasonably, or
 - (ii) Contracting Authority receives any written notice of lien arising in relation to the performance of the Works,

Contracting Authority shall be entitled to withhold such portion of any payment otherwise due to Project Co in an amount Contracting Authority reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by Contracting Authority in connection therewith, including such amount on account of costs of the lien claimant such that Contracting Authority may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the CLA, until such time as such claim has been dealt with as provided below.

- (f) In the event that a written notice of a construction lien arising in relation to the performance of the Works is received by Contracting Authority, and Contracting Authority provides immediate written notice of the construction lien to Project Co, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Contracting Authority, acting reasonably, Project Co shall, within 10 Business Days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the CLA.

- (g) If a construction lien arising in relation to the performance of the Works is registered against the Sites, the Facilities or the Existing Facilities, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Contracting Authority, acting reasonably, Project Co shall, within 10 Business Days, at its sole expense, vacate or discharge the lien from title to the Sites, the Facilities and the Existing Facilities. If the lien is merely vacated, Project Co shall, if requested, undertake Contracting Authority's defence of any action commenced in respect of the lien at Project Co's expense and (i) if an action against Contracting Authority has been commenced in respect of the lien, Project Co shall, at its sole cost and expense, promptly use best efforts to obtain a discontinuance of such action as it relates to Contracting Authority, or (ii) if no action has been commenced in respect of the lien, Project Co shall, at its sole cost and expense, promptly use best efforts to obtain a release from the lien claimant releasing Contracting Authority from all claims of such claimant that arise from the subject matter of the lien.
- (h) If Project Co fails or refuses to (i) vacate or discharge a construction lien or obtain the withdrawal or other disposal of a written notice of lien arising in relation to the performance of the Works within the time prescribed above, or (ii) promptly obtain the discontinuance of action or release described in Section 17.3(g) above, if applicable, and (iii) unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Contracting Authority, acting reasonably, then Contracting Authority shall, at its option, and upon providing notice to Project Co, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by Contracting Authority in doing so (including legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of Project Co, and Contracting Authority may deduct such amounts from the amounts otherwise due or owing to Project Co.
- (i) Without limiting any of the provisions of this Section 17.3, Project Co shall satisfy all judgments and pay all costs resulting from any construction liens arising in relation to the performance of the Works or any actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against Contracting Authority by any person that provided services or materials to the Sites, the Facilities or the Existing Facilities in relation to the Works.
- (j) The provisions of Sections 17.3(e) through 17.3(i) (inclusive) do not apply to construction liens (i) filed by Project Co which are claimed as a result of any default of Contracting Authority to make payments to Project Co in accordance with the terms of the Project Agreement or (ii) filed by any Contracting Authority Party, including for greater certainty Contracting Authority's own forces or Contracting Authority's other contractors, which are claimed as a result of work in relation to the Project.
- (k) For clarity, with each application for payment, Project Co shall submit a Statutory Declaration on CCDC Form 9A (2001).

- (l) Project Co shall cause a Payment Certifier to be appointed under the Design and Construction Contract and shall cause such Payment Certifier to certify the substantial performance of the Design and Construction Contract in accordance with the CLA.

18. SITE CONDITION

18.1 Acceptance of Site Condition

- (a) Subject to Sections 7.4, 18.2 and 18.3, Project Co acknowledges and agrees that it has investigated the Sites and its surroundings in accordance with Good Industry Practice taking into account all matters relating to the Sites (including the buildings, structures and works, on, over and under the Sites existing on the date hereof and the Background Information) prior to executing this Project Agreement and agrees to accept the Sites and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 7.4, 18.2 and 18.3, Project Co shall not be entitled to make any claim of any nature whatsoever against Contracting Authority or any Contracting Authority Party on any grounds relating to the Sites, including the fact that incorrect or insufficient information on any matter relating to the Sites was given to it by any person, whether or not Contracting Authority or a Contracting Authority Party, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Sites provided by such person to Project Co.
- (b) Subject to Sections 7.4, 18.2 and 18.3, Project Co acknowledges and agrees that it has and shall be deemed to have in connection with each Site:
 - (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 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 Works in a lawful manner.

18.2 Contamination

- (a) Contracting Authority shall be responsible for Contamination on, in or under, or migrating to or from, the Sites, except for any such Contamination:
- (i) that was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental 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 18.1, taking into account all matters relating to the Sites, including the buildings, structures and works, on, over and under the Sites 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 18.2(a), Project Co shall immediately inform the Contracting Authority Representative and shall comply with all Applicable Law in respect thereof at Contracting Authority's cost pursuant to Section 18.2(d).
- (c) In the event that Contracting Authority wishes Project Co to perform actions which are in addition to any required pursuant to Section 18.2(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 18.2(d).
- (d) If Sections 18.2(b) and 18.2(c) require Project Co to perform any alteration, addition, Demolition, extension or variation in the Works as a result of Contamination for which Contracting Authority is responsible pursuant to Section 18.2(a) 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 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

18.3 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at any Site are or shall be the sole and absolute property of Contracting Authority.
- (b) Upon the discovery of any item referred to in Section 18.3(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 (Ontario)* 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 18.3(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.
- (d) If Sections 18.3(b) and 18.3(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 Article 30, be treated as a Delay Event and, subject to and in accordance with Article 31, be treated as a Compensation Event.

19. GOVERNMENTAL AUTHORITIES AND THIRD PARTY FINANCIAL OBLIGATIONS

19.1 Governmental Authorities and Financial Obligations

- (a) Subject to Section 19.1(c), Project Co shall be responsible for all Financial Obligations under or in respect of all Permits, Licences, Approvals and Agreements including to 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 Facilities or the Sites;
 - (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 any applicable Utility Company or any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 19.1(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.
- (c) 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 “A” – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation as being the responsibility of Contracting Authority.
- (d) Contracting Authority shall be responsible for all costs incurred by the Contracting Authority in connection with Project Co Permits, Licences, Approvals and Agreements.

20. CONTRACTING AUTHORITY ACCESS AND MONITORING

20.1 Contracting Authority Access During the Works

- (a) Subject to Section 20.1(b) but without limiting any of Contracting Authority’s rights in respect of the Sites and the Existing Facilities, Project Co acknowledges and agrees that Contracting Authority, the Contracting Authority Parties and the Government Entities and their respective representatives shall, prior to Final Completion, have unrestricted access to the Sites, the 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 20.1 shall restrict or impede Contracting Authority's right to use and access the Existing Facilities or any part of the Sites not required at that time for Project Co's performance of the Works in accordance with the terms hereof.

- (b) In exercising their access rights under Section 20.1(a), Contracting Authority, the Contracting Authority Parties and the Government Entities 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 Sites for Contracting Authority'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.

20.2 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, 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.

20.3 Right to Open Up

- (a) Contracting Authority shall have the right, at any time prior to the Final Completion Date, to request Project Co to open up and inspect (or allow Contracting Authority to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where Contracting Authority reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When Contracting Authority makes such a request, Contracting Authority shall include reasonably detailed reasons with such request.

- (b) If the inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the 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 Design Data) relevant to such part or parts of the Works, the exercise by Contracting Authority of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

20.4 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by Contracting Authority or the Contracting Authority Representative of the rights under this Article 20 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Article 20.

20.5 Right of Access of Additional Contractors to Works

- (a) Subject to Section 11.13, Project Co shall grant, and shall cause all Project Co Parties to grant, Additional Contractors access to those parts of the Works as may be necessary for the Additional Contractors to carry out any Additional Works.

21. EQUIPMENT

21.1 Equipment Steering Committee

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Equipment Steering Committee**”) consisting of:
 - (i) 4 representatives appointed by MCSCS from time to time;
 - (ii) 2 representatives of Contracting Authority, one of whom shall be the Contracting Authority Representative; and
 - (iii) 2 representatives of Project Co, one of whom shall be the Project Co Representative, appointed by Project Co from time to time.
- (b) Members of the Equipment Steering Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the Equipment Steering Committee.

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

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

21.2 Contracting Authority Equipment Responsibilities

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

- (c) For greater certainty, Project Co, and not Contracting Authority, shall be liable as “purchaser” to the vendor or manufacturer under every purchase order, contract and manufacturer’s installation invoice related to In-Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms. For clarity, all costs relating to In-Contract Equipment shall be included in the Guaranteed Price.
- (d) Contracting Authority shall assume the obligation to make any payments in respect of Equipment that are payable to a vendor or a manufacturer after the Substantial Completion Date under any and all leases, managed equipment programs, usage based pricing and other such arrangements or for service agreements, provided that Project Co is not expressly obligated to make any such payments under this Project Agreement (including, for clarity, under Schedule 15 - Output Specifications) and Contracting Authority has given its prior written approval to such arrangements.
- (e) Contracting Authority shall be responsible for any and all decontamination of Existing Equipment (as required under Applicable Law or by Contracting Authority, in its sole discretion) prior to the decommissioning, de-installation and disconnection of such Existing Equipment by Project Co.

21.3 MCSCS Equipment

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

21.4 Project Co Equipment and Existing Equipment Responsibilities

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

- (i) Planning and Design

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

- (A) subject to the prior approval of Contracting Authority, develop, revise (as may be required) and finalize all Facility drawings (including, but not limited to, the room-by-room layouts, elevations and reflected ceiling plans of each Facility) to determine the manner in which Existing Equipment can suitably be used in each Facility;

- (B) provide analyses and recommendations to Contracting Authority on the effect that the type, quality and quantity of Not-In-Contract Equipment may have on the overall design of each Facility and on the relevant areas within each Facility;
 - (C) develop, coordinate, revise (as may be required), and finalize the design of each Facility to accommodate all Equipment and Existing Equipment;
 - (D) validate, coordinate and, if required, revise the utilities information, the design and the Works described in Article 4 of Schedule 15 – Output Specifications;
 - (E) develop, coordinate, revise (as may be required) and finalize all Design Data associated with the floor layouts and servicing of all Equipment and Existing Equipment (including, but not limited to, all architectural, structural, mechanical and electrical information and communications technology as well as any other building systems related design and construction information); and
 - (F) develop or collate, as applicable, all Shop Drawings for Equipment and Existing Equipment, submit them to Contracting Authority for review and approval and fully coordinate the reviewed Shop Drawings with the Design Data.
- (ii) Procurement
- (A) Except as otherwise expressly set out in or limited by this Project Agreement (including, but not limited to, by Section 21.2(b)), Project Co shall be responsible for all procurement matters related to Equipment as part of its responsibility for the performance and completion of the Works. For clarity, Project Co shall be responsible for:
 - (I) the procurement of each and every item of Equipment, including, but not limited to:
 - a) determining the method of procurement for all Equipment;
 - b) the preparation and issuance of tenders, quotations or requests for proposals documentation;
 - c) implementing and managing the procurement processes and evaluations;
 - d) conducting negotiations with Equipment vendors and manufacturers; and

- e) making vendor, manufacturer and Equipment selections and awards;
 - (II) the execution of any and all purchase orders and/or contracts;
 - (III) incorporating all review comments received from Contracting Authority pursuant to Section 21.2(b) into the Equipment procurement documentation and the negotiation, selection and award processes;
 - (IV) following the completion of each procurement, updating and maintaining an up-to-date list of In-Contract Equipment in the same format as Article 4 of Schedule 15 – Output Specifications, including all relevant utilities information in Article 4 of Schedule 15 – Output Specifications and Not-In-Contract Equipment in the same format as Article 4 of Schedule 15 – Output Specifications, including all relevant utilities information in Article 4 of Schedule 15 – Output Specifications;
 - (V) subject to Section 21.2(d) and Section 21.10, the payment of all Equipment invoices, including, but not limited to, manufacturer’s installation invoices and other documentation related thereto;
 - (VI) managing the procurement of all Equipment so as to bundle the purchase of all Equipment to minimize the number of Equipment requests for proposals issued to the extent reasonably possible; and
 - (VII) developing all required design and installation and training, requirements and other information with respect to Equipment in a manner that is ready for incorporation in the relevant procurement documentation, including but not limited to scheduling and submission requirements associated with Shop Drawings and any other building interface information, scheduling requirements as well as, subject to Section 21.5(a)(iii) any reasonable requirements associated with delivery, installation, commissioning and training that the vendor and/or the manufacturer must comply with.
- (B) In addition to its other obligations in this Article 21, Project Co shall act as procurement manager in respect of all items and all bundled items of Not-In-Contract Equipment as part of its responsibility for the performance and completion of the Works. For clarity, Project Co shall be responsible for:
- (I) in consultation and coordination with the Equipment Steering Committee, establishing procurement processes that are fair, open and competitive, all in accordance with any applicable Contracting Authority policies, Contracting Authority buying agreements, and

good purchasing and procurement practices and complying with such procurement processes;

- (II) in consultation and coordination with and incorporating the input from, Contracting Authority, preparing and issuing procurement documentation in respect of Not-In-Contract Equipment, including tenders, quotations and/or requests for proposals for Not-In-Contract Equipment (“**NIC Equipment Procurement Documentation**”). Contracting Authority shall, acting reasonably, approve of the form, substance and all terms and conditions of all NIC Equipment Procurement Documentation (including, but not limited to, the technical specifications relating to the Not-In-Contract Equipment which, for clarity, shall be developed by Project Co in coordination and consultation with the Equipment Steering Committee and, where applicable, any associated service and preventative maintenance arrangements);
- (III) developing all required Design Data for Not-In-Contract Equipment in conformance with Schedule 15 – Output Specifications and in a manner that is ready for incorporation in the relevant procurement documentation;
- (IV) developing any other information and/or requirements that Project Co deems necessary to be incorporated in the procurement documentation, as approved by Contracting Authority, and in a manner that is ready for incorporation;
- (V) attending all user group meetings to facilitate and enable the development and finalization of NIC Equipment Procurement Documentation (including technical specifications, which shall be developed by Project Co in coordination and consultation with the Equipment Steering Committee);
- (VI) conducting the procurement for all Not-In-Contract Equipment including:
 - a) jointly with the Equipment Steering Committee, confirming the persons eligible to take part in each Not-In-Contract Equipment procurement as proponents;
 - b) reviewing and evaluating all tenders, quotations or proposals from Not-In-Contract Equipment vendors by clearly delineating the costs and performance of the Not-In-Contract Equipment, the training methods and values, the testing and calibration

protocols, the acceptable end results and the party responsible for such testing, be it the vendor, a third party or individuals engaged by Project Co;

- c) conducting the technical evaluations of procurement submission by reviewing, commenting, and scoring the submissions against the requirements developed by Project Co (as approved by Contracting Authority) and providing the results of such assessment to Contracting Authority;
- d) in consultation and coordination with the Equipment Steering Committee, selecting tenders, quotations or proposals from Not-In-Contract Equipment vendors;
- e) entering into all purchase orders and other contracts with respect to the Not-In-Contract Equipment; and
- f) providing such documentation as Contracting Authority requires, acting reasonably, to discharge Project Co's obligations under this Section 21;

(VII) in accordance with the NIC Equipment Procurement Documentation, acting as a single point of contact for all Not-In-Contract Equipment vendors;

(VIII) based on the tenders, quotations and proposals received from Not-In-Contract Equipment vendors, making recommendations to the Equipment Steering Committee for the procurement by Project Co of each item or bundle of items of Not-In-Contract Equipment (each is an "**NIC Equipment Procurement Recommendation**"). Each such recommendation shall include the following information:

- a) item description, item number, and quantities;
- b) the manufacturer, model number, vendor, specifications and options for an item;
- c) 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;

- d) an analysis of the effect of the items on the overall design of the applicable Facility and the relevant areas within the applicable Facility;
- e) 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;
- f) details of training for all applicable Contracting Authority staff;
- g) Not-In-Contract Equipment acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant Not-In-Contract Equipment vendor;
- h) the dates and times when the items shall be delivered to the applicable Site;
- i) all costs, with a breakdown of applicable HST and net of all direct or indirect discounts, rebates, refunds, charge-backs, credits, price adjustments or any other allowances obtained across all categories of Not-In-Contract Equipment that effectively reduce the net selling price of such Not-In-Contract Equipment;
- j) the total amounts and timing of cash flows required to implement the recommendation and the full details of the calculation of such amounts;
- k) 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;
- l) any Taxes applicable to the items;
- m) if so requested by the Contracting Authority Representative, a copy of each quote or proposal and all other relevant information in respect of the items and such other documentation as Contracting Authority may reasonably request, all of which shall be provided on a fully transparent and open basis to the Contracting Authority Representative; and

- n) if no tenders, quotations and proposals are available or have been received by Project Co, an alternate recommended course of action for procurement by Project Co, including possible substitutes for such items;

(iii) Installation and Commissioning

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

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

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

unable to complete the procurement, installation or commissioning of any such item of Equipment or Existing Equipment referred to in this Section 21.4(e) due to a delay in the performance of any of its obligations by an equipment vendor or manufacturer.

- (f) If the commissioning of any Equipment or any part thereof has been waived by Contracting Authority pursuant to Section 21.4(d) or (e), until such time as Project Co has completed the procurement, installation and commissioning of all Equipment in accordance with this Section 21, Contracting Authority may withhold from any payment or payments due to Project Co a holdback amount equal to the greater of the Not-In-Contract Equipment Fee and \$[REDACTED]
- (g) All information related to Equipment or Existing Equipment to be developed by Project Co pursuant to this Section 21 which may or does require Contracting Authority's review (whether or not specifically requested by Contracting Authority) shall be Works Submittals and shall be subject to the provisions of Schedule 10 – Review Procedure. For clarity, such information includes, but is not limited to, design development and construction documentation incorporating Equipment or Existing Equipment information, all technical specifications related to Not In-Contract Equipment and to In-Contract Equipment that Contracting Authority may be required to approve under this Section 21.
- (h) Project Co shall establish, maintain and manage the budget for the Not-In-Contract Equipment and Existing Equipment.
- (i) Project Co shall, subject to the prior approval of Contracting Authority, in accordance with each relevant contract and/or purchase order for an item or any items of Not-In-Contract Equipment, cause the Not-In-Contract Equipment vendor or manufacturer to comply with the applicable design, delivery (including delivery to the location of installation), offloading, handling, assembly, installation and commissioning (including, but not limited to, testing and calibration, start up, training and acceptance) schedule and requirements included in such contract and/or purchase order as well as any applicable warranty and maintenance requirements;
- (j) Project Co shall be responsible for (A) causing each Not-In-Contract equipment vendor or manufacturer to deliver and perform all required services in respect of each item of Not-In-Contract Equipment; and (B) ensuring the successful completion of all commissioning activities with respect to Not-In-Contract Equipment (including, but not limited to, Not-In-Contract Equipment testing, calibration, start up, training and acceptance).
- (k) Project Co shall cause all Not-In-Contract Equipment Vendors and manufacturers (including, for clarity, their employees, agents, representatives, contractors and subcontractors) who access the applicable Site to coordinate and comply with the instructions of Project Co relating to matters of health and safety on the applicable Site.

21.5 Additional Project Co Equipment Responsibilities

- (a) Project Co:
- (i) shall, until the fulfillment of all of Project Co's Equipment or Existing Equipment obligations in respect of the Works, from time to time, revise, update and maintain (A) an up-to-date consolidated list of Equipment and Existing Equipment in the same format as Article 4 of Schedule 15 – Output Specifications, and (B) the utilities information as set out in Article 4 of Schedule 15 – Output Specifications, and provide such list, inclusive of utilities information, to Contracting Authority following every such revision and update or at intervals otherwise reasonably requested by Contracting Authority;
 - (ii) shall schedule, lead and keep the minutes of user group meetings in relation to Equipment and Existing Equipment in order to collect user feedback on the Design Data produced by Project Co as well as on Equipment and MCSCS Equipment technical specifications to be attached to the relevant procurement documents developed by Contracting Authority or Project Co; and
 - (iii) shall, as required by Contracting Authority from time to time, provide access to the Sites and the Facilities to any and all Equipment and Existing Equipment vendors and manufacturers (including, for clarity, each of their employees, agents, representatives, contractors and subcontractors) to allow them to deliver, unpack, assemble, install and/or commission any and all applicable Equipment and Existing Equipment and perform any other works related to such Equipment and Existing Equipment in connection with the Project.
 - (iv) and not Contracting Authority, shall be liable as “purchaser” to the vendor or manufacturer under every purchase order, contract and manufacturer's installation invoice related to Not-In-Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms.

21.6 Minimizing Disruptions

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

21.7 Equipment Training

- (a) For and in respect of each item of Equipment, Project Co shall, in accordance with Schedule 14 – Outline Commissioning Program, provide or arrange for adequate, appropriate and timely training in the item's proper operation and maintenance for all applicable Contracting Authority staff.

- (b) Contracting Authority shall, or shall cause, a Contracting Authority Party or a representative of OPP, as applicable, to make its staff at each Facility to be available for training purposes in accordance with the Works Schedule, the Phase Commissioning Program and the Final Commissioning Program, as applicable.

21.8 Scheduling of Equipment and Existing Equipment Related Activities

- (a) Project Co shall, as part of the Draft Works Schedule submitted in accordance with Section 13.2(b), and in consultation with Contracting Authority, MCSCS and OPP, prepare and submit to Contracting Authority for approval a complete, detailed and computerized schedule outlining all activities associated with Equipment and Existing Equipment that supports the completion of the Works (the “**Equipment Schedule**”), including, but not limited to, as applicable, the design, planning, procurement, transfer, delivery, assembly, installation and commissioning of all Equipment and Existing Equipment, irrespective of whether such activities are being carried out by Project Co or Contracting Authority pursuant to this Project Agreement. At a minimum, Project Co shall include in the Equipment Schedule the sequencing and timing of all activities relating to:
 - (i) Equipment and Existing Equipment design and planning, including, but not limited to, all related activities to be completed pursuant to the Review Procedure;
 - (ii) each procurement activity associated with the individual items or bundles of Equipment and Existing Equipment;
 - (iii) the completion of all Works to enable the installation of Equipment and Existing Equipment;
 - (iv) the decontamination, decommissioning, de-installation and disconnection of Existing Equipment;
 - (v) the delivery, transfer, assembly, installation, commissioning and acceptance of Equipment and Existing Equipment in accordance with each Phase Commissioning Program and the Final Commissioning Program.
- (b) Project Co shall ensure that, in addition to the inclusion of all of the activities described in Section 21.8, the draft Equipment Schedule reflects that:
 - (i) the procurement of Not-In-Contract Equipment and Existing Equipment shall be completed in separate phases comprising the following main groupings of Not-In-Contract Equipment and Existing Equipment:
 - (A) items with a significant impact on the design of the applicable Facility as a whole;
 - (B) longer procurement lead items; and

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

21.9 INTENTIONALLY DELETED

21.10 Payment for Not-In-Contract Equipment

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

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

- (d) Project Co shall ensure that the Monthly Equipment Payment does not include any financing costs. Project Co shall be solely responsible for any financing costs relating to

the Not-In-Contract Equipment and shall promptly reimburse Contracting Authority for any amounts of financing that Contracting Authority determines have been included in the Monthly Equipment Payment. Project Co represents and warrants that no financing costs relating to the procurement of Not-In-Contract Equipment have been included in the Financial Model.

21.11 Monthly Equipment Payment

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

22. LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN AND OTHER REQUIREMENTS

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 a LEED Silver Rating for each Facility and, except as set out in Section 1.2.2 of Article 1 of Schedule 15 – Output Specifications, Project Co may, in its sole discretion, determine which additional credits to pursue.

22.2 Mandatory Prerequisites and Credits

- (a) Project Co shall, at a minimum, achieve the credits and prerequisites under the LEED Rating System provided for in Section 3.8.1 of Article 1 of Schedule 15 – Output Specifications.

22.3 LEED Progress Reports

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

22.4 LEED Silver Rating

- (a) Project Co shall cause the Project to be registered with CaGBC on behalf of Contracting Authority. Project Co shall verify that the Project is registered with CaGBC within 60 days following Financial Close and confirm to Contracting Authority that Project Co is satisfied that the registration is valid, and is effective as of the date it was made.
- (b) If there is a change in the requirements for the achievement of a LEED Silver Rating under the LEED Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify Contracting Authority of such change and such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

- (c) Project Co shall apply to the CaGBC to obtain LEED Silver Rating for each Facility as soon as possible.
- (d) In the event that:
 - (i) Project Co fails to obtain the credits and prerequisites under the LEED Rating System within 24 months after the Substantial Completion Date, provided for in Section 1.2.2 of Article 1 and Section 3.8 of Article 3 of Schedule 15 – Output Specifications, in respect of any Facility; or
 - (ii) A LEED Silver Rating is not obtained by 24 months after the Substantial Completion Date in respect of any Facility,

other than as a direct result of any act or omission of Contracting Authority, any Contracting Authority Party or any Government Entity, Contracting Authority shall be entitled to be paid liquidated damages by Project Co in the amount of \$[REDACTED] for each Facility, provided that the maximum amount of liquidated damages payable by Project Co to Contracting Authority for all Facilities under Section 22.4(d)(i) and (ii) shall not exceed \$[REDACTED]

- (e) For greater clarity, Project Co’s obligation to pay liquidated damages under Section 22.4(d) does not diminish Project Co’s obligations under Schedule 15 – Output Specifications.
- (f) 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 occurrence of either of such events. 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 occurrence of either of such events. For greater certainty, Project Co’s failure to obtain the credits and prerequisites under the LEED Rating System provided for in Section 1.2.2 of Article 1 and Section 3.8 of Article 3 of Schedule 15 – Output Specifications or to obtain a LEED Silver Rating by 24 months after the Substantial Completion Date 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.

22.5 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.

22.6 LEED Obligations in Design and Construction Contract

- (a) All obligations of Project Co with respect to LEED arising under this Project Agreement, including for certainty all obligations under this Article 22, are required to be made the obligations of the Construction Contractor under the Design and Construction Contract.

23. INDEPENDENT CERTIFIER

23.1 Appointment

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

23.2 Role of Independent Certifier

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

23.3 Changes to Terms of Appointment

- (a) Neither Contracting Authority nor Project Co shall without the other's prior written approval (not to be unreasonably withheld or delayed):
 - (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 service 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 acknowledge that the Independent Certifier shall provide certain services and reports to Project Co, the Lenders and the Project Co Parties in addition to performing the

functions of the Independent Certifier under this Project Agreement. 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 five 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 five Business Days thereafter, select three 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.

23A PHASE COMMISSIONING AND COMPLETION

23A.1 Phase Commissioning Activities

- (a) Project Co shall perform all Phase Project Co Commissioning, and shall facilitate the performance of the Phase Contracting Authority Commissioning, set out in each Phase Commissioning Program.

23A.2 Phase Commissioning Program

- (a) Project Co shall prepare a draft of the applicable Phase Commissioning Program in respect of each Phase Project Co Commissioning and Phase Contracting Authority Commissioning and shall provide a copy thereof to the Independent Certifier, the Contracting Authority Commissioning Consultant and the Contracting Authority Representative not less than 365 days prior to each applicable Scheduled Phase Completion Date.
- (b) Each Phase Commissioning Program shall, at a minimum:
 - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the applicable Phase Project Co Commissioning shall be completed to achieve Phase Completion on or before each Scheduled Phase Completion Date;
 - (ii) describe the requirements, and the timing and sequence of such requirements, of the applicable 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 Phase Project Co Commissioning;
 - (vi) include a schedule of each of the Phase Project Co Commissioning Tests and the 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 Phase Project Co Commissioning and Phase Contracting Authority Commissioning;
 - (viii) provide for the re-verification of systems following the applicable Phase Contracting Authority Commissioning;
 - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of each Phase Commissioning Program or Applicable Law; and
 - (x) comply with the requirements and the timing and sequence of such requirements of each applicable Transition.
- (c) Contracting Authority shall provide Project Co with comments on each draft Phase Commissioning Program in accordance with the procedures contemplated by Section 4.1 of Schedule 10 – Review Procedure, and Project Co shall revise each draft Phase Commissioning Program to the extent contemplated by Schedule 10 – Review Procedure within 30 days of receipt of any comments from Contracting Authority.
- (d) When agreed by the Parties, the applicable Phase Commissioning Program shall replace the Outline Commissioning Program with respect to the applicable Phase Completion.

23A.3 Commencement of Phase Project Co Commissioning

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

23A.4 Phase Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least ten Business Days' notice prior to the date upon which Project Co anticipates delivering a Phase Completion Notice (the "**10-Day Phase Completion Notice**").
- (b) Subject to the terms and conditions of this Section 23A.4(b), Project Co shall give the Independent Certifier and the Contracting Authority Representative notice (the "**Phase Completion Notice**") upon the satisfaction of all requirements for a Phase Completion, which Phase Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for the Phase Completion, together with Project Co's opinion as to whether the conditions for issuance of the applicable Phase Completion Certificate have been satisfied. Project Co acknowledges and agrees that, in addition to any other obligations that it has under this Project Agreement, it shall not have the right to issue a Phase Completion Notice unless and until all work in respect of the OPP Functional Requirements has been completed in all respects in accordance with Schedule 15 – Output Specifications of the Project Agreement. Project Co further acknowledges and agrees that no part of the Phase Minor Deficiencies shall relate to the OPP Functional Requirements.
- (c) Contracting Authority shall, within five Business Days after receipt of the applicable 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 Phase Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that such Phase Completion Certificate should not be issued.
- (d) Within five Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 23A.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the applicable Phase Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, to determine whether any Phase Minor Deficiencies exist, and to issue to Contracting Authority and to Project Co either:
 - (i) the applicable Phase Completion Certificate, confirming the date of issue as the applicable Phase Completion Date and setting out the Phase Minor Deficiencies List (if applicable) in accordance with Section 23A.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 Phase Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 23A.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

five Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:

- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
- (ii) the schedule for completion of all such rectification actions; and
- (iii) any additional 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 applicable Phase Project Co Commissioning in a timely manner. For each application for Phase Completion, Project Co shall submit a new 10-Day Phase Completion Notice and a new Phase Completion Notice and the process described in Sections 23A.4(c) to (e), inclusive, shall be repeated.

- (f) In the event that the Phase Completion Certificate has not been issued within 30 days after the delivery of a 10-Day Phase Completion Notice or the delivery of a Phase Completion Notice, such 10-Day Phase Completion Notice or Phase 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 Phase Completion Notice in order to initiate a new application for Phase Completion.
- (g) Project Co shall provide As-Built Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event no later than 30 days after each Phase Completion Date.

23A.5 Operation and Maintenance Manuals

- (a) Project Co shall prepare and deliver to Contracting Authority draft copies of all necessary operation and maintenance manuals for the applicable Phase of the Works in the format set out in the Output Specifications no later than 30 days prior to each Scheduled Phase Completion Date.

23A.5A Maintenance Instructions

- (a) No later than 30 days prior to each Scheduled Phase Completion Date, Project Co shall prepare and deliver to Contracting Authority maintenance data in the format set out in the Output Specifications which is compatible with Contracting Authority's CMMS. The maintenance data shall detail all required planned activities (including, but not limited to, preventive maintenance) for the applicable portion of the Works prescribed by the applicable operation and maintenance manuals and Good Industry Practice and shall be subject to the review and approval of Contracting Authority, acting reasonably. Following Contracting Authority's approval of such maintenance data, Contracting Authority shall upload it into the CMMS.

23A.6 Phase Contracting Authority Commissioning

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

23A.7 Phase Countdown Notice

- (a) With respect to each Phase Completion, Project Co shall deliver a notice (the “**Phase Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates that such Phase Completion will be achieved (the “**Anticipated Phase Completion Date**”).
- (b) Each Phase Countdown Notice shall be delivered not less than 90 days prior to each Anticipated Phase Completion Date. If Project Co fails to deliver a Phase Countdown Notice not less than 90 days prior to the applicable Scheduled Phase Completion Date, such Anticipated Phase Completion Date shall be deemed to be the same date as such Scheduled Phase Completion Date.

- (c) In accordance with Section 13.4A, no Anticipated Phase Completion Date shall be earlier than the applicable Scheduled Phase Completion Date without the prior written consent of Contracting Authority, in its sole discretion.

23A.8 Phase Minor Deficiencies

- (a) In the event that Phase Minor Deficiencies in respect of a Phase of the Works exist when Project Co gives a 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 Phase Minor Deficiencies in respect of such Phase of the Works (the “**Phase Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Phase Minor Deficiencies.
- (b) Each Phase Minor Deficiencies List will contain the schedule for the completion and rectification of the applicable Phase Minor Deficiencies. In determining the relevant time for rectifying Phase Minor Deficiencies, Project Co shall schedule the completion and rectification of Phase Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of Contracting Authority’s use and enjoyment of a Phase of the Works or disruption of the Works.
- (c) The Independent Certifier must prepare a Phase Minor Deficiencies List in relation to each Phase Completion Notice before a Phase Completion Certificate is issued, but shall not withhold such Phase Completion Certificate by reason solely that there are Phase Minor Deficiencies.
- (d) Contracting Authority may, in its sole discretion, waive any requirement for a Phase Completion, including with respect to Equipment and Existing Equipment, provided that the failure to meet any such requirement shall constitute a Phase Minor Deficiency.

23A.9 Rectification of 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 Works, complete and rectify all Phase Minor Deficiencies within 45 days of the issuance of each Phase Minor Deficiencies List or such other period as the Independent Certifier may specify in such Phase Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Phase Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Phase of the Works.

23A.10 Failure to Rectify Phase Minor Deficiencies

- (a) If Project Co has failed to complete and rectify any Phase Minor Deficiency specified in a Phase Minor Deficiencies List:

- (i) within 75 days of the issuance of the Phase Minor Deficiencies List for all Phase Minor Deficiencies where no time for rectification or completion has been specified by the Independent Certifier, or
- (ii) within 30 days after the time for completion and rectification of any Phase Minor Deficiency where such a time has been specified in the Phase Minor Deficiencies List by the Independent Certifier,

Contracting Authority may engage others to perform the work necessary to complete and rectify any such Phase Minor Deficiencies, at the risk and cost of Project Co, and, if and as applicable, Contracting Authority may deduct such cost from the Completion Holdback and interest earned thereon.

23A.11 Effect of Certificates/Use

- (a) The issuance of a Phase Completion Certificate and any taking over or use by Contracting Authority of any part of a Phase of the 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 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.

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 of the Project Co Commissioning and the Contracting Authority Commissioning and shall provide a copy thereof to the Independent Certifier, the Contracting Authority Commissioning Consultant and the Contracting Authority Representative not less than 365 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall, at a minimum:

- (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;
 - (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; and
 - (x) comply with the requirements and the timing and sequence of such requirements of the applicable Transition.
- (c) Contracting Authority shall provide Project Co with comments on the draft Final Commissioning Program in accordance with the procedures contemplated by Section 4.1 of Schedule 10 – Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent contemplated 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 with respect to Substantial Completion and Final Completion.

24.3 Commencement of Project Co Commissioning

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

24.4 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least ten Business Days' notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice (the "**10-Day Notice**").
- (b) Subject to this Section 24.4(b), Project Co shall give the Independent Certifier and the Contracting Authority Representative notice (the "**Substantial Completion Notice**") upon the satisfaction of all requirements for Substantial Completion, which Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied. Project Co acknowledges and agrees that, in addition to any other obligations that it has under this Project Agreement, it shall not have the right to issue the Substantial Completion Notice unless and until all work in respect of the OPP Functional Requirements has been completed in all respects in accordance with Schedule 15 – Output Specifications of the Project Agreement. Project Co further acknowledges and agrees that no part of the Minor Deficiencies shall relate to the OPP Functional Requirements.
- (c) Contracting Authority shall, within five Business Days after receipt of the Substantial Completion Notice, 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 and, if applicable, any reasons as to why it considers that the Substantial Completion Certificate should not be issued.

- (d) Within five Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 24.4(c), 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.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.4(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 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. For each 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 (e), inclusive, shall be repeated.
- (f) In the event that the Substantial Completion Certificate has not been issued within 30 days after the delivery of a 10-Day Notice or the delivery of a Substantial Completion Notice, 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.
- (g) 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 Substantial Completion Payment Date, and a Dispute in relation to the Substantial 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 Substantial Completion Certificate may be referred for resolution pursuant to the Schedule 27 – Dispute Resolution Procedure.

- (h) Project Co shall provide As-Built Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event no later than 30 days after the Substantial Completion Date.

24.5 Operation and Maintenance Manuals

- (a) In respect of each Facility, Project Co shall prepare and deliver to Contracting Authority draft copies of all necessary operation and maintenance manuals for the Works in the format set out in the Output Specifications no later than 30 days prior to the Substantial Completion Date.

24.5A Maintenance Instructions

- (a) No later than 30 days prior to the Substantial Completion Date, Project Co shall prepare and deliver to Contracting Authority maintenance data in the format set out in the Output Specifications which is compatible with Contracting Authority's CMMS. The maintenance data shall detail all required planned activities (including, but not limited to, preventive maintenance) for the applicable portion of the Works prescribed by the applicable operation and maintenance manuals and Good Industry Practice and shall be subject to the review and approval of Contracting Authority, acting reasonably. Following Contracting Authority's approval of such maintenance data, Contracting Authority shall upload it into the CMMS.

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 full access to related Site, the related Facility, any portion of the Existing Facilities in which any Works are to be performed and all relevant parts thereof at such times as may be set out in the Final Commissioning Program to enable Contracting Authority to undertake the Contracting Authority Commissioning in accordance with the Final Commissioning Program. Contracting Authority shall comply, and shall ensure that all Contracting Authority Parties comply, with the directions, procedures and safety guidelines established by Project Co for the Sites and shall use commercially reasonable efforts to minimize disruption to the Works 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 Facilities 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 each Subcontractor shall cooperate with Contracting Authority and all 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

- (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 90 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 90 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 13.5(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.

24.8 Minor Deficiencies

- (a) In the event that any 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, subject as hereinafter provided, is[REDACTED]% of the amount estimated by the Independent Certifier for Contracting Authority to complete and rectify (i) all Phase Minor Deficiencies identified, incomplete and not rectified; and (ii) all such Minor Deficiencies identified in the Minor Deficiencies List (the “**Completion Holdback**”), which holdback shall be held in an interest bearing account. For greater certainty, the amounts provided for in items (i) and (ii) of this Section 24.8 shall not be duplicative. Notwithstanding the foregoing, the Completion holdback shall not include any amounts held back pursuant to Section 21.4(f).
- (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 use and enjoyment of the Facilities or disruption of the Works.

- (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 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 Equipment and Existing Equipment, and the failure to meet any such requirement shall constitute a Minor Deficiency.

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 Works, 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 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 in Section 24.9, Contracting Authority may 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 Final Completion Date, Contracting Authority shall release to Project Co the amount of the Completion Holdback (less any amounts deducted in accordance with Section 24.10(a)) (together with all interest accrued thereon and applicable HST) less the amount of any Finishing Holdback required to be maintained by Contracting Authority as at such date, which Finishing Holdback amount shall be paid by Contracting Authority to Project Co in accordance with Section 4.5A(d). 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 (which, for greater certainty, will be on or before the Scheduled Final Completion 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 60 days prior to the Anticipated Final Completion Date. If Project Co fails to deliver the Final Completion Countdown Notice not less than 60 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 INTENTIONALLY DELETED

24.13 INTENTIONALLY DELETED

24.14 INTENTIONALLY DELETED

24.15 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least ten 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 Phase Minor Deficiencies and all Minor Deficiencies, together with Project Co’s opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied. The Final Completion Notice shall also include the following documentation:
- (i) Project Co’s written request for release of the Completion Holdback, including a declaration that no written notice of lien arising in relation to the performance of the Works has been received by it that has not been withdrawn by the lien claimant;
 - (ii) Project Co’s Statutory Declaration CCDC 9A (2001);
 - (iii) Project Co’s WSIB Certificate of Clearance; and
 - (iv) a written statement that the Works have been performed to the requirements of the Ancillary Documents, itemizing approved changes in the Works, the Independent Certifier’s written instructions, and modifications required by Governmental Authorities.
- (c) Contracting Authority shall, within five Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with Contracting Authority’s opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within five Business Days after Project Co’s receipt of Contracting Authority’s opinion pursuant to Section 24.15(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and to Project Co either:
- (i) the Final Completion Certificate confirming the date of issue as the Final Completion Date; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.15(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within

five Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:

- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
- (ii) the schedule for completion of all such rectification actions; and
- (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 24.15(c) 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.

24.16 Effect of Certificates/Use

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate and any taking over or use by Contracting Authority of any part of the Facilities 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 Minor Deficiencies List or of the amended Minor Deficiencies List described in Section 24.8(d); or
 - (ii) be construed as an approval by Contracting Authority of the Works or the way in which they have been carried out.

24.17 Transitions

- (a) Project Co shall, in cooperation with the Transition Subcommittee, plan, coordinate, manage and execute the physical transitions to and within the Facilities, including, without limitation:
 - (i) the transfer, storage and installation of all Existing Equipment in accordance with the each applicable Phase Commissioning Program and the Final Commissioning Program; and

- (ii) the physical transitions of certain resources relating to the operations and activities of the Existing Facilities (including, for clarity, the associated contents of the Existing Facilities) as identified by Contracting Authority.

For clarity, each Transition shall be carried out by Project Co at all times in accordance with the applicable requirements of Schedule 11 – Design Quality Plan and Construction Quality Plan.

(b) **INTENTIONALLY DELETED;**

- (c) Project Co shall, within 30 days following Financial Close, prepare and submit to Contracting Authority a list of prospective candidates (each a “**Transition Advisor Candidate**”) for appointment as the Transitions advisor (the “**Transition Advisor**”), each of which must have experience planning and executing 5 relocation assignments of similar size, scope and complexity and who will, in accordance with this Section 24.17 (i) ensure that a complete and all-encompassing service is provided that will fulfill all aspects of each Transition and all related planning, occupancy planning and operational preparedness planning required by Contracting Authority and (ii) perform the physical relocation of all items involved in such Transitions.

- (d) Subject to Section 24.17(c), Project Co shall conduct a competitive bid process for the selection of the Transition Advisor from among the Transition Advisor Candidates. Project Co shall consult with Contracting Authority in the design and implementation of such competitive bid process, including the development of the evaluation criteria, and shall accommodate any reasonable request of Contracting Authority with respect thereto. Contracting Authority shall be entitled to participate in the evaluation and selection of the successful Transition Advisor Candidate for appointment as Transition Advisor.

24.18 Transition Subcommittee

- (a) The Parties shall, within 30 days following Financial Close, establish a transition subcommittee of the Works Committee (the “**Transition Subcommittee**”) consisting of 3 representatives of each Party. A representative of the Transition Advisor shall be required to attend meetings of the Transition Subcommittee. Members of the Transition Subcommittee may invite, on prior notice to all members, such other advisors and consultants as they require from time to time to attend meetings and provide briefings to the Transition Subcommittee.
- (b) The Transition Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to each Transition, including issues related to decanting to and within the Facilities and the transfer and installation of all Existing Equipment.
- (c) The primary role of the Transition Subcommittee shall be to oversee and coordinate each Transition in a timely and efficient manner and in accordance with the Works Schedule and with each Phase Commissioning Program and the Final Commissioning Program.

- (d) The Transition Subcommittee shall be responsible for receiving and reviewing all matters related to each Transition and shall make recommendations to the Works Committee, which, after consulting with the Works Committee, Contracting Authority may accept or reject in its sole discretion.
- (e) The members of the Transition Subcommittee may adopt such procedures and practices for the conduct of the activities of the Transition Subcommittee as they consider appropriate from time to time.
- (f) The Transition Subcommittee shall operate until the Final Completion Date.

25. HUMAN RESOURCES

25.1 Admittance of Personnel, Security and Safety

- (a) Without limitation, Project Co acknowledges that the security of the occupants of the Sites, the Facilities and the Existing Facilities and the safety and health of the employees, visitors and other persons on the Sites and/or in the Facilities and the Existing Facilities is paramount. If any employee of Project Co, or any Project Co Party is considered by Contracting Authority to constitute a concern for the security of the Sites, the Facilities and/or the Existing Facilities or for the safety or health of the employees, visitors and/or other persons on the Sites and/or in the Facilities or the Existing Facilities, Contracting Authority may require that Project Co replace such employee or restrict access to the Sites, the Facilities and/or the Existing Facilities to that employee and Project Co shall engage or cause the Project Co Parties to engage substitute employees to proceed with the Works so as not to jeopardize security or safety or cause delay to the progress of the Works contrary to the Works Schedule.
- (b) Contracting Authority shall have the right to refuse admittance to, or order the removal from the Sites, the Facilities and/or the Existing Facilities of any person employed by (or acting on behalf of) Project Co, or any Project Co Party who fails to comply with the Human Rights Policies or who has been convicted of a Relevant Conviction.
- (c) Any decision of Contracting Authority made pursuant to this Section 25.1 shall be final and conclusive.
- (d) Any action taken under this Section 25.1 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.

25.2 Notification of Convictions

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that Contracting Authority is immediately notified in the event that Project Co or any Project Co Party becomes aware that any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Works has been convicted of a Relevant Conviction. 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 25.2.

25.3 Human Resources Policies

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all relevant matters relating to the Works (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, Good Industry Practice and the Human Rights Policies and that they are published in written form and that copies of them (and any revisions and amendments to them) are directly issued to Contracting Authority and all Project Co Parties.

25.4 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 Works.

25A. CONTRACTING AUTHORITY'S REMEDIAL RIGHTS

25A.1 Exercise of Remedial Rights

- (a) Contracting Authority may exercise all rights set out in this Article 25A 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 Facilities and/or Existing Facilities, including employees of and visitors to the Facilities and/or Existing Facilities and members of the public; or
 - (B) may potentially compromise the reputation or integrity of Contracting Authority or any other Government Entity or are inconsistent with the nature of the Province's police system, so as to affect public confidence in that system,

provided that:

- (C) 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 Section 25A.1(a)(i)(A), Contracting Authority shall not exercise its rights under this Article 25A 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 Section 25A.1(a)(i)(A) actually occur; and

- (D) in respect of Section 25A.1(a)(i)(B), Contracting Authority shall not exercise its rights under this Article 25A 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 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 11.23, 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 11.24(a), or to perform its obligations to rectify any non-compliance noted in any H&S Construction Inspection Report in accordance with Section 11.24(d); or
- (iii) Project Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 11.25(a) or Project Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 11.25(b).

25A.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 Article 25A at any time and from time to time if Contracting Authority, acting reasonably, considers the circumstances to constitute an Emergency.

25A.3 Rectification

- (a) Without prejudice to Contracting Authority's rights under Article 34 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 25A.1 or 25A.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 any Project Co Party 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 25A.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 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 requiring the termination and replacement of Project Co Parties, either itself or by engaging others (including a third party) to take any such steps.

- (c) Notwithstanding the foregoing provisions of this Section 25A.3, in the event of an Emergency, the notice under Section 25A.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 25A.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

25A.4 Costs and Expenses

- (a) Subject to Contracting Authority's obligations pursuant to Sections 25A.5 and 25A.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 Article 25A; 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 Article 25A, including in relation to Contracting Authority taking such steps, either itself or by engaging others (including a third party) to take any such steps as Contracting Authority considers appropriate and as are in accordance with this Article 25A.

25A.5 Reimbursement Events

- (a) In this Section 25A.5, a "**Reimbursement Event**" means:

- (i) an act or omission of Project Co or any Project Co Party or a breach of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by Contracting Authority or a Contracting Authority Party; or
 - (ii) 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 Article 25A 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 Article 25A that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) 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 Article 25A.

25A.6 Reimbursement if Improper Exercise of Rights

- (a) If Contracting Authority exercises its rights pursuant to this Article 25A, 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 Article 25A 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.

26. RECORDS, INFORMATION AND AUDIT

26.1 Records Provisions

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

26.2 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 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, 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 26.2(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 Sites, 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 Subcontractor from any Governmental Authority in relation to any of the Works, or the Sites, 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 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, 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. 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 26.2(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 26.2 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 26.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

26.3 Lenders' Consultant Reports

- (a) Project Co shall cause the Lenders' Agent to cause, in accordance with Section 5(j) of Schedule 4 – Lenders' Direct Agreement, the Lenders' Consultant to provide Contracting Authority a copy of any written assessment or report of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent.

27. COMMUNICATIONS

27.1 Communications

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

28. CHANGES IN LAW**28.1 Performance after Change in Law**

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

28.2 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 ten 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 ten 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 ten 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.

28.3 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 Works 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 28.3.
- (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 ten 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 ten 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 ten 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 28.3, and any calculation of compensation shall take into consideration, inter alia:
 - (I) any failure by a Party to comply with Section 28.3(b)(iii);
 - (II) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (III) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Article 30 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 28.3, and Article 31 shall be construed accordingly.

29. VARIATIONS

29.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations.
- (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’s board of directors 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 Works.
- (c) Without limiting Project Co’s obligations pursuant to Section 11.11(a) and Schedule 22 – Variation Procedure, Project Co shall include in each Subcontract, or shall otherwise 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.

29.2 Innovation and Value Engineering

- (a) Project Co acknowledges that Contracting Authority at all times desires to reduce the overall cost to Contracting Authority of the Project, 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; or
 - (ii) any Variation resulting from a Change in Law.
- (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 if there are any dates by which a decision by Contracting Authority must be made;
 - (vi) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (vii) 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) the Innovation Proposal affects the quality of the Works, the Facilities, or the likelihood of successful completion of the Works;
 - (ii) the Innovation Proposal will benefit or interfere with the efficient operation of the Facilities or the performance of the Contracting Authority Activities;
 - (iii) the Innovation Proposal will interfere with the relationship between Contracting Authority and third parties;
 - (iv) the financial strength of Project Co is sufficient to deliver the changed Works, as applicable;
 - (v) the residual value of the Sites or Facilities is affected;
 - (vi) the Innovation Proposal materially affects the risks or costs to which Contracting Authority is exposed; or
 - (vii) 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) 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 a Subcontractor to decrease, the net savings in the costs of Project Co and/or the 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 a lump sum payment.
- (j) 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:
- (i) equally by Project Co and Contracting Authority following the implementation of the Innovation Proposal until the Termination Date; 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 be reflected in a lump sum payment.

30. DELAY EVENTS

30.1 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 causes a delay in achieving a Phase Completion by the applicable Scheduled Phase Completion Date or Substantial Completion by the Scheduled Substantial Completion Date:
- (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
 - (ii) any breach by Contracting Authority of any of Contracting Authority's obligations under this Project Agreement (including, subject to Section 30.2(o), any delay by Contracting Authority in giving access to the Sites or to the Existing Facilities pursuant to Section 16.1), any obstruction of the rights afforded to Project Co under Section 16.1 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 20.3 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 18.2(b) or 18.2(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 18.3(b) or 18.3(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, artifacts 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 the provisions of Section 11.13, the execution of Additional Works on the Sites by Additional Contractors;
- (vii) a requirement pursuant to Section 11.1 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) a Relief Event;
- (ix) an event of Force Majeure; or
- (x) a Relevant Change in Law.

30.2 Consequences of a Delay Event

- (a) Project Co shall provide written notice to the Contracting Authority Representative and the Independent Certifier within 10 Business Days of becoming aware of the occurrence of any event or circumstance described in Section 30.1(a)(ii), (iv), (v) or (vi) 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 30.2(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 30.2(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 for 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 30.2(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 30.2(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 any Phase Completion Date and/or the Scheduled Substantial Completion Date, if such event or circumstances forms the basis of 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 30.2(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 Contracting Authority shall not be obligated to consider, the notice given under Section 30.2(a) for the purposes of determining Project Co's entitlement to relief under this Section 30. Project Co, at its option, may submit a new, currently dated notice which complies with the provisions of Section 30.2(a) for the same event or circumstance which gave rise to the previous, unsubstantiated notice, and the provisions of this Section 30 shall apply to any new notice, *mutatis mutandis*. Project Co acknowledges and agrees that Contracting Authority, in determining Project Co's entitlement to an extension of time pursuant to this Section 30, and without limiting any other right of Contracting Authority 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 30.2(a) and deemed null and void pursuant to Section 30.2(c), and
 - (ii) Project Co submitting the new notice pursuant to Section 30.2(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 30.2(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 30.2(b), or of further particulars under Section 30.2(c), 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 potential Delay Event, including on-site inspection.
- (f) In addition to complying with its obligations under Sections 30.2(a) and 30.2(b), Project Co shall provide written notice to the Contracting Authority Representative and the Independent Certifier within 10 Business Days of becoming aware that an event or circumstance has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of a Delay Event. Project Co shall, within 15 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 30.2(a), 30.2(d) and 30.2(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 a Scheduled Phase Completion Date or Scheduled Substantial Completion Date, including a critical path analysis of the event or circumstances indicating the impact upon the Scheduled Phase Completion Date or Scheduled Substantial Completion Date 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 30.2(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 30.2(f), or of further particulars under Section 30.2(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 30, 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) one or more revised Scheduled Phase Completion Dates; (B) a revised Scheduled Substantial Completion Date; or (C) a revised Scheduled Final 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 30.2(f) and the date of receipt of any further particulars (if such are required under Section 30.2(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 30.2(g) and the date of receipt of any further particulars (if such are required under Section 30.2(h)), whichever is later.
- (j) **INTENTIONALLY DELETED.**
- (k) If:
 - (i) the Contracting Authority Representative declines to fix (A) any applicable revised Scheduled Phase Completion Date(s); (B) a revised Scheduled Substantial Completion Date; or (C) a revised Scheduled Final Completion Date, as applicable;
 - (ii) Project Co considers that a different (A) Scheduled Phase Completion Date(s); (B) Scheduled Substantial Completion Date; or (C) Scheduled Final Completion Date should be fixed; or
 - (iii) there is a dispute as to whether a Delay Event has occurred,then Project Co shall be entitled to refer the matter for 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) To the extent that Project Co does not comply with its obligations under Sections 30.2(a), (b), (d), (e), (f), (g) or (h), such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 30.
- (m) If the Works should be behind schedule for a reason other than a Delay Event, or if a Project Co Party delays the progress of any portion of the Works necessary to complete the Works on schedule, Project Co shall use all reasonable measures to bring the Works back on schedule. Project Co shall exercise all means within its discretion, such as directing any Project Co Party that is creating delays to increase their labour forces and equipment, to improve the organization and expediting of the Works, or to work overtime as may be necessary. Project Co shall provide any additional supervision, coordination and expediting, including overtime by its own personnel as may be required to achieve this end. The costs and expenses incurred by the use of such measures and overtime shall be borne by Project Co and/or the Project Co Parties and there shall be no adjustment to the Guaranteed Price as a result of such costs and expenses and for clarity, no extension to any Phase Completion Date(s) or the Scheduled Substantial Completion Date.
- (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 either an extension in the Scheduled Phase Completion Date(s), the Scheduled Substantial Completion Date or additional compensation to the extent of the concurrent

delays. Concurrent delays are those that are caused by two or more independent events which affect the Scheduled Phase Completion Date(s) or the Scheduled Substantial Completion Date where the time period over which such delays occur overlap in time, but only for the duration of the overlap.

- (o) Subject to Sections 11.17(b) and 11.17(c), Contracting Authority shall provide Project Co with access to and use of the Sites and the Existing Facilities as required pursuant to Article 16 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 11.17(b) and 11.17(c) will not result in the occurrence of a Delay Event (and, for greater certainty, there shall not be a resulting change to any Scheduled Phase Completion Date or the Scheduled Substantial Completion Date) or a Compensation Event (and, for certainty, there shall not be any resulting change to the Guaranteed Price).
- (p) 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.

30.3 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 30.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 30.

31. COMPENSATION EVENTS

31.1 Definition

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 30.1(a)(ii) (subject to Section 30.2(o)), 30.1(a)(iii), 30.1(a)(iv), 30.1(a)(v), 30.1(a)(vi) and 30.1(a)(vii) 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.

31.2 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 31. 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 30.1(a)(i);
 - (ii) Section 33, in the case of a Delay Event referred to in Section 30.1(a)(ix);
 - (iii) Section 32, in the case of a Delay Event referred to in Section 30.1(a)(viii); and
 - (iv) Section 28, in the case of a Delay Event referred to in Section 30.1(a)(x).
- (b) Subject to Sections 31.2(d), 31.3, 31.4 and 31.5, 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 or 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 31.2, 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.
- (d) To the extent that Project Co does not comply with its obligations under Sections 30.2(a) to (h), inclusive and subject to Section 30.2(c), such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 31.

31.3 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 31 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 31.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 31.

31.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 31 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.

31.5 Delivery of Works Schedule

- (a) If an event referred to in Sections 30.1(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 13.2(c), and prior to Contracting Authority assigning the comment “NO COMMENT” or “MINOR NON-CONFORMANCE” to the Draft Works Schedule referred to in Section 13.2(b)(i), Project Co shall not be entitled to receive any compensation under this Section 31 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 31.5, Project Co would have been entitled to receive pursuant to Section 31.2(b).

32. RELIEF EVENTS

32.1 Definition

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

- (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 MCSCS or the construction 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 Works or the construction and/or operation of the Facilities in general,

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 Contracting Authority Party.

32.2 Consequences of a Relief Event

- (a) Subject to Section 32.3, no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 36.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement, 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).
- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 30.1(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 30; and
 - (ii) in respect of a Relief Event referred to in Section 32.1(a)(v), 32.1(a)(vi) or 32.1(a)(vii), on the earlier of (A) the Substantial Completion Date, and (B) the date of payment of the Contracting Authority Default Termination Sum or Non-Default 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 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 or Non-Default 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, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 32.2(b)(ii) and 38.
- (d) Subject to Section 38, 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 32.

32.3 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 32.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 32.
- (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 32.3(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 32.3(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.

32.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 32 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.

33. FORCE MAJEURE

33.1 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 Facilities and/or the Sites, 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 Facilities and/or the Sites from any event referred to in Section 33.1(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.

33.2 Consequences of Force Majeure

- (a) Subject to Section 33.3, 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 30.1(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 30; and
 - (ii) on the earlier of (A) the Substantial Completion Date, and (B) the date of payment of the Contracting Authority Default Termination Sum or Non-Default 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 accrued 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 or Non-Default Termination Sum, as applicable, together with interest thereon at the rate 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 33.2(b)(ii) and 38.
- (d) Subject to Section 38, 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 33.

33.3 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 33.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 33.
- (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 33.3(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 33.3(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.

33.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 33 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.

33.5 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 33.5.

34. PROJECT CO DEFAULT

34.1 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 Works or of the Contracting Authority Activities (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it 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 34.1(a)(i);

- (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 or other process of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
 - (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 34.1(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 34.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 180 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
 - (iii) Project Co either:
 - (A) failing to deliver a Recovery Schedule under Section 13.4(a)(iv)(A);
 - (B) delivering a Recovery Schedule under Section 13.4(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 13.4(a)(iv)(A) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Sections 13.4(a)(iv) and 13.4(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 Works, the Contracting Authority Activities, or that may potentially compromise the reputation or integrity of Contracting Authority or any other Government Entity or are inconsistent with the nature of the Province's police system, so as to affect public confidence in that system, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from Contracting Authority;
- (v) Project Co committing a breach of Sections 40 or 41 ;
- (vi) Project Co committing a breach of its obligations under this Project Agreement which has or will have a material adverse effect on the performance of Contracting Authority operations or Contracting Authority Activities (other than a breach that is otherwise referred to in Sections 34.1(a)(i) to (v) inclusive or 34.1(a)(vii) to (xvi) inclusive) 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 Contracting Authority operations and the Contracting Authority Activities;
 - (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;

- (vii) Project Co wholly abandoning the Works for a period which exceeds three Business Days from receipt by Project Co of a written request to return to the Sites, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement;
- (viii) Project Co failing to comply with Sections 47.1 or 47.3;
- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 47.4;
- (x) 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 Sites 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;
- (xi) 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 4.12(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;
- (xii) Project Co failing to comply with Section 48;
- (xiii) Project Co failing to comply with Section 8.3 or Schedule 29 - Refinancing;
- (xiv) 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;

- (xv) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xvi) A default by Project Co or any Project Co Party under any of the Ancillary Documents following the expiry of any applicable notice and cure periods thereunder.

34.2 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.

34.3 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 34.4, 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.

34.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 34.1(a)(i)(B), 34.1(a)(i)(C), 34.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 34.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 34.1(a)(i)(B) or 34.1(a)(i)(C)), 34.1(a)(iii), 34.1(a)(iv), 34.1(a)(v), 34.1(a)(vii), 34.1(a)(viii), 34.1(a)(ix), (where the Project Co Event of Default referred to in Section 34.1(a)(ix) is capable of being remedied), 34.1(a)(xi), 34.1(a)(xiii), 34.1(a)(xiv) (where the Project Co Event of Default referred to in Section 34.1(a)(xiv) is not in respect of insurance), 34.1(a)(xv), or 34.1(a)(xvi), Contracting Authority shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders’ Direct Agreement to receive such notice, and Project Co shall:
 - (i) within five Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such

breach is not capable of being remedied in such period then such longer period as is acceptable to Contracting Authority, acting reasonably; and

- (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 34.4(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 34.4(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; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 34.4(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 34.4(a) and (b); or
 - (iv) where Project Co puts forward a plan and schedule pursuant to Section 34.4(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 34.4(a), and without prejudice to the other rights of Contracting Authority in this Section 34.4, 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 34.4, 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.

34.5 Contracting Authority 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 34, including any relevant increased administrative expenses. Contracting Authority shall take commercially reasonable steps to mitigate such costs.

34.6 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 34 and 36.

35. CONTRACTING AUTHORITY DEFAULT

35.1 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 4.12(a)(i), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:
 - (A) in respect of the Substantial Completion Payment, such failure continues for a period of 10 Business Days; or
 - (B) in respect of any other payment due and payable by Contracting Authority to Project Co under this Project Agreement, such failure continues for a period of 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 16 (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, provided that, 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”.

35.2 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 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.

35.3 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 35, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

35.4 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.

36. RELIEF EVENT AND NON DEFAULT TERMINATION

36.1 Termination for Relief Event

- (a) 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 32.3(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.

36.2 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 33.5 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.

36.3 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. Such written notice shall include confirmation that Contracting Authority has, in respect of such termination, obtained the prior written consent of MCSCS.
- (b) In the event of notice being given by Contracting Authority in accordance with this Section 36.3, 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 where such Works have not yet been commenced.

36.4 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.

37. EFFECT OF TERMINATION

37.1 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 36.4, this Section 37 shall apply in respect of such termination.

37.2 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.

37.3 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 37.

37.4 Effect of Notice of Termination

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 36.4:
 - (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 43.1, 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 Facilities as shall have been constructed and such items of the Plant and equipment, including Equipment as shall have been procured by Project Co, and, if Contracting Authority so elects:
 - (A) all plant, equipment and materials (other than those referred to in Section 37.4(a)(i)(B)) on or near to the Sites 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 Facilities;
- (iii) in so far as title shall not have already passed to Contracting Authority pursuant to Section 43.1 or Section 37.4(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 Facilities together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Works and all facilities and equipment, including the Equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to Contracting Authority, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Contracting Authority in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
- (iv) if Contracting Authority so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Design and Construction 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 Works 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 the Design and Construction Contract with the Construction Contractor shall be made by Contracting Authority pursuant to, and subject to, the terms of the Construction Contractor's 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 Facilities, and reasonably required by Contracting Authority in connection with the operation of the Facilities;

- (vi) 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 each Facility; and
- (vii) Project Co shall deliver to Contracting Authority all information, reports, documents, records and the like referred to in Section 26, 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).

37.5 Ownership of Information

- (a) Subject to Section 39, 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 Works 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.

37.6 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 37.

37.7 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:
 - (i) as soon as practicable remove from the Sites all property belonging to Project Co or any Project Co Party that is not acquired by Contracting Authority pursuant to

Section 37.4 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;

- (ii) 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 each Facility; and
 - (B) to the extent transferable and without prejudice to Contracting Authority's rights pursuant to Section 39, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of each Facility; and
- (iii) as soon as practicable, vacate the Sites and shall leave the Sites and the Facilities in a safe, clean and orderly condition.

37.8 Termination upon Aforesaid Transfer

- (a) On completion of Project Co's obligations pursuant to this Section 37, this Project Agreement shall terminate and, except as provided in Section 37.9, all rights and obligations of Contracting Authority and Project Co under this Project Agreement shall cease and be of no further force and effect.

37.9 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, 4, 6, 7, 8, 11.15, 11.16, 17.2, 18.1, 18.2(a), 18.3(a), 23.6, 0.16, 26, 34.5, 35.3, 36.4, 37, 38, 39 (with the exception of 39.4(b)), 40, 41, 42.3, 43, 44, 45, 0, 48.3, 49.1, 50.4, 50.8, 50.9, 50.10, 50.11 and 50.12 of this Project Agreement, Schedule 23 – Compensation on Termination, Schedule 24 – Financial Model, Sections 1.2 to 1.8 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure 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 36.4. For clarity, any termination of this Project Agreement shall be without prejudice to, and shall not affect, the Performance Guarantee of Construction Guarantor, which shall survive the termination of

this Project Agreement, including termination on the Expiry Date pursuant to Section 36.4, in respect of any and all of such surviving provisions of the Project Agreement.

38. COMPENSATION ON TERMINATION

38.1 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.

38.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 38.2(b), any compensation paid pursuant to this Section 38, 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 38.2(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 4.12 or taken into account pursuant to Schedule 23 - Compensation on Termination in determining or agreeing upon the Contracting Authority Default Termination Sum, Non-Default Termination Sum, Project Co Default Termination Sum or any other termination sum, as the case may be; and
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 37.9 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.

39. INTELLECTUAL PROPERTY

39.1 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 provide the assignments granted to Contracting Authority herein; and
- (iii) the Project Data and the Intellectual Property Rights and their use by Contracting Authority and the Contracting Authority Parties 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.

39.2 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 39.2(a), for any and all of the Approved Purposes.

39.3 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, obtain the grant of an equivalent licence to that referred to in Section 39.3(a)(i), provided that such licence may, in respect of the Construction Contractor's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the Design and Construction Contract; 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), obtain the grant of an equivalent licence to that referred to in Section 39.3(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 39.3 and 39.5(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.

39.4 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 Facilities, the Sites or Works (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.

39.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 39 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 39.3(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 39.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 39 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 39.5(b) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

39.6 Claims

- (a) Where a demand, claim, action or proceeding is made or brought against Contracting Authority or a Contracting Authority Party or any Governmental Authority which arises out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by Contracting Authority or any Contracting Authority Party or Governmental Authority or because the use of any materials, machinery or equipment in connection with the Works 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 otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless Contracting Authority and each Contracting Authority Party and Governmental Authority from and against all such demands, claims, actions and proceedings and Section 44.3 shall apply.

39.7 Contracting Authority Trade-Marks

- (a) Project Co shall not use any Contracting Authority Trade-Marks or the Trade-Marks of a Government Entity without obtaining a trade-mark licence on terms and conditions satisfactory to Contracting Authority or the relevant Government Entity, as applicable, in their sole discretion.

39.8 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 39 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.

39.9 Government Use of Documents

- (a) The Parties hereby disclaim any right, title or interest of any nature whatsoever they each may have in or to this Project Agreement that might prohibit or otherwise interfere with MOI's, MCSCS's, IO's or the Province's ability to use this Project Agreement in any manner desired by MOI, MCSCS, IO or the Province.
- (b) Each of the Parties hereby consents to the use by MOI, MCSCS, IO and/or the Province 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 MOI, MCSCS, IO and/or the Province by either Party in circumstances where disclosure may be refused under Section 17(1) of FIPPA.

40. CONFIDENTIALITY

40.1 Disclosure

- (a) Subject to Sections 40.1(b), 40.1(c) and 40.2, 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 40.1(b) and 40.1(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 40.1(b), but subject to Section 40.2, 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 terms thereof are subject to the Open Data Directive and that the Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Open Data Directive.

40.2 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 40.1(b). The

Parties acknowledge and agree that the Guaranteed Price, but not any 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 40.1(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.

40.3 Disclosure to Government

- (a) Project Co acknowledges and agrees that Contracting Authority will be free to disclose any information, including Confidential Information, to MOI, MCSCS, IO and/or the Province, and, subject to compliance with FIPPA, MOI, MCSCS, IO and/or the Province will be free to use, disclose or publish (including on websites) the information on such terms and in such manner as MOI, MCSCS, IO and/or the Province see fit.
- (b) For greater certainty, the Parties acknowledge and agree that, subject only to the removal of any information which the Parties are (or would be) entitled to refuse to disclose pursuant to 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 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 MOI, MCSCS, IO and/or the Province.

40.4 Freedom of Information

- (a) The Parties acknowledge and agree that FIPPA applies to Contracting Authority, MOI, MCSCS, IO and the Province, and that Contracting Authority, MOI, MCSCS, IO and the Province are required to fully comply with FIPPA.

40.5 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 40 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 the Lenders' Agent, and their respective 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 Works 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 MOI, IO, MCSCS and/or the Province 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 Province's alternate procurement and financing policies and framework. MOI, IO, MCSCS and/or the Province 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 less than a reasonable degree of care.

40.6 Exceptions

- (a) Information of a Party (the "**Proprietor**"), 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 36 or is otherwise required by Contracting Authority for the purposes of performing (or having performed) the Works, including the design or construction of the Facilities, or any other operations or services the same as, or similar to, the Works; or
- (ix) the information would not be exempt from disclosure under FIPPA.

40.7 Survival of Confidentiality

- (a) The obligations in Section 40.1 to Section 40.6 will cease on the date that is three years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

41. PERSONAL INFORMATION

41.1 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 only to the extent necessary to perform Project Co's obligations under this Project Agreement.
- (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 and the *Personal Information Protection and Electronic Documents Act* (Canada).
- (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 41.
- (e) Project Co shall allow Contracting Authority on reasonable notice to inspect the measures of Project Co and each Project Co Party to protect Personal Information.

41.2 Protection of Personal Information

- (a) Project Co shall take all necessary steps, including the appropriate technical and organizational and physical security measures, and shall require each Project Co Party to take all necessary steps and to include provisions in Subcontracts to require each Project Co Party and other 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 and to 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) Contracting Authority may from time to time require that Project Co or any Project Co Party 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.
- (d) This Section 41.2 shall not limit Section 41.1.

41.3 Survival

- (a) The obligations in this Section 41 shall survive the termination of this Project Agreement.

42. INSURANCE AND PERFORMANCE SECURITY

42.1 General Requirements

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

42.2 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.

42.3 Performance Guarantee of Construction Guarantor

- (a) At all times during the Project Term and, in respect of the provisions described in Section 37.9, following the Project Term, Project Co shall ensure that a valid and binding Performance Guarantee of the Construction Guarantor in favour of Contracting Authority from the Construction Guarantor (or a party of comparable financial strength, capacity and stability, as determined by Contracting Authority acting in its sole discretion) and in the form of guarantee attached as Schedule 12 – Performance Guarantee of Construction Guarantor, is in place and enforceable by Contracting Authority.

43. TITLE

43.1 Title

- (a) Title to each item and part of the Facilities and the Equipment, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to Contracting Authority (or as Contracting Authority may direct) upon the receipt of such item on the Sites, 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 a Facility or are to be affixed or attached to a 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 such Facility or affixed or attached to such Facility.

44. INDEMNITIES

44.1 Project Co Indemnities to Contracting Authority

- (a) Project Co shall indemnify and save harmless Contracting Authority 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 one or more of the following:
- (i) a failure by Project Co to achieve a Phase Completion by the applicable Scheduled Phase Completion Date;
 - (ii) failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
 - (iii) any physical loss of or damage to all or any part of the Sites, the Facilities and 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:

- (vii) the breach of this Project Agreement by Contracting Authority; or

- (viii) in respect of Section 44.1(a)(i) or Section 44.1(a)(ii), any deliberate or negligent act or omission of Contracting Authority or any Contracting Authority Party; or
 - (ix) in respect of Sections 44.1(a)(iii), 44.1(a)(iv), 44.1(a)(v) or 44.1(a)(vi), any act or omission of Contracting Authority or any Contracting Authority Party.
- (b) Project Co shall indemnify and save harmless Contracting Authority 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 Project Co herein.
- (c) Project Co shall indemnify and save harmless Contracting Authority 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, 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 Sites, except for Contamination for which Contracting Authority is responsible pursuant to Section 18.2(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 34 and any other rights under this Project Agreement, if Contracting Authority exercises its step-in rights under the Construction Contractor's Direct Agreement, Project Co shall indemnify Contracting Authority for all obligations of Project Co assumed by Contracting Authority under the Design and Construction 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 day to day at a rate per annum 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.

44.2 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 Contracting Authority or any Contracting Authority Party, 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 Contracting Authority or any Contracting Authority Party, 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 Contracting Authority or any Contracting Authority Party, 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 day to day at a rate per annum 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.

44.3 Conduct of Claims

- (a) This Section 44.3 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 44, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within ten 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 44.3(d), 44.3(e) and 44.3(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 44.3 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 44.3(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 44.3(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 44.3(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 44.3(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 44.3(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 44.3 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.

44.4 Mitigation – Indemnity Claims

- (a) For greater certainty, Section 50.4 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.

45. LIMITS ON LIABILITY

45.1 Indirect Losses

- (a) Subject to Section 45.1(b) and without prejudice to 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 44.1(a)(i) and 44.1(a)(ii) only, the exceptions in Sections 45.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, Contracting Authority’s loss of use of the Facilities and/or the Existing Facilities or a portion thereof, which for the purposes of Section 44.1(a)(i) and 44.1(a)(ii), shall be Direct Losses.

45.2 No Liability in Tort

- (a) Subject to the indemnities provided herein, Contracting Authority and the Contracting Authority Parties shall not 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 Contracting Authority Party 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.

45.3 Sole Remedy

- (a) Nothing in this Project Agreement 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.
- (b) 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.

45.4 Maximum Liability

- (a) Subject to Section 45.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 44 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 Sections 44.1(a)(i), 44.1(a)(ii) and 45.4A shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.

- (c) Nothing in this Section 45.4 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.

45.4A 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 45.4A, Project Co’s obligation to indemnify Contracting Authority pursuant to Section 44.1(a)(i)-(ii) shall remain unaffected by, and shall apply in addition to, any Liquidated Damages payable by Project Co pursuant to this Section 45.4A, provided, however, that any amount for which Project Co is required to indemnify Contracting Authority pursuant to 44.1(a)(i)-(ii) 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 45.4A 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 4.12(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.

46. DISPUTE RESOLUTION PROCEDURE

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

47. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

47.1 Project Co Assignment

- (a) Project Co shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement or any Ancillary Document without the prior written consent of Contracting Authority, which consent may be withheld in the sole discretion of Contracting Authority, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliates is a Restricted Person or a person whose standing or activities are inconsistent with (i) the reputation or integrity of Contracting Authority or any other Government Entity, or (ii) the nature of the Province’s police system, so as to affect public confidence in that system.
- (b) Section 47.1(a) shall not apply to:
 - (i) 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; or
 - (ii) any Subcontract or sub-subcontract entered into by Project Co, the Project Co Parties or any sub-subcontractor in connection with the Project.

47.2 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) to any minister of the Province;
 - (iii) to a Crown agency 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

- (iv) in circumstances other than those described in Sections 47.2(a)(i) to 47.2(a)(iii), with the prior written consent of Project Co, not to be unreasonably withheld or delayed;

provided that:

- (v) the person to whom any such assignment, transfer, disposition or other alienation is made has the legal capacity, power and authority to accept such sale, assignment, transfer, disposition or other alienation and agrees in writing with Project Co to 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.
- (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 47.2.

47.3 Subcontracting

- (a) Project Co shall not subcontract any interest in this Project Agreement or the Design and Construction Contract, and shall not permit the Construction Contractor to subcontract any interest in the Design and Construction Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities are inconsistent with (i) the reputation or integrity of Contracting Authority or any other Government Entity, or (ii) the nature of the Province's police system, so as to affect public confidence in that system.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor unless Project Co has complied with Sections 8.2(a), 47.3(c) and 47.3(d) or received the prior written consent of Contracting Authority, not to be unreasonably withheld or delayed.
- (c) Subject to Section 47.3(d), if the Design and Construction 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 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, and Project Co shall require, that any replacement enter into a contract upon the same or substantially similar terms as the Design and Construction Contract so replaced, including the provision of replacement Security and an agreement on the same or substantially similar terms as the Construction Contractor's Direct Agreement unless any material variations are approved by Contracting Authority, acting reasonably.

47.4 Changes in Ownership and Control

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or 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: (A) may potentially compromise the reputation or integrity of Contracting Authority or any other Government Entity; or (B) are inconsistent with the nature of the Province's police system, so as to affect public perception of that system; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Works.
- (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 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.
- (e) Subject to Section 47.4(a), (b), (c) and (d), no Change in Control of Project Co, or of any Control Party shall be permitted without the prior written consent of Contracting Authority, not to be unreasonably withheld or delayed.
- (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; and
- (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.

Following the delivery to Contracting Authority of the notice referred to in this Section 47.4(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) This Section 47.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities, units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.
- (h) Section 47.4(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 47.4(f) shall apply.

47.5 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’s determination of Project Co’s compliance with Section 47.1, 47.3 or 47.4 whether or not such consent is granted.

48. PROHIBITED ACTS

48.1 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 48.1(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 48.1(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 48;
- (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.

48.2 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 34 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 34 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 Works 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 34 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 Works shall be performed by another person, where relevant, in accordance with Section 47.3;
 - (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 34 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 Works 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 48.2(a)(i) to 48.2(a)(iv), then Contracting Authority may give notice to Project Co and Section 34 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 Works shall be performed by another person.
- (b) Any notice of termination under this Section 48.2 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 48.2, Contracting Authority shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 48.

48.3 Permitted Payments

- (a) Nothing contained in this Section 48 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.

48.4 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.

48.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 48, 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.

49. NOTICES

49.1 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]

Fax No.: **[REDACTED]**

Attn: **[REDACTED]**

Email: **[REDACTED]**

With a copy to:

[REDACTED]

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

Email: **[REDACTED]**

If to Contracting Authority:

[REDACTED]

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

With a copy to:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

49.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 49.1, 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]

Fax No.: [REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

With a copy to:

[REDACTED]

Fax No.: [REDACTED]

Attn: [REDACTED]

Email: [REDACTED]

If to the Contracting Authority Representative: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

49.3 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 49.3.

49.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 49.1 or 49.2 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.

49.5 Deemed Receipt of Notices

- (a) Subject to Sections 49.5(b), 49.5(c) and 49.5(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 49.
- (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.

49.6 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 49.

50. GENERAL

50.1 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.

50.2 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.

- (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.

50.3 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, Workers' Compensation Board 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.

50.4 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.

50.5 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 their respective directors, officers, senior management and the Project Co Representative and the Contracting Authority Representative, respectively. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the "knowledge of" Project Co or Contracting Authority, shall be construed in a manner consistent with the foregoing sentence.

50.6 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.

50.7 No Reliance

- (a) Each of the Parties acknowledges 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 50.7 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.

50.8 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.

50.9 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.

50.10 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.

50.11 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.

50.12 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.

50.13 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.

50.14 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 declare satisfaite.

- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operation 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.

50.15 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.

50.16 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 or faxed form provided that any Party providing its signature in faxed form shall promptly forward to the other Party an original signed copy of this Project Agreement which was so faxed.

50.17 Government Entities as Third Party Beneficiaries

- (a) The provisions of Sections 2.4, 7.1, 7.2(a), 7.3(a), 9.1(c), 11.12(a), 39.6, 39.7, 39.9, 40, 44.1 and 45.2 and each other provision of the Project Agreement which is to the benefit of a Government Entity are:
 - (i) intended for the benefit of each Government Entity and, if set out in the relevant Section, each Government Entity's 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, the "**Third Party Beneficiaries**"); and
 - (ii) are in addition to, and not in substitution for, any other rights that the Third Party Beneficiaries may have by contract or otherwise.
- (b) Contracting Authority shall hold the rights and benefits of Sections 2.4, 7.1, 7.2(a), 7.3(a), 9.1(c), 11.12(a), 39.6, 39.7, 39.9, 40, 44.1 and 45.2 and each other provision of the Project Agreement which is to the benefit of each Government Entity in trust for and on behalf of the Third Party Beneficiaries and Contracting Authority hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Third Party Beneficiaries.

50.18 Time is of the Essence

- (a) Time is of the essence in this Project Agreement.

50.19 Copyright Notice

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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
Infrastructure as represented by the Ontario
Infrastructure and Lands Corporation**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the
corporation.

BIRD CAPITAL OMP PROJECT CO INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We 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) of the Project Agreement.
 - 1.2 “**10-Day Phase Completion Notice**” has the meaning given in Section 23A.4(a).
 - 1.3 “**401 Contracting Authority**” has the meaning given in the Construction Procedures Agreement.
 - 1.4 “**401 Extension**” has the meaning given in Schedule the Construction Procedures Agreement.
 - 1.5 “**401 Project Agreement**” has the meaning given in the Construction Procedures Agreement.
 - 1.6 “**401 Project Co**” has the meaning given in the Construction Procedures Agreement.
 - 1.7 “**401 Project Co Parties**” has the meaning given in the Construction Procedures Agreement.
 - 1.8 “**401 Site**” has the meaning given in the Construction Procedures Agreement.
 - 1.9 “**Account Trustee**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
 - 1.10 “**Access Level**” has the meaning given in Section 10.4(d) of the Project Agreement.
 - 1.11 “**Additional Contractor**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor or Project Co) or Contracting Authority’s own forces, engaged by Contracting Authority to carry out the Additional Works.
 - 1.12 “**Additional Works**” means those works in relation to the Facilities which are not Works and which are to be carried out by an Additional Contractor, including works or services Contracting Authority requires to be performed prior to Substantial Completion and those works in relation to the Facilities which are not Phases of the Works and which are to be carried out by an Additional Contractor, including works or services Contracting Authority requires to be performed prior to Phase Completion.
 - 1.13 “**Administrative Costs**” means, for the purposes of Section 45.4A of the Project Agreement, only those costs and expenses incurred by Contracting Authority and OPP in the ordinary course in relation to staffing, the PDC Team, the Contracting Authority Commissioning Consultant and the Independent Certifier, in each case assuming normal utilization.

- 1.14 “**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 the unitholders, shareholders, partners or owners of Project Co, as applicable, and any person or entity controlling, controlled by or under common control with Project Co where “control” of any person or entity shall mean the ownership, directly or indirectly, of securities of such person or entity having the power to elect a majority of directors or similar authority or to otherwise control the decisions made on behalf of such person or entity.
- 1.15 “**Ancillary Documents**” means the Design and Construction Contract [REDACTED]
- 1.16 “**Anticipated Final Completion Date**” has the meaning given in Section 24.11(a) of the Project Agreement.
- 1.17 “**Anticipated Phase Completion Date**” has the meaning given in Section 23A.7(a) of the Project Agreement
- 1.18 “**Anticipated Substantial Completion Date**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.19 “**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 or any Contracting Authority Party.
- 1.20 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.21 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.22 “**Apprenticeship Plan**” has the meaning given in Section 11.21(a) of the Project Agreement.
- 1.23 “**Approved Purposes**” means:
- (a) Contracting Authority and the Contracting Authority Parties performing the Contracting Authority Activities (and their operations relating to the performance of the Contracting Authority Activities), their obligations under the Project

Agreement and/or any other activities in connection with the Facilities and the Sites;

- (b) following termination of the Project Agreement, the design, construction and/or maintenance of each Facility, and/or the performance of any other operations the same as, or similar to, the Works; and
 - (c) the development by MCSCS and/or the Province of best practices for facilities in the Province of Ontario similar to the Facilities.
- 1.24 “**As Built Drawings**” means drawings prepared by Project Co in a format and with content and details that Contracting Authority, acting reasonably, considers appropriate.
- 1.25 “**As-built Works Schedule**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.26 “**Associated Liabilities**” has the meaning given in Section 4.21(b) of the Project Agreement.
- 1.27 “**ATI**” means the *Access to Information Act* (Canada).
- 1.28 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.29 “**Background Information**” means any and all drawings, reports (including the Environmental Reports, the Geotechnical Reports, and any other report given or otherwise referred to in the Output Specifications), 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.
- 1.30 “**Bank**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.31 “**Beneficiary**” has the meaning given in Section 44.3(a) of the Project Agreement.
- 1.32 “**Bonds**” means any one or more of the Performance Bond and the Labour and Material Payment Bond described in Section 17 of Schedule 25 – Insurance and Performance Security Requirements, and, collectively, means all of them.
- 1.33 “**Building**” means a building as defined in the Building Code.
- 1.34 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario).

- 1.35 “**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.
- 1.36 “**CaGBC**” means the Canada Green Building Council.
- 1.37 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.38 “**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.
- 1.39 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.40 “**Cash Allowance Account**” means [REDACTED].
- 1.41 “**Cash Allowance Amount**” means [REDACTED].
- 1.42 “**Cash Allowance Item**” means [REDACTED].
- 1.43 “**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.
- 1.44 “**Certification Services**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.45 “**Certification Services Variation**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.46 “**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 11.24(a) of the Project Agreement.
- 1.47 “**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.
- 1.48 **“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.
- 1.49 **“Change in Ownership”** means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.50 **“Chief Security Officer”** means the individual designated as the Chief Security Officer in Schedule 9 – Key Individuals of the Project Agreement.
- 1.51 **“CLA”** means the *Construction Lien Act*, R.S.O. 1990, c.C.30.
- 1.52 **“Commercial Close”** means the date of the Project Agreement.
- 1.53 **“Commissioning Team”** has the meaning given in Section 4.1 of Schedule 14 – Outline Commissioning Program.
- 1.54 **“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 or equipment; and
 - (d) required to be included in each Phase Commissioning Program by the Independent Certifier, the Contracting Authority Commissioning Consultant or the Contracting Authority Representative during its development pursuant to Section 23A.2 of the Project Agreement;
 - (e) required to be included in the Final Commissioning Program by the Independent Certifier, the Contracting Authority Commissioning Consultant or the Contracting Authority Representative during its development pursuant to Section 24.2 of the Project Agreement.

- 1.55 “**Compensation Event**” has the meaning given in Section 31.1(a) of the Project Agreement.
- 1.56 “**Compensation Payment**” means the Contracting Authority Default Termination Sum, the Project Co Default Termination Sum or the Non-Default Termination Sum.
- 1.57 “**Completion Holdback**” has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.58 “**Complex Structure**” means any post-tensioned or pre-tensioned structure that has undergone significant structural alteration making it difficult for personnel at the Sites 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.
- 1.59 “**Complex Structure Demolition**” means any Demolition:
- (a) where significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed or altered;
 - (b) where large penetrations are being created through slabs;
 - (c) which 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) where 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; or
 - (e) where any apparent or inferable risk associated with the Demolition poses a significant risk to workers, the public or adjacent property.
- 1.60 “**Confidant**” has the meaning given in Section 40.6(a)(i) of the Project Agreement.
- 1.61 “**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.
- 1.62 “**Construction Contractor**” means [REDACTED], engaged by Project Co to perform the Works and any substitute building contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.63 “**Construction Contractor’s Direct Agreement**” means the agreement to be entered into between Contracting Authority, Project Co and the Construction Contractor in the form set out in Schedule 5 – Construction Contractor’s Direct Agreement.

- 1.64 “**Construction Defect**” has the meaning given to it in Section 11.14(a) of the Project Agreement.
- 1.65 “**Construction Document Submittals**” has the meaning given in Section 11.1(c)(ii) of the Project Agreement.
- 1.66 “**Construction Guarantor**” means [REDACTED].
- 1.67 “**Construction Latent Defect**” has the meaning given in Section 11.15(c) of the Project Agreement.
- 1.68 “**Construction Procedures Agreement**” means the agreement entered into between Project Co, Contracting Authority, 401 Project Co and 401 Contracting Authority in substantially the form attached hereto as Schedule 36 – Construction Procedures Agreement.
- 1.69 “**Construction Quality Plan**” means the construction quality plan included in Schedule 11 - Design Quality Plan and Construction Quality Plan.
- 1.70 “**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.
- 1.71 “**Contracting Authority**” has the meaning given in the preamble to the Project Agreement.
- 1.72 “**Contracting Authority Activities**” includes (i) the direct or indirect provision of provincial and municipal policing services at the Facilities as established by Applicable Law, including under the *Police Services Act* (Ontario); (ii) the conduct of activities provided in or associated with the Facilities as local OPP detachments, including, but not limited to, provide policing services to the communities in which such Facilities are located; and (iii) any other activities appurtenant thereto, including the provision of management and administration services.”
- 1.73 “**Contracting Authority Commissioning**” means the commissioning activities to be carried out by Contracting Authority in accordance with the Final Commissioning Program.
- 1.74 “**Contracting Authority Commissioning Consultant**” means the person appointed by Contracting Authority as its commissioning consultant.
- 1.75 “**Contracting Authority Commissioning Period**” means the period during which Contracting Authority is performing the Contracting Authority Commissioning.

- 1.76 “**Contracting Authority Commissioning Tests**” means all commissioning tests required to be performed by Contracting Authority pursuant to the Final Commissioning Program.
- 1.77 “**Contracting Authority Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.78 “**Contracting Authority Design Team**” means any of Contracting Authority, its agents, contractors and subcontractors of any tier and its or their governors, directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Facilities on behalf of Contracting Authority, but excluding Project Co and any Project Co Party.
- 1.79 “**Contracting Authority Event of Default**” has the meaning given in Section 35.1(a) of the Project Agreement.
- 1.80 “**Contracting Authority Mortgages**” means, collectively, the Sisters First Mortgage and the Sisters Second Mortgage, which are both defined and described in Schedule 16 – Title Encumbrances.
- 1.81 “**Contracting Authority Party**” means any of Contracting Authority and its respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the Contracting Authority Activities, Project Co and any Project Co Party, and the “**Contracting Authority Parties**” shall be construed accordingly.
- 1.82 “**Contracting Authority Permits, Licences, Approvals and Agreements**” means only those Contracting Authority permits, licences, approvals and agreements which are the responsibility of Contracting Authority to obtain as set out in Appendix “A” to this Schedule 1 - Definitions and Interpretation.
- 1.83 “**Contracting Authority Representative**” means the person designated as such by Contracting Authority on or prior to the date of Financial Close and any permitted replacement.
- 1.84 “**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 4.15 of the Project Agreement.
- 1.85 “**Contracting Authority Trade-Marks**” means any and all Trade-Marks used by Contracting Authority in any manner whatsoever.
- 1.86 “**Contractor Site Specific Safety Manual**” means the document describing the Construction Contractor’s health and safety management program for the Project and the Sites from Financial Close until Final Completion, all in accordance with the minimum requirements set out in Schedule 28 – Contractor Site Specific Safety Manual Requirements.

- 1.87 “**Control Party**” means any person with any form of direct ownership interest in Project Co, including [REDACTED].
- 1.88 “**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 such other person’s Certificate of Recognition and Letter of Good Standing extends and applies to such person.
- 1.89 “**COR-Certified Construction Project Co Party**” has the meaning given in Section 11.23(a)(ii) of the Project Agreement.
- 1.90 “**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.
- 1.91 “**COR-Qualified Construction Project Co Party**” means one of the following:
- (a) where the Construction Contractor is a single legal entity, the Construction Contractor;
 - (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.
- 1.92 “**Corporations Act**” means the *Corporations Act*, R.S.O. 1990, c. C.38, as amended.
- 1.93 “**Cost of the Financing**” means all costs and expenses incurred in connection with the Financing pursuant to the Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in Schedule 24 – Financial Model.
- 1.94 “**Cost of the Works**” means the cost to Project Co of performing the Works as set out in Schedule 24 – Financial Model and shall include all amounts to be included in the Cost of the Works set out in the Project Agreement.
- 1.95 “**Countdown Notice**” has the meaning given in Section 24.7(a) of the Project Agreement.

- 1.96 “**CPI**” means, as at the date of the Project Agreement, CPI XFET and, thereafter, the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), 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.
- 1.97 “**CPI XFET**” means the Consumer Price Index excluding food, energy and the effect of changes in indirect taxes.
- 1.98 “**CPIC**” means the Canadian Police Information Centre.
- 1.99 “**CPI_n**” is the value of CPI on April 1 of the relevant year, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.100 “**CPI_o**” is the value of CPI at Financial Close, to be determined by reference to the relevant index in the month immediately preceding Financial Close.
- 1.101 “**Critical Non-Conformance**” means any Non-Conformance, or combination of Major Non-Conformances, that:
- (a) in the reasonable opinion of Contracting Authority, demonstrates that Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion;
 - (b) is persistent, ongoing or repeated; or
 - (c) in the reasonable opinion of Contracting Authority, by its continued existence or through the process of rectification, would:
 - (i) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to traffic flow;
 - (ii) prejudice or is reasonably expected to materially prejudice the performance of any Contracting Authority Activities;
 - (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 Facilities and/or the Existing Facilities, including employees, volunteers and visitors to the Facilities and/or the Existing Facilities, and members 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 Works Schedule, adversely affect Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date, require a material resequencing of the Works or cause any delay in achieving Substantial Completion; or
 - (vii) potentially compromise the reputation or integrity of Contracting Authority and/or any Contracting Authority Party or the nature of the Province's police system so as to negatively affect public perception of that system or undertaking.
- 1.102 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.103 “**Current Progress Works Schedule**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.104 “**Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Lenders in the normal course under the Lending Agreements.
- 1.105 “**Delay Event**” has the meaning given in Section 30.1(a) of the Project Agreement.
- 1.106 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.107 “**Demolition Default Event**” has the meaning given in Section 11.25(b)(ii) of the Project Agreement.
- 1.108 “**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.
- 1.109 “**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.
- 1.110 “**Demolition Requirements**” has the meaning given in Section 11.25(a) of the Project Agreement.

- 1.111 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by Project Co in accordance with Section 11.25(a)(iv)(A) of the Project Agreement.
- 1.112 “**Demolition Supervisor**” has the meaning given in Section 11.25(a)(ii) of the Project Agreement.
- 1.113 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.114 “**Design and Construction Contract**” means the design and construction contract between Project Co and the Construction Contractor dated on or about the date of Financial Close.
- 1.115 “**Design Data**” means, in respect of each Facility, 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.
- 1.116 “**Design Development Submittals**” has the meaning given in Section 11.1(c)(i) of the Project Agreement.
- 1.117 “**Design Quality Plan**” means the design quality plan included in Schedule 11 - Design Quality Plan and Construction Quality Plan.
- 1.118 “**Design Team**” means:
- (a) [REDACTED]
- engaged by Project Co to design the Facilities and any substitute design team engaged by Project Co or a Project Co Party as may be permitted by the Project Agreement.
- 1.119 “**Design Workshops**” has the meaning given in Section 11.3(a) of the Project Agreement.
- 1.120 “**Designated Project Co Employee**” means:
- (a) every person employed, engaged or hired by Project Co or by a Project Co Party or by a Subcontractor who is:
- (i) to carry out any of the responsibilities of Project Co under the Project Agreement during the Project Term or to provide any of the Works; or
- (ii) identified by name in any proposal submitted by Project Co or a Project Co Party or Subcontractor or who is hired in replacement of any person so named; or

- (b) every other person otherwise designated as a Designated Project Co Employee by Contracting Authority from time to time.

For clarity, any individual who requires access to classified information or technology of OPP, confidential information of OPP, or who otherwise requires access to people, property, information, resources or assets of OPP, whether or not such individual will access the Sites or Facilities, shall be deemed a Designated Project Co Employee.

- 1.121 **“Detachments”** mean, collectively, each Facility listed in Schedule 33 – List of Facilities.
- 1.122 **“Development Approvals”** means, in respect of each Facility, 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.
- 1.123 **“Direct Cost”** has the meaning given in Schedule 22 -Variation Procedure.
- 1.124 **“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.
- 1.125 **“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 five ([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 five ([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.
- 1.126 **“Discriminatory Change in Law”** means any Change in Law, the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:

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

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

- (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 is a change in Taxes that affects companies generally.

1.127 “**Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.

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

1.129 “**Draft Works Schedule**” has the meaning given in Schedule 19 – Works Scheduling Requirements.

1.130 “**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.

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

- (a) that:
 - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize the health and/or safety of any persons or any part or the whole of the Facilities or Existing Facilities;
 - (ii) causes or may cause damage or harm to property, buildings and/or equipment; or

- (iii) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Facilities, any part of the Sites, the conduct of the Works and/or the conduct of Contracting Authority Activities;

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.

1.132 **“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.

1.133 **“Environmental Reports and Designated Substance Reports”** means [REDACTED].

1.134 **“Equipment”** means the Not-In-Contract Equipment (including furniture) and the In-Contract Equipment and, for clarity, does not include the Existing Equipment.

1.135 **“Equipment Invoice”** has the meaning given in Section 21.10(a) of the Project Agreement.

1.136 **“Equipment List”** means the equipment lists set out in Article 4 of Schedule 15 – Output Specifications.

1.137 **“Equipment Procurement Sub-Plan”** means the plan referenced in RFP Schedule 3, Part 1, Part B, Section 4.1.

1.138 **“Equipment Schedule”** has the meaning given in Section 21.8(a) of the Project Agreement.

1.139 **“Equipment Steering Committee”** has the meaning given in Section 21.1(a) of the Project Agreement.

1.140 **“Estimate”** has the meaning given in Schedule 22 - Variation Procedure.

1.141 **“Existing Equipment”** means the equipment, furniture and fixtures identified as “Existing Equipment” in Article 4 of Schedule 15 – Output Specifications and the MCSCS Equipment.

1.142 **“Existing Equipment List”** means the equipment list set out in Article 4 of Schedule 15 – Output Specifications.

- 1.143 “**Existing Facilities**”. For the purpose of the Project Agreement, there are no Existing Facilities and any reference to “Existing Facilities” in the Project Agreement shall have no force or effect.
- 1.144 “**Expert**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.145 “**Expiry Date**” means the first anniversary of the Final Completion Date.
- 1.146 “**Facilities**” means, collectively, the facilities set out in Schedule 33 – List of Facilities.
- 1.147 “**Facility**” means a Facility listed in Schedule 33 – List of Facilities, with each Facility being comprised of the following:
- (a) all buildings, facilities and other structures;
 - (b) the Plant;
 - (c) all site services, utilities, roadways and parking area required to support such buildings, facilities and structures;
 - (d) all supporting systems, infrastructure and improvements; and
 - (e) all other works, improvements and Demolition to occur on the applicable Site,
- 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 design, construction, installation or completion.
- 1.148 “**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.
- 1.149 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including completion of all Minor Deficiencies.
- 1.150 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.15 of the Project Agreement.
- 1.151 “**Final Completion Countdown Notice**” has the meaning given in Section 24.11(a) of the Project Agreement.
- 1.152 “**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.
- 1.153 “**Final Completion Notice**” has the meaning given in Section 24.15(b) of the Project Agreement.

- 1.154 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.155 “**Financial Close Target Date**” means August 16, 2018, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.156 “**Financial Model**” means the computer spreadsheet model included in Schedule 24 – Financial Model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Works together with, if applicable, 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.
- 1.157 “**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.
- 1.158 “**Financing**” means the financing with the Lenders, that is consistent in all material respects with Schedule 24 - Financial Model and the Project Agreement, to finance the Project.
- 1.159 “**Finishing Holdback**” means the finishing construction lien holdback to be retained pursuant to Section 22(2) of the CLA.
- 1.160 “**Finishing Holdback Payment Date**” means the date for payment of the Finishing Holdback pursuant to Section 4.5A(d) of the Project Agreement.
- 1.161 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 (Ontario).
- 1.162 “**Force Majeure**” has the meaning given in Section 33.1(a) of the Project Agreement.
- 1.163 “**Geotechnical Reports**” means [REDACTED].
- 1.164 “**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.
- 1.165 “**Government Entity**” means any one or more of the Province, IO, MOI and the MCSCS (including OPP).
- 1.166 “**Governmental Authority**” means MCSCS, and any other 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 Facilities or Existing Facilities, or the Contracting Authority Activities, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.

- 1.167 “**Guaranteed Price**” is the amount referred to in Section 3.1(a) of the Project Agreement.
- 1.168 “**H&S Certification Default Event**” has the meaning given in Section 11.23(b)(iii) of the Project Agreement.
- 1.169 “**H&S Certification Maintenance Plan**” has the meaning given in Section 11.23 (b)(vii)(B) of the Project Agreement.
- 1.170 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 11.23 (b)(vi)(B) of the Project Agreement.
- 1.171 “**H&S Construction Inspection**” has the meaning given in Section 11.24(a) of the Project Agreement.
- 1.172 “**H&S Construction Inspection Report**” has the meaning given in Section 11.24(c) of the Project Agreement.
- 1.173 “**H&S Construction Re-Inspection**” has the meaning given in Section 11.24(d)(ii) of the Project Agreement.
- 1.174 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 11.24(d)(iii) of the Project Agreement.
- 1.175 “**Hazardous Substances**” means any contaminant, pollutant, mould, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined in or identified pursuant to any Applicable Law.
- 1.176 “**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.
- 1.177 “**Hedging Agreement**” means an agreement relating to the hedging of interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.178 “**Heritage Guidelines and Protocols**” means those heritage guidelines and protocols established by Applicable Laws.

- 1.179 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.180 “**Human Rights Policies**” means the following policies of Contracting Authority provided to Project Co as Background Information, as amended, supplemented or replaced from time to time:
- (a) Ontario Public Services Occupational Health and Safety Policy;
 - (b) Ontario Public Services Respectful Workplace Policy (Policy to Support a Respectful Workplace and Prevent Workplace Harassment and Discrimination);
 - (c) Ontario Public Services Workplace Violence Prevention Policy;
 - (d) Ontario Provincial Police Sexual harassment Prevention Action Plan; and
 - (e) Ontario Provincial Police Anti-Racism Action Plan.
- 1.181 “**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.
- 1.182 “**Improvements**” means structures, buildings, installations, fixtures, services and other such improvements.
- 1.183 “**In-Contract Equipment**” means all Equipment in respect to which Project Co is to be the purchaser as specified in Article 4 of Schedule 15 – Output Specifications, and for clarity, does not include any Not-In-Contract Equipment or Existing Equipment.
- 1.184 “**Indemnifiable Taxes**” has the meaning given in Section 4.21(b) of the Project Agreement.
- 1.185 “**Indemnifier**” has the meaning given in Section 44.3(a) of the Project Agreement.
- 1.186 “**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.
- 1.187 “**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.
- 1.188 “**Indirect Losses**” has the meaning given in Section 45.1 of the Project Agreement.

- 1.189 “**Innovation Proposal**” has the meaning given in Section 29.2(b) of the Project Agreement.
- 1.190 “**Insurance**” means the insurance contemplated in Schedule 25 – Insurance and Performance Security Requirements.
- 1.191 “**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.
- 1.192 “**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.
- 1.193 “**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 Facilities (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction); or
 - (b) the Project Agreement.
- 1.194 “**Interest Reference Rate**” means the reference benchmark rate of interest identified in the Financial Model and used in the calculation of the Project Debt Interest Cost, and for greater clarity, is the base rate of interest exclusive of any stated or imbedded spread, (including credit, swap or other types of spread) or fees.
- 1.195 “**Interim Works Schedule**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.196 “**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 Infrastructure.
- 1.197 “**IPFP Framework**” has the meaning given in the recitals to the Project Agreement.
- 1.198 “**Irrecoverable Tax**” has the meaning given in Section 4.17(b) of the Project Agreement.
- 1.199 “**Jointly Developed Materials**” has the meaning given in Section 39.4(a) of the Project Agreement.
- 1.200 “**Junior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.201 “**Junior Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Junior Lenders in the normal course under the Lending Agreements.
- 1.202 “**Junior Lenders**” For the purpose of the Project Agreement, there are no Junior Lenders and any reference to “Junior Lenders” in the Project Agreement shall have no force or effect.
- 1.203 “**Key Individuals**” has the meaning given in Schedule 9 – Key Individuals.
- 1.204 “**Key Works Milestones**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.205 “**Labour and Material Payment Bond**” means, collectively, the Labour and Material Payment Bond and the Multiple Obligee Rider to Labour and Material Payment Bond in the form attached as Appendix C to Schedule 25 – Insurance and Performance Security Requirements.
- 1.206 “**LD Commencement Date**” has the meaning given in Section 45.4A(a) of the Project Agreement.
- 1.207 “**LEED**” means Leadership in Energy & Environmental Design.
- 1.208 “**LEED Rating System**” means CaGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System for New Construction and Major Renovations, LEED – NC Version 1.0, including any addenda or update thereto issued prior to the date of the Project Agreement.
- 1.209 “**LEED Silver Rating**” means the achievement of a ‘Silver’ rating from the CaGBC, with respect to the LEED Rating System.
- 1.210 “**Legislative Holdback**” means the basic holdback to be retained pursuant to Section 22(1) of the CLA. For greater certainty, the amount of the basic holdback required by Part IV of the CLA may be reduced by the amount of the holdback which has been paid

- by Project Co or the Construction Contractor in respect of Subcontracts certified complete under Section 33 of the CLA in accordance with Section 25 of the CLA.
- 1.211 “**Legislative Holdback Payment Date**” means the date for payment of the Legislative Holdback pursuant to Section 4.5(e) of the Project Agreement.
- 1.212 “**Lenders**” means any or all of the persons acting arm’s length to Project Co and each Project Co Party who provide the Financing, and for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns and any Affiliate of Project Co or a Project Co Party.
- 1.213 “**Lenders’ Agent**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.214 “**Lenders’ Consultant**” means any consultant appointed from time to time by the Lenders (including, without limitation, the Lenders’ technical advisor). Nothing contained in the Project Documents and no action taken by the Lenders’ Consultant in connection with the Works or the Project Documents shall constitute direction and/or control by Contracting Authority, Project Co or the Lenders.
- 1.215 “**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.
- 1.216 “**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, including, for greater certainty, the Security Documents and the Hedging Agreements.
- 1.217 “**Letter of Credit Provider**” has the meaning given in the Request for Proposals.
- 1.218 “**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 IHSA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.219 “**Liquidated Damages**” means the liquidated damages to be paid pursuant to Section 45.4A of the Project Agreement which shall be in the amount of \$[REDACTED] per Business Day.
- 1.220 “**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.
- 1.221 “**Longstop Date**” has the meaning given in Section 34.1(a)(ii) of the Project Agreement.

- 1.222 “**Look-ahead Schedule**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.223 “**Maintenance Instructions**” means the maintenance data prepared and delivered by Project Co to Contracting Authority pursuant to Section 24.5A of the Project Agreement.
- 1.224 “**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 of any Substantial Completion.
- 1.225 “**Make Good**”, “**Made Good**”, “**Making Good**” and derivatives thereof, means, as applicable, repairing, restoring, refurbishing, rehabilitating, removing and 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 at the commencement of the Works, 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.
- 1.226 “**MCSCS**” means Her Majesty the Queen in Right of Ontario, as represented by the Minister of Community Safety and Correctional Services, and includes any successors thereto or persons exercising delegated power and the Minister’s authority.
- 1.227 “**MCSCS Equipment**” means the equipment designated in the column labelled “MCSCS Equipment” in Article 4 of Schedule 15 – Output Specifications and the procurement of which Contracting Authority is responsible pursuant to Section 21.3 of the Project Agreement.
- 1.228 “**Minor Deficiencies**” means, in respect of each Facility, any defects, deficiencies and items of outstanding work (including in relation to seasonal work but excluding Phase Minor Deficiencies) arising from or related to the work required to achieve any Substantial Completion and that would not materially impair Contracting Authority’s use and enjoyment of the Facility (including the Contracting Authority Commissioning) or the performance of the Contracting Authority Activities.
- 1.229 “**Minor Deficiencies List**” has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.230 “**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 any Substantial Completion but may result in a Minor Deficiency.
- 1.231 “**Mississauga Site**” has the meaning given in Section 16.1(g) of the Project Agreement.
- 1.232 “**MOI**” means Her Majesty The Queen in Right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.233 “**Monthly Equipment Payment**” has the meaning given in Section 21.10(a) of the Project Agreement.
- 1.234 “**Monthly Equipment Payment Estimate**” has the meaning given in Section 21.10(b) of the Project Agreement.
- 1.235 “**Multiple Obligee Rider to Labour and Material Payment Bond**” means the Multiple Obligee Rider amending the Labour and Material Payment Bond to add Contracting Authority and Lenders as additional named Obligees, in the form attached as Exhibit 1 to Appendix C of Schedule 25 – Insurance and Performance Security Requirements.
- 1.236 “**Multiple Obligee Rider to Performance Bond**” means the Multiple Obligee Rider amending the Performance Bond to add Contracting Authority and Lender as additional named Obligees, in the form attached as Exhibit 1 to Appendix B of Schedule 25 – Insurance and Performance Security Requirements.
- 1.237 “**NIC Equipment Procurement Documentation**” has the meaning given in Section 21.4(a)(ii)(B)(II) of the Project Agreement.
- 1.238 “**NIC Equipment Procurement Recommendation**” has the meaning given in Section 21.4(a)(ii)(B)(VIII) of the Project Agreement.
- 1.239 “**No Default Payment Compensation Amount**” means [REDACTED].
- 1.240 “**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 and which failure is not rectified by Project Co within the applicable time period, if any, stipulated in the Project Agreement.
- 1.241 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.242 “**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).

- 1.243 “**Not-In-Contract Equipment**” means all equipment, furniture and fixtures as specified in Article 4 of Schedule 15 – Output Specifications, and for clarity, does not include any In-Contract Equipment or Existing Equipment.
- 1.244 “**Not-In-Contract Equipment Fee**” means [REDACTED].
- 1.245 “**Notice**” has the meaning given in Section 49.1(a) of the Project Agreement.
- 1.246 “**Notice of Project**” means a notice of project filed with the Ministry of Labour in compliance with O. Reg 213/91 under the *Occupational Health and Safety Act* (Ontario).
- 1.247 “**Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of the Facilities in compliance with Applicable Law.
- 1.248 “**OCPM**” has the meaning given in Section 13.6(b) of the Project Agreement.
- 1.249 “**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.
- 1.250 “**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.
- 1.251 “**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.
- 1.252 “**OPP**” means Ontario Provincial Police.
- 1.253 “**OPP Functional Requirements**” means each of the following requirements, which are to be completed in all respects prior to the issuance of a Phase Completion Certificate or Substantial Completion Certificate, as applicable, in each case, in accordance with and as further described in Schedule 15 – Output Specifications of the Project Agreement:
- (a) completion of a fully functional “Restricted & Secure Area” area in each Facility, which secure function area shall be free from any possible ligature points in all holding cells;
 - (b) completion of a fully operational duress alarm (building wide) and CCTV systems;
 - (c) completion of all evidence vaults and the “Voice and Data Room”;
 - (d) securing the Facility to the OPP keying and Hirsch system; and
 - (e) completion and installation of fully operational officer handgun lockers and long gun vaults.

- 1.254 “**OPPM**” means Ontario Provincial Police Modernization Project.
- 1.255 “**Order**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.256 “**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.
- 1.257 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.258 “**PAR Meeting**” has the meaning given in Section 14.6(f) of the Project Agreement.
- 1.259 “**Party**” means either Contracting Authority or Project Co, and “**Parties**” means both Contracting Authority and Project Co.
- 1.260 “**Payment Certifier**” means the professional architect of record or the engineer of record for the Project.
- 1.261 “**Payment Compensation Amount**” means [REDACTED].
- 1.262 “**PDC Team**” means [REDACTED].
- 1.263 “**Performance Bond**” means any of the Performance Bonds described in Section 17.4 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.264 “**Performance Guarantee of Construction Guarantor**” means a performance guarantee given by the Construction Guarantor in the form set out in Schedule 12 – Performance Guarantee of Construction Guarantor.
- 1.265 “**Performance Security**” means, collectively, the Bonds and the Performance Guarantee of Construction Guarantor.
- 1.266 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.267 “**Permits, Licences, Approvals and Agreements**” means the Contracting Authority Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.268 “**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.
- 1.269 **"Personal Information"** means all personal information (as the term **"personal information"** is defined in section 2(1) of FIPPA) 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 Works and not derived directly or indirectly from Contracting Authority in respect of the Project.
- 1.270 **"Phase Commissioning Program"** means each program to be jointly developed and agreed by Contracting Authority and Project Co in accordance with Section 23A.2 of the Project Agreement.
- 1.271 **"Phase Completion"** means the point at which (i) a Phase of the Works has been completed in accordance with the Project Agreement; (ii) a Phase Occupancy Permit has been issued; and (iii) all requirements for a Phase Completion described in the applicable Phase Commissioning Program, other than in respect of Phase Minor Deficiencies, have been satisfied.
- 1.272 **"Phase Completion Certificate"** means the certificate to be issued by the Independent Certifier in accordance with Section 23A.4(d) of the Project Agreement.
- 1.273 **"Phase Completion Date"** means the date on which each Phase Completion is achieved as evidenced by the applicable Phase Completion Certificate, as such date shall be stated therein.
- 1.274 **"Phase Completion Notice"** has the meaning given in Section 23A.4(b) of the Project Agreement.
- 1.275 **"Phase Contracting Authority Commissioning"** means the commissioning activities to be carried out by Contracting Authority in accordance with each Phase Commissioning Program.
- 1.276 **"Phase Contracting Authority Commissioning Period"** means each period during which Contracting Authority is performing Phase Contracting Authority Commissioning.
- 1.277 **"Phase Contracting Authority Commissioning Tests"** means all Commissioning Tests required to be performed by Contracting Authority pursuant to each Phase Commissioning Program.
- 1.278 **"Phase Countdown Notice"** has the meaning given in Section 23A.7(a) of the Project Agreement.

- 1.279 “**Phase of the Works**” means each phase of the Works identified in Section 1.1.7 of the Output Specifications; and “**Phases of the Works**” means greater than one Phase of the Works.
- 1.280 “**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 Phase Completion and which would not materially impair Contracting Authority’s use and enjoyment of the applicable Phase of the Works (including the applicable Phase Contracting Authority Commissioning) or the performance of the applicable Contracting Authority Activities.
- 1.281 “**Phase Minor Deficiencies List**” has the meaning given in Section 23A.8(a) of the Project Agreement.
- 1.282 “**Phase Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of a Phase of the Works as a police facility in compliance with Applicable Law.
- 1.283 “**Phase Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of a Phase Completion Certificate in accordance with each Phase Commissioning Program.
- 1.284 “**Phase Project Co Commissioning Tests**” means all Commissioning Tests required to be performed by Project Co pursuant to each Phase Commissioning Program.
- 1.285 “**Phasing Requirements**” means the requirements for the phasing and sequencing of the Works set out in Section 1.1.7 of Article 1 of the Output Specifications.
- 1.286 “**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.
- 1.287 “**Potential Interaction**” has the meaning given in Schedule 36 – Construction Procedures Agreement.
- 1.288 “**Primary Subcontractor**” means any Project Co Party that is performing any part of the Works.
- 1.289 “**Proceeding At Risk**” has the meaning given in Section 14.6(g) of the Project Agreement.
- 1.290 “**Proceeding At Risk Matter**” has the meaning given in Section 14.6(a)(ii) of the Project Agreement.
- 1.291 “**Proceeding At Risk Notice**” has the meaning given in Section 14.6(a) of the Project Agreement.

- 1.292 **“Product”** means or **“Products”** mean material, machinery, equipment and fixtures forming the Works but does not include Equipment or Existing Equipment or machinery and equipment used to prepare, fabricate, convey or erect the Works, which is referred to as construction machinery and equipment.
- 1.293 **“Progress Works Schedule”** has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.294 **“Prohibited Act”** has the meaning given in Section 48.1(a) of the Project Agreement.
- 1.295 **“Project”** has the meaning given in the recitals to the Project Agreement.
- 1.296 **“Project Agreement”** has the meaning given in the recitals to the Project Agreement.
- 1.297 **“Project Co”** has the meaning given in the introductory paragraph of the Project Agreement.
- 1.298 **“Project Co Amount”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.299 **“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.
- 1.300 **“Project Co Commissioning Authority”** has the meaning given in Section 2 of Schedule 14 – Outline Commissioning Program.
- 1.301 **“Project Co Commissioning Tests”** means all Commissioning Tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.302 **“Project Co Construction Event of Default”** means a Project Co Event of Default relating to a failure or breach by Project Co to perform, observe or comply with any covenants, agreements, obligations or liabilities with respect to the Works, excluding a default by the Construction Guarantor under the Performance Guarantee of Construction Guarantor.
- 1.303 **“Project Co Default Termination Sum”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.304 **“Project Co Event of Default”** has the meaning given in Section 34.1(a) of the Project Agreement.
- 1.305 **“Project Co Group”** means [REDACTED].
- 1.306 **“Project Co Party”** means:
- (a) the Construction Contractor;

- (b) any person engaged by Project Co and/or the Construction Contractor from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Works (or any of them); and
- (c) 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.

- 1.307 “**Project Co Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained by Project Co in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents and agreements from any third parties (including all Development Approvals and the approval of the Fire Marshal of Ontario), needed to perform the Works in accordance with the Project Agreement, and including those permits, licenses, approvals and agreements which are the responsibility of Project Co to obtain as set out in Appendix “A” to this Schedule 1 –Definitions and Interpretation and those permits, licenses, approvals and agreements which are the responsibility of Project Co to obtain as set out in the Output Specifications, but other than any Contracting Authority Permits, Licences, Approvals and Agreements.
- 1.308 “**Project Co Proposal Extracts**” means the documents attached as Schedule 13 - Project Co Proposal Extracts.
- 1.309 “**Project Co Representative**” means the person designated as such by Project Co on or prior to Commercial Close and any permitted replacement.
- 1.310 “**Project Co Variation Notice**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.311 “**Project Data**” means:
- (a) all Design Data; and
 - (b) any other materials, documents and or data acquired, brought into existence or used in relation to the Works 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.
- 1.312 “**Project Debt Interest Cost**” means the budgeted amount of aggregate interest charges in respect of the Junior Debt Amount and Senior Debt Amount used to calculate the Cost of the Financing portion of the Guaranteed Price.
- 1.313 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.

- 1.314 “**Project Schedules**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.315 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.
- 1.316 “**Proposed Works Schedule**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.317 “**Proprietor**” has the meaning given in Section 40.6(a) of the Project Agreement.
- 1.318 “**Province**” means Her Majesty the Queen in Right of Ontario.
- 1.319 “**Quality Plans**” has the meaning given in Section 15.1(a) of the Project Agreement.
- 1.320 “**Recoverable Tax**” has the meaning given in Section 4.17(c) of the Project Agreement.
- 1.321 “**Recovery Amount**” has the meaning given in Section 44.3(g) of the Project Agreement.
- 1.322 “**Recovery Schedule**” has the meaning given in Section 13.4(a)(iv)(A) of the Project Agreement.
- 1.323 “**Recovery Schedule Report**” has the meaning given in Section 13.4(a)(iv)(C) of the Project Agreement.
- 1.324 “**Refinancing**” has the meaning given in Schedule 29 – Refinancing.
- 1.325 “**Reimbursement Event**” has the meaning given in Section 25A.5(a) of the Project Agreement.
- 1.326 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Specific Change in Law.
- 1.327 “**Relevant Conviction**”
- (a) means a conviction under the *Criminal Code* (Canada);
 - (b) outstanding charges, warrants, judicial orders, peace bonds, probation and prohibition orders or absolute (one year) and conditional (three years) discharges under the *Criminal Code* (Canada);
 - (c) any offense in Canada or elsewhere for which a record exists under the *Criminal Records Act*;
 - (d) occurrences from local police databases that did not result with a charge (e.g., police involvement, including, but not limited to, theft, weapons, sex offences or violent, harmful and threatening behaviour);

- (e) criminal charges not resulting in a conviction or finding of guilt appearing in any search of local police databases (e.g., dispositions including, but not limited to, stayed, withdrawn, dismissed cases or cases of not criminally responsible by reason of mental disorder as listed on local indices);
- (f) criminal charges or occurrences, both resulting or not resulting in a conviction or finding of guilt, appearing in any comprehensive name search of additional police databases (e.g., Royal Canadian Mounted Police Intelligence or Military);
- (g) criminal record in any other country for a person who has resided outside of Canada for a period of over six continuous months;
- (h) any offense in Canada or elsewhere which is otherwise designated as a Relevant Conviction by Contracting Authority or OPP from time to time, having regard to the secure nature of the Sites and the Facilities,

and is one for which no pardon has been granted.

1.328 “**Relief Event**” has the meaning given in Section 32.1(a) of the Project Agreement.

1.329 “**Request for Payment Approval**” has the meaning given in Section 3.2(d) of the Project Agreement.

1.330 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on July 21, 2017.

1.331 “**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, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;

- (e) is subject to a material claim of 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
 - (f) has a material interest in the production of tobacco products.
- 1.332 **“Review Procedure”** means the procedure set out in Schedule 10 - Review Procedure.
- 1.333 **“RFP Submission Deadline”** means [REDACTED].
- 1.334 **“Scheduled Final Completion Date”** means [REDACTED].
- 1.335 **“Scheduled Phase Completion Date”** means each Scheduled Phase Completion Date set out in the Works Schedule, as such date may be extended pursuant to Section 30 of the Project Agreement. For clarity, any change to a Scheduled Phase Completion Date initiated by Project Co other than an extension to such date pursuant to Section 30 of the Project Agreement must be approved in writing by Contracting Authority and, subject to the terms of Schedule 22 – Variation Procedure, any Contracting Authority approval of any such change does not entitle Project Co to a Variation, an extension of time or an addition to the Guaranteed Price.
- 1.336 **“Scheduled Substantial Completion Date”** means [REDACTED], as such date may be extended pursuant to Section 30 of the Project Agreement.
- 1.337 **“Security”** means the Bonds, the Insurance and any other security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents.
- 1.338 **“Security Clearance Check”** means any and all security clearance or background checks and investigations required by OPP in its sole discretion, and any and all renewals thereof as required pursuant to Section 10.4 of the Project Agreement.
- 1.339 **“Security Clearance Check Date”** means each of the following dates:
- (a) with respect to Project Co, each Project Co Party and each Designated Project Co Employee, Commercial Close;
 - (b) with respect to each Subcontractor, upon such Subcontractor being awarded a contract to perform any part of the Works; and
 - (c) the second anniversary of the date on which a previous Security Clearance Check was conducted.
- 1.340 **“Security Documents”** means [REDACTED].

- 1.341 “**Senior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.342 “**Senior Debt Service Amount**” means [REDACTED].
- 1.343 “**Senior Lenders**” means [REDACTED].
- 1.344 “**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.
- 1.345 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affects access by Project Co to such markets.
- 1.346 “**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.
- 1.347 “**Site**” has the meaning given, in respect of each Facility, in Schedule 34 – List of Sites.
- 1.348 “**Site Conditions**” means, in respect of each Site, the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.349 “**Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the construction or operation of policing facilities in the Province.
- 1.350 “**Standby Letter of Credit**” means the letter of credit delivered in accordance with Section 9.1(2) of the Request for Proposals.
- 1.351 “**Start-Up Meeting**” has the meaning given in Section 11.2(a) of the Project Agreement.
- 1.352 “**Step-in Period**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.353 “**Structure**” means any permanent structure other than a building, including a bridge, dam or lock.

- 1.354 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Works, including the Construction Contractor, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.355 “**Subcontractor’s Direct Agreement**” means the agreement to be entered into among Contracting Authority, Project Co, the Construction Contractor and certain Subcontractors determined in accordance with the terms of the Project Agreement in the form set out in Schedule 7 – Subcontractor’s Direct Agreement.
- 1.356 “**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 any other Subcontractor at any tier in relation to any aspect of the Works.
- 1.357 “**Substantial Completion**” means the point at which (i) each Facility has been completed in accordance with the Project Agreement, including each Phase of the Works; (ii) the Occupancy Permit has been issued; (iii) the Payment Certifier appointed pursuant to Section 17.3(l) of the Project Agreement has certified the substantial performance of the Design and Construction Contract and the related certificate of substantial performance has been published, each in accordance with the CLA; and (iv) all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.
- 1.358 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d) of the Project Agreement.
- 1.359 “**Substantial Completion Date**” means the date on which Substantial Completion is achieved as evidenced by a Substantial Completion Certificate, as such date shall be stated therein.
- 1.360 “**Substantial Completion Notice**” has the meaning given in Section 24.4(b) of the Project Agreement.
- 1.361 “**Substantial Completion Payment**” means [REDACTED].
- 1.362 “**Substantial Completion Payment Date**” means [REDACTED].
- 1.363 “**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 Works.
- 1.364 “**Surety**” means the person issuing the Bonds.
- 1.365 “**Tax**” or “**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.

- 1.366 “**Technical Reports**” means the Environmental Reports and Designated Substance Reports and the Geotechnical Reports.
- 1.367 “**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.
- 1.368 “**Third Party Beneficiaries**” has the meaning given at Section 50.17(a)(i) of the Project Agreement.
- 1.369 “**Title Encumbrances**” means, in respect of each Site, the Encumbrances listed in Schedule 16 - Title Encumbrances and any other Encumbrance consented to by Contracting Authority and reasonably required in connection with the development of the Facility and the Works.
- 1.370 “**Trade-Marks**” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.371 “**Transition**” and “**Transitions**” have the meanings respectively given in Section 24.17(a) of the Project Agreement.
- 1.372 “**Transition Advisor**” has the meaning given in Section 24.17(c) of the Project Agreement.
- 1.373 “**Transition Advisor Candidate**” has the meaning given in Section 24.17(c) of the Project Agreement.
- 1.374 “**Transition Management Sub-Plan**” means the plan referenced in RFP Schedule 3, Part 1, Part B, Section 5.1.
- 1.375 “**Transition Parameters**” For the purpose of the Project Agreement, there are no Transition Parameters and any reference to “Transition Parameters” in the Project Agreement shall have no force or effect.
- 1.376 “**Transition Services Fee**” means [REDACTED].
- 1.377 “**Transition Subcommittee**” has the meaning given in Section 24.18(a) of the Project Agreement.
- 1.378 “**Trust Account**” has the meaning given in the Trust Account Agreement.
- 1.379 “**Trust Account Agreement**” means the trust account agreement to be entered into between Contracting Authority, Project Co and the Trustee in the form set out in Schedule 32 - Trust Account Agreement.
- 1.380 “**Trustee**” has the meaning given in Schedule 32 - Trust Account Agreement.

- 1.381 “**Utilities**” means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.382 “**Utility Company**” means any company or companies designated by Project Co to provide Utilities.
- 1.383 “**Variation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.384 “**Variation Confirmation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.385 “**Variation Directive**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.386 “**Variation Enquiry**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.387 “**Variation Procedure**” means the procedure set out in Schedule 22 - Variation Procedure.
- 1.388 “**Warranty Period**” means (i) with respect to each Phase of the Works which has achieved Phase Completion, a period beginning on the applicable Phase Completion Date and expiring on the date that is one year following the Substantial Completion Date, and (ii) with respect to the Works (excluding each Phase of the Works) which have achieved Substantial Completion, a period beginning on the Substantial Completion Date and expiring on the date that is one year following the Substantial Completion Date.
- 1.389 “**Working Day**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.390 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Facilities, including the Phases of the Works, completion and rectification of any Phase Minor Deficiencies and Minor Deficiencies and the performance of all other obligations of Project Co under the Project Agreement.
- 1.391 “**Works Area Micro-Schedule**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.392 “**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) in respect of each Facility, 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 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.
- 1.393 “**Works Committee**” has the meaning given in Section 14.1(a) of the Project Agreement.
- 1.394 “**Works Milestone**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.395 “**Works Report**” has the meaning given in Section 13.6(a) of the Project Agreement.
- 1.396 “**Works Schedule**” has the meaning given in Schedule 19 – Works Scheduling Requirements.
- 1.397 “**Works Schedule Progress Report**” has the meaning given in Schedule 17 – Works Scheduling Requirements.
- 1.398 “**Works Submittals**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.399 “**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, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Articles, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section”, “Article” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Article, 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, Articles, 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 Contracting Authority Party shall be construed having regard to the interactive nature of the activities of Contracting Authority, Contracting Authority Parties and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications; or
 - (b) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and Contracting Authority's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
 - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".

- 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.
- 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 policing sectors 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:

$$\text{Adjusted amount or sum} = \frac{\text{Amount or sum}}{x} \times \frac{\text{CPI}_n}{\text{CPI}_o}$$

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information and of the Sites, 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 A

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

CONTRACTING AUTHORITY AND PROJECT CO PLAA RESPONSIBILITY TABLE

- Please see attached document -

APPENDIX “A” TO SCHEDULE 1
CONTRACTING AUTHORITY AND PROJECT CO PERMITS,
LICENCES, APPROVALS AND AGREEMENTS (“PLAA”)
[REDACTED]

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 hereof:

- 1.1 an original of this Project Agreement;
- 1.2 an original of the Lenders’ Direct Agreement;
- 1.3 an original of the Independent Certifier Agreement;
- 1.4 an original of the Insurance Trust Agreement;
- 1.5 an original of the Trust Account Agreement;
- 1.6 an original notice of appointment of the Project Co Representative;
- 1.7 an original of the acknowledgement and undertaking in the form attached as Appendix A to this Schedule 2;
- 1.8 the Lending Agreements;
- 1.9 the Design and Construction Contract;
- 1.10 an original of the Performance Guarantee of Construction Guarantor;
- 1.11 an original of the Construction Contractor’s Direct Agreement;
- 1.12 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by Project Co in accordance with this Project Agreement;
- 1.13 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 CD-Rom;
- 1.14 an original of the Bonds required in accordance with this Project Agreement or as Contracting Authority may direct in accordance with the Insurance Trust Agreement;

- 1.15 an original of the undertaking and acknowledgement in the form attached as Appendix A to this Schedule 2;
- 1.16 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.17 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;
- 1.18 a certificate of an officer of the Construction Guarantor substantially in the form attached as Appendix B to this Schedule 2;
- 1.19 the Proposed Works Schedule and the Interim Works Schedule, both in form and substance satisfactory to Contracting Authority;
- 1.20 an original of the opinion from counsel to Project Co, the Construction Contractor, the Construction 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;
- 1.21 evidence that the COR-Qualified Construction Project Co Party has its COR Certification in good standing (or to the extent that the COR-Qualified Construction Project Co Party does not have its COR Certification by Financial Close, evidence that the COR-Qualified Construction Project Co Party has its current OHSAS 18001 Accreditation in good standing and has made an application to IHSA for its COR Certification);
- 1.22 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;
- 1.23 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;
- 1.24 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
- 1.25 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 hereof:

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

APPENDIX A

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

TO: Ontario Infrastructure and Lands Corporation (“**Contracting Authority**”)
AND TO: Her Majesty the Queen in Right of Ontario as represented by the Minister of Community Safety and Correctional Services (“**MCSCS**”)
RE: Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [●] day of August, 2018 between Contracting Authority and Bird Capital OMP Project Co Inc. (“**Project Co**”)

1. The undersigned acknowledges that:
 - (a) The Project will proceed as an alternative financing and procurement project under the MOI’s *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in the IPFP Framework.
 - (b) The IPFP Framework establishes 5 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) The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the police sector.
2. The undersigned undertakes to comply with the *Police Services Act* (Ontario) all regulations thereunder in any direction or order issued by MCSCS to Contracting Authority to the extent that the direction or order affects the Works.
3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

DATED this _____ day of August, 2018.

BIRD CAPITAL OMP PROJECT CO INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

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: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION
AND TO: CASSELS BROCK & BLACKWELL LLP
AND TO: [REDACTED]
AND TO: [REDACTED]
AND TO: [REDACTED]

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

1. Constatting Documents

- (a) The Corporation is a [REDACTED].
- (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 [REDACTED] 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 [●], 2018 (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Project Agreement") pursuant to which the Corporation will design, build and finance the Facilities;

- (2) a lenders' direct agreement between the Corporation, Contracting Authority and the Lenders' Agent;
- (3) a design and construction contract between the Corporation and [REDACTED] (the "**Construction Contractor**");
- (4) an insurance trust agreement between the Corporation, Contracting Authority, the Lenders' Agent and [REDACTED] and
- (5) *[NTD: List other documents delivered at Financial Close.]*

(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;
 - (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:

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>
[●]		_____
[●]		_____
[●]		_____
[●]		_____

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:

<u>ISSUED SHARES</u>	<u>REGISTERED OWNER</u>

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 _____, 2018.

Name:

Title:

APPENDIX C

FORM OF PROJECT CO/PROJECT CO PARTY/CONSTRUCTION GUARANTOR
OPINION

[INSERT DATE]

[REDACTED]

[REDACTED]

Dear Sirs/Mesdames:

Re: Ontario Provincial Police Modernization Phase 2 Project

We have acted as counsel to Bird Capital OMP Project Co Inc. (“**Project Co**”) and [REDACTED] (the “**Construction Contractor**”) in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build and finance agreement for the redevelopment of Ontario Provincial Police Modernization Phase 2 Project facilities in the Province of Ontario. *[NTD: Additional parties to be added depending on consortium structure and/or the financing package.]*

This opinion is being delivered to [REDACTED] (“**Contracting Authority**”) and their counsel pursuant to Section 1.21 of Schedule 2 to the project agreement made as of [●], 2018 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 and the Construction Contractor, 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 [●], 2018):

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):
 - (a) the Design and Construction Contract;
 - (b) the Insurance Trust Agreement;
 - (c) the Lenders’ Direct Agreement;

- (d) the Trust Account Agreement;
- (e) the Construction Contractor's Direct Agreement;
- (f) the Lending Agreements;
- (g) the Performance Bond;
- (h) the Multiple Obligee Rider to the Performance Bond;
- (i) the Labour and Material Payment Bond;
- (j) the Multiple Obligee Rider to the Labour and Material Payment Bond; and
- (k) the Performance Guarantee of Construction Guarantor.
- (l) *[NTD: List other documents delivered at the date of the Project Agreement.]*

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 or the Construction Contractor]**, 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 and the Construction Contractor 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 and the Construction Contractor (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 [●], 2018 (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.

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 and the Construction Contractor) 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 and the Construction Contractor) 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 and the Construction Contractor) to Project Co and the Construction Contractor.

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 [REDACTED].
2. The Construction Contractor is [REDACTED].

Corporate Power and Capacity

1. 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.
2. 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.

Corporate Authorization

1. 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.
2. 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.

Execution and Delivery

1. Project Co has duly executed and delivered each of the Documents to which it is a party.
2. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.

Enforceability

1. 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.

2. 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.

No Breach or Default

1. 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.
2. 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.

Regulatory Approvals

1. 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.
2. 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.

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,

[REDACTED]

APPENDIX D

FORM OF CONTRACTING AUTHORITY OFFICER'S CERTIFICATE

**Certificate of an Officer of Ontario Infrastructure and Lands Corporation
(the "Corporation")**

TO: BIRD CAPITAL OMP PROJECT CO INC. ("Project Co")

AND TO: [REDACTED]

AND TO: [REDACTED]

I, _____, _____ 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 Ontario Provincial Police Modernization Phase 2 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 Infrastructure (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.
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 Ontario Provincial Police

Modernization Phase 2 Project on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

NAME	POSITION	SIGNATURE

DATED this _____ day of August, 2018.

Name:
Title:

SCHEDULE 3

INTENTIONALLY DELETED

SCHEDULE 4

LENDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the 16th day of August, 2018

BETWEEN:

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

(“**Contracting Authority**”)

- AND -

[REDACTED], acting as agent for and on behalf of the Lenders

(the “**Lenders' Agent**”)

- AND -

BIRD CAPITAL OMP PROJECT CO INC.,[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 to procure the Ontario Provincial Police Modernization Phase 2 Project comprised of the facilities set forth in Schedule 33 - List of Facilities of the Project Agreement in the Province of Ontario.
- C. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Works, 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. Project Co, the Lenders’ Agent and the Lenders recognize and understand that the OPP is governed by the *Police Services Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment.
- F. 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) “**Construction Contractor**” has the meaning given in the Project Agreement.
- (f) “**Construction Contractor’s Direct Agreement**” has the meaning given in the Project Agreement.
- (g) “**Contracting Authority Activities**” has the meaning given in the Project Agreement.

- (h) “**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.
- (i) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (j) “**Design and Construction Contract**” has the meaning given in the Project Agreement.
- (k) “**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.
- (l) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (m) “**Exercise Date**” has the meaning given in Section 12(b).
- (n) “**Facility**” or “**Facilities**” has the meaning given in the Project Agreement.
- (o) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (p) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (q) “**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.
- (r) “**Lenders**” has the meaning given in the Project Agreement.
- (s) “**Lenders’ Agent**” means [REDACTED], acting as agent for and on behalf of the Lenders.
- (t) “**Lenders’ Construction Contractor Direct Agreement**” means the direct agreement among the Lenders’ Agent, the Construction Contractor and Project Co.
- (u) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (v) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (w) “**Longstop Date**” has the meaning given in the Project Agreement.
- (x) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 90 days later.
- (y) “**Novation Date**” has the meaning given in Section 10(a).

- (z) “**Novation Notice**” has the meaning given in Section 10(a).
- (aa) “**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.
- (bb) “**person**” has the meaning given in the Project Agreement.
- (cc) “**Phase Completion Date**” has the meaning given in the Project Agreement.
- (dd) “**Project**” has the meaning given in the Project Agreement.
- (ee) “**Project Agreement**” means the project agreement made on or about August 16, 2018 between Contracting Authority and Project Co.
- (ff) “**Project Co**” means Bird Capital OMP Project Co Inc., [REDACTED].
- (gg) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (hh) “**Project Co Party**” has the meaning given in the Project Agreement.
- (ii) “**Project Documents**” has the meaning given in the Project Agreement.
- (jj) “**Province**” has the meaning given in the Project Agreement.
- (kk) “**Refinancing**” has the meaning given in the Project Agreement.
- (ll) “**Restricted Person**” has the meaning given in the Project Agreement.
- (mm) “**Scheduled Phase Completion Date**” has the meaning given in the Project Agreement.
- (nn) “**Scheduled Substantial Completion Date**” has the meaning given in the Project Agreement.
- (oo) “**Security**” means the security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents.
- (pp) “**Security Documents**” [REDACTED].
- (qq) “**Step-In Date**” means the date on which Contracting Authority receives a Step-In Notice from the Lenders’ Agent.
- (rr) “**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.

- (ss) **“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 of this Lenders’ Direct Agreement);
 - (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 120 days after the Longstop Date; or
 - (B) the date falling 2 years after the Step-In Date.
- (tt) **“Step-Out Date”** means the date falling 30 days after the date on which Contracting Authority receives a Step-Out Notice.
- (uu) **“Step-Out Notice”** has the meaning given in Section 9(a).
- (vv) **“Subcontractor’s Direct Agreement”** has the meaning given in the Project Agreement.
- (ww) **“Subsequent Indebtedness Notice”** has the meaning given in Section 7(c).
- (xx) **“Substantial Completion Date”** has the meaning given in the Project Agreement.
- (yy) **“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.
- (zz) **“Termination Date”** has the meaning given in the Project Agreement.
- (aaa) **“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 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 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 the Construction Contractor’s Direct Agreement, the provisions of this Lenders’ Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

4. TERM

- (a) This Lenders’ Direct Agreement shall terminate automatically on the earliest of:
 - (i) the date on which all amounts which may be or become owing 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 8.3 of the Project Agreement.
- (b) Project Co shall not, prior to the Substantial Completion Date, exercise any rights of voluntary prepayment, voluntary redemption, or other voluntary repayment of loan, as applicable, under the Lending Agreements without the prior written consent of Contracting Authority, acting in its sole discretion. In exercising its sole discretion to grant consent, Contracting Authority shall be entitled to request and consider, and Project Co shall be required to provide within 10 Business Days of a request by Contracting Authority, amongst other things and not limited to, the following:
 - (i) written certification by an officer of Project Co of the remaining Project Costs (as defined in the Lending Agreements) accrued and unpaid or expected to be incurred to achieve the applicable Scheduled Phase Completion and Substantial Completion and to fund any Project Accounts (as defined in the Lending Agreements) then not funded and required to be funded at or prior to the then anticipated (as approved by the Lender's Technical Advisor (as defined in the Lending Agreements)) by the applicable Phase Completion Date or the Substantial Completion Date;
 - (ii) written certification by an officer of Project Co that no Funding Shortfall (as defined in the Lending Agreements) would reasonably be expected to arise as a consequence of such prepayment and/or redemption, including any related cancellation of unutilized commitments, if applicable, under the Lending Agreements;
 - (iii) written confirmation from the Lenders' Consultant, addressed to Contracting Authority, that the Project Co's calculation in (i) above and Project Co's certification in (ii) above is, in the opinion of the Lenders' Consultant, correct;
 - (iv) written confirmation from the Lenders' Consultant, addressed to Contracting Authority, that no incremental delay in achieving a Phase Completion Date (beyond the applicable Scheduled Phase Completion Date) or the Substantial Completion Date (beyond the Scheduled Substantial Completion Date) would reasonably be expected as a

consequence of such prepayment and/or redemption and related cancellation of unutilized commitments, if applicable, under the Lending Agreements; and

- (v) written confirmation from the Lenders' Consultant, addressed to Contracting Authority, that each Phase Completion Date is likely to occur on or prior to the then applicable Scheduled Phase Completion Date and the Substantial Completion Date is likely to occur on or prior to the then Scheduled Substantial Completion Date.
- (c) Project Co and Contracting Authority shall not amend or modify the Contracting Authority Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Lenders or Project Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(b) within 30 days of receipt thereof.
- (d) 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.
- (e) The Lenders' Agent acknowledges having received a copy of the Project Agreement.
- (f) Contracting Authority acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to Contracting Authority as at the date of Financial Close.
- (g) 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.
- (h) Project Co and the Lenders' Agent hereby authorize and instruct Contracting Authority (and Contracting Authority agrees) to pay [REDACTED] 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 under paragraph 5(h)(iv), above, to a bank account specified by the Lenders' Agent.

- (i) 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.
- (j) 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 Legislative Holdback to be maintained in accordance with the Project Agreement. Project Co agrees that it shall, in respect of all payments under the Project Agreement, comply with Part IV of the *Construction Lien Act* (Ontario). The Lenders' Agent shall cause the Lenders' Consultant to provide Contracting Authority with a copy of any written assessment or report prepared by the Lenders' Consultant in relation to the status or progress of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent. The Lenders' Agent acknowledges and agrees that this Section 5(j) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, a copy of any and all of its written assessments and reports to Contracting Authority.

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 29 - 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 as police institution or the Contracting Authority Activities; (ii) may compromise Contracting Authority's reputation or integrity or the nature of the Province's police system, so as to affect public confidence in that system.

- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7. **TERMINATION OF PROJECT AGREEMENT BY CONTRACTING AUTHORITY**

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, Contracting Authority may, at any time, serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), Contracting Authority shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
 - (i) Contracting Authority promptly delivers written notice (a "**Default Notice**") to the Lenders' Agent setting out the Project Co Event of Default in reasonable detail;
 - (ii) not later than 30 days after the date of a Default Notice, Contracting Authority delivers written notice (an "**Indebtedness Notice**") to the Lenders' Agent setting out:
 - (A) all amounts owed by Project Co to Contracting Authority and any other existing liabilities and unperformed obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, as of the date on which Contracting Authority sent the Default Notice; and
 - (B) all amounts which will become owing by Project Co to Contracting Authority and any other liabilities and obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
 - (iii) the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- (c) At any time after Contracting Authority sends an Indebtedness Notice but before Contracting Authority receives a Step-In Notice, if Contracting Authority discovers amounts that have become owing by Project Co to Contracting Authority 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 120 days after the Longstop Date; or
 - (B) 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 date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders’ Agent; or
 - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement.

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 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. CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT

- (a) Notwithstanding any provision in the Construction Contractor’s Direct Agreement, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Construction Contractor’s Direct Agreement, 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 Construction Contractor’s Direct Agreement to step in to and/or novate the Design and Construction Contract in accordance with the Construction Contractor’s Direct Agreement.
- (c) Following the Exercise Date, Contracting Authority shall not do anything to prejudice the rights which are not transferred to it pursuant to the Construction Contractor’s Direct Agreement.
- (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 the Design and Construction Contract assumed or novated by Contracting Authority pursuant to the Construction Contractor’s Direct Agreement.
- (e) Notwithstanding the terms of the Construction Contractor’s Direct Agreement and any other provisions of this Section 12, the Construction Contractor (and any guarantor 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 Design and Construction 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 Construction Contractor’s Direct

Agreement (and/or the Design and Construction Contract) from the Construction Contractor;

- (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor; or
- (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor, 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.

12A. SUBCONTRACTOR'S DIRECT AGREEMENT

Notwithstanding any provision in a Subcontractor's Direct Agreement, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of any Subcontractor's Direct Agreement unless:

- (a) the Project Agreement and the Design and Construction Contract have been terminated;
- (b) Contracting Authority is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lender's Direct Agreement; or
- (c) Contracting Authority is entitled to exercise its rights under the Construction Contractor's Direct Agreement pursuant to Section 12(b).

12B. PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

Notwithstanding any provision in the Performance Guarantee of Construction Guarantor, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of the Performance Guarantee of Construction Guarantor unless:

- (a) the Project Agreement has been terminated; or
- (b) Contracting Authority is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement.

13. NOTICE OF PROJECT CO DELAY OR PROCEEDING AT RISK

- (a) The Parties acknowledge that, if Project Co is deemed to be Proceeding At Risk pursuant to Section 14.6(g) 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 the relevant information supporting Contracting Authority's opinion that Project Co is Proceeding at Risk.
- (b) The Parties acknowledge that if Contracting Authority delivers notice to Project Co pursuant to Section 13.4(a)(ii) 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 47.1 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 benefit 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 47.2 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]

Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**

with a copy to:

[REDACTED]

Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**

If to the Lenders' Agent:

[REDACTED]
Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**
Email: **[REDACTED]**

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

With a copy to:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]
Email: [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. AMENDMENTS

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

17. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct Agreement shall be binding or effective unless the waiver is in writing,

signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

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

18. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Lenders' Direct Agreement, of principal and agent.

19. ENTIRE AGREEMENT

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

20. SEVERABILITY

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

21. ENUREMENT

This Lenders' Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

22. GOVERNING LAW AND JURISDICTION

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

23. DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

24. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

25. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Lenders' Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

26. COUNTERPARTS

This Lenders' Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Lenders' Direct Agreement which was so faxed.

27. CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 40 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.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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 Infrastructure as represented by
the Ontario Infrastructure and Lands
Corporation**

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

BIRD CAPITAL OMP PROJECT CO INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 5

CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 16th day of August, 2018

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Infrastructure as represented by the 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 –

BIRD CAPITAL OMP PROJECT CO INC., [REDACTED]

(“Project Co”)

– AND –

[REDACTED]

(the “Construction Contractor”)

– AND –

[REDACTED]

(the “Construction Guarantor”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Construction Guarantor to enter into, this Construction Contractor’s Direct Agreement with Contracting Authority.
- B. Project Co and the Construction Contractor have entered into the Design and 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) **“Approved Purposes”** has the meaning given in the Project Agreement.
- (b) **“Business Day”** has the meaning given in the Project Agreement.
- (c) **“Construction Contractor”** means [REDACTED].
- (d) **“Construction Guarantor”** means [REDACTED]
- (e) **“Contracting Authority”** means Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure as represented by the Ontario Infrastructure and Lands Corporation
- (f) **“Default Notice”** has the meaning given in Section 5(a).
- (g) **“Design and Construction Contract”** has the meaning given in the Project Agreement.
- (h) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (i) **“Lenders”** has the meaning given in the Project Agreement.
- (j) **“Lenders’ Direct Agreement”** has the meaning given in the Project Agreement.
- (k) **“Party”** means Contracting Authority, the Construction Contractor, the Construction Guarantor or Project Co, and **“Parties”** means Contracting Authority, the Construction Contractor, the Construction Guarantor and Project Co.
- (l) **“Project”** has the meaning given in the Project Agreement.
- (m) **“Project Agreement”** means the project agreement made on or about August 16, 2018 between Contracting Authority and Project Co.
- (n) **“Project Co”** means Bird Capital OMP Project Co Inc..
- (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 Design and 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 Design and 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 Design and Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Design and Construction Contract that may give the Construction Contractor a right to terminate the Design and 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 Design and 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 Design and 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 Design and 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 Design and 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 Design and 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 Design and 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 Design and 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 or covenant in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Design and 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 or covenant, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; 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 or covenant 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 Design and 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 Design and 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 Design and 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 Design and 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 Design and 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 Design and 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 Design and 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 Design and 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 Design and 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 Design and Construction Contract.

8. PROJECT CO AS PARTY

Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Design and 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) and 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 47.2 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 Design and 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]

Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**
Email: **[REDACTED]**

with a copy to:

[REDACTED]

Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**
Email: **[REDACTED]**

If to Project Co:

[REDACTED]

Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**
Email: **[REDACTED]**

With a copy to:

[REDACTED]

Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**
Email: **[REDACTED]**

If to the Construction Contractor:

[REDACTED]

Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**
Email: **[REDACTED]**

With a copy to:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

If to the Construction Guarantor:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

With a copy to:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

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).

- (b) 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.
- (c) 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.
- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.

- (e) 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.
- (f) 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 hereby irrevocably attorn to the exclusive jurisdiction of such courts.

19. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Construction Contractor’s Direct Agreement.

20. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Construction Contractor’s Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s’en declare satisfaite.

21. COUNTERPARTS

This Construction Contractor's Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Construction Contractor's Direct Agreement which was so faxed.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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 Infrastructure as Represented by
the Ontario Infrastructure and Lands
Corporation**

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the
corporation

BIRD CAPITAL OMP PROJECT CO INC.

Per:

Name:
Title:

Per:

Name:
Title:

I/We have authority to bind the
Corporation

[REDACTED]

Per:

Name:

Title:

I have the authority to bind the
Corporation

Per:

Name:

Title:

I/We have authority to bind the
Corporation

[REDACTED]

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the
Corporation

SCHEDULE 6

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the 16th day of August, 2018.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Infrastructure as represented by the 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:

BIRD CAPITAL OMP PROJECT CO INC., [REDACTED]

(“**Project Co**”)

AND:

WTP PROPERTY CONSULTANTS LTD., 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 Independent Certifier Team member per hour as listed in Appendix B to this Independent Certifier Agreement for Certification Services identified in item (x) of Appendix A to this Independent Certifier Agreement, including any services required to provide additional work.

- (vi) “**Independent Certifier**” has the meaning given 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**” and “**PA Party**” have the meanings given in the recitals to this Independent Certifier Agreement.
- (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 and financing of the Facilities.
- (x) “**Total Fixed Fee**” means the Fee for all Certification Services other than those identified in item (x) 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 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 or on the Facilities, the Existing Facilities and Sites 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, each Phase Commissioning Program and the Final Commissioning Program shall:
 - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, The Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;

- (ii) have demonstrated competence in the commissioning of facilities similar to the Facilities and in having completed or monitored the commissioning of facilities similar in size and type to the Facilities;
 - (iii) have an understanding of the appropriate CSA standards; and
 - (iv) have an understanding of the commissioning process and the reports to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but 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, each Phase Commissioning Program and the Final Commissioning Program.

3.10 Minimize Interference

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

4. ROLE OF THE PA PARTIES

4.1 Assistance

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

4.2 Instructions in Writing

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

4.3 Information and Services

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to determine whether each Phase Completion, Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
 - (i) the Independent Certifier must give notice in writing to the Project Co Representative or the Contracting Authority Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
 - (ii) Project Co or Contracting Authority, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Sites 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 Sites, the Facilities, 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 Sites, the Facilities, the Existing Facilities and the Works; and
 - (iii) not causing any damage to the Sites, the Facilities, 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; or
- (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:
 - (i) subject to the Independent Certifier complying with Section 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) 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 Section 6.1(a)(i).

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, food and incidental expenses, 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)(ii) 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 Final Completion Date; 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 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.

10.5 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.

10.6 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 10.5, 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.

10.7 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 or 10.5 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.

10.8 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).

10.9 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, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section 10.9 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.

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]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

with a copy to: **[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

If to Project Co: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

with a copy to: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Independent Certifier: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 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 hereby irrevocably attorn to the exclusive jurisdiction of such courts.

12.7 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.

12.8 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 12.8(b).

12.9 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.

12.10 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.

12.11 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.

12.12 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.

12.13 Copyright Notice

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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 Infrastructure as Represented by
the Ontario Infrastructure and Lands
Corporation**

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

BIRD CAPITAL OMP PROJECT CO INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

WTP PROPERTY CONSULTANTS LTD.

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 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) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works;
- (c) Review information relating to Delay Events and Compensation Events;
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consult with the relevant party;
- (e) In accordance with Section 14.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee;
- (f) Review (i) each draft 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 Phase Commissioning Program, to identify any errors or omissions, and to report any risks; and (ii) 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;
- (g) Monitor the Commissioning Tests (as indicatively described in Schedule 14 - Outline Commissioning Program to the Project Agreement) and other tests, including re-tests, to be performed as set out in each Phase Commissioning Program and the Final Commissioning Program or as otherwise required for Project Co to achieve each Phase Completion, Substantial Completion and Final Completion;
- (h) 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;
- (i) Conduct inspections of the Works as necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement;

- (j) 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 profile schedules provided to the Independent Certifier pursuant to the Project Agreement;
- (k) Monitor the requirements, progress and results of all Phase Project Co Commissioning, Phase Contracting Authority Commissioning, the Project Co Commissioning and Contracting Authority Commissioning;
- (l) Monitor the conduct of the Commissioning Tests during any seasonal performance testing prescribed in each Phase Commissioning Program and the Final Commissioning Program including, without limitation, any re-tests, review of Commissioning Tests and results, copies of any certificates or other Permits, Licences, Approvals, and Agreements received by Project Co in connection with any Commissioning Tests conducted during the seasonal performance testing, review and accepting performance testing forms required to be delivered pursuant to each Phase Commissioning Program and the Final Commissioning Program and to perform such other similar responsibilities (other than performing Commissioning Tests or performance of inspections) with respect to any matter relating to commissioning of the Facilities after Substantial Completion, as applicable, as either party may request and to report to each of the parties thereon;
- (m) Identify any errors or omissions made during the conduct of any such Commissioning Tests referenced in item (l) above and to advise Project Co and Contracting Authority with respect to the implications of those errors and omissions, to the extent that the Independent Certifier may reasonably be aware;
- (n) Upon receipt of notice from Project Co requesting the issuance of a Phase Completion Certificate, the Substantial Completion Certificate or the Final Completion Certificate, as applicable, 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 (o) of this Appendix A until the issuance of the applicable certificate;
- (p) In consultation with Project Co and Contracting Authority:

- (i) prepare the Phase Minor Deficiencies List in accordance with Section 23A.8(a) to (c) and Minor Deficiencies List in accordance with Sections 24.8(a) to (c) of the Project Agreement, which will include:
 - (A) an estimate of the cost for Contracting Authority to complete and rectify the Phase Minor Deficiencies and the Minor Deficiencies;
 - (B) the time for Project Co to complete and rectify the Phase Minor Deficiencies and the Minor Deficiencies; and
 - (C) a schedule for the completion and rectification of the Phase Minor Deficiencies and the Minor Deficiencies; and
- (ii) amend the Minor Deficiencies List in accordance with Sections 24.8(d) and (e) of the Project Agreement, which will specify a rectification time for any newly added Minor Deficiency that is no greater than 10 Business Days.
- (q) Both prior to and following Substantial Completion, review Project Co cash allowance expenditures against the installations in respect of the Cash Allowance Items and the Cash Allowance Amount;
- (r) Review and observe installation of all equipment, furniture, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “**Installed Equipment**”) into or onto the Facilities by Contracting Authority or any agent or contractor of Contracting Authority either before or after Substantial Completion and provide a report to Contracting Authority and Project Co identifying any damage to the Facilities which has been caused as a result of the installation of such Installed Equipment into or onto the Facilities by Contracting Authority, its contractors and/or agents;
- (s) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement;
- (t) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services;
- (u) Provide periodic reports to the PA Parties, copying IO, 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**”); and
 - (ii) accompanying the Monthly Reports delivered for the months of May, August, November and February, a quarterly report (the “**Quarterly Report**”) for the quarters ending June 30th, September 30th, December 31st and March 31st

respectively, in substantially the form as that in Appendix D and that contains the following information confirmed to the best of the Independent Certifier's professional knowledge and judgment:

- (A) the extent (expressed as a percentage) of completion of the Works as of the date of the Quarterly Report;
 - (B) the value of the Works completed as of the date of the Quarterly Report;
 - (C) the forecasted extent (expressed as a percentage) of completion of the Works as of the end of the applicable quarter and for the next four quarters; and
 - (D) the forecasted value of the Works anticipated to be completed as of the end of the applicable quarter and for the next four quarters.
- (v) Issue a certificate for payment of (i) the Legislative Holdback pursuant to Section 4.5(c) of the Project Agreement, and (ii) the Finishing Holdback pursuant to Section 4.5A(c) of the Project Agreement;
 - (w) In accordance with Section 14.6(b) of the Project Agreement, attend all meetings and deliberations of the Works Committee with respect to Proceeding At Risk Matters;
 - (x) Provide advice on other matters that may arise that both PA Parties may jointly require;
 - (y) Review the reports and plans prepared by Project Co pursuant to Section 13.6(a) of the Project Agreement and produce a monthly IC progress report for the PA Parties; and
 - (z) Issue its opinion as to whether Contracting Authority acted reasonably in delivering the subject Proceeding At Risk Notice pursuant to Section 14.6(e) of the Project Agreement.

APPENDIX B

INDEPENDENT CERTIFIER FEE

[REDACTED]

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

[REDACTED]

APPENDIX D

FORM OF QUARTERLY REPORT

[REDACTED]

SCHEDULE 7

SUBCONTRACTOR’S DIRECT AGREEMENT

THIS AGREEMENT is made as of [●] day of [●], 20[●]

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Infrastructure as represented by the 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 –

BIRD CAPITAL OMP PROJECT CO INC., [REDACTED]

(“**Project Co**”)

– AND –

[REDACTED]

(the “**Construction Contractor**”)

– AND –

[[●], a corporation incorporated under the laws of [Ontario]]

(the “**Subcontractor**”)

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 Subcontractor to enter into, this Subcontractor’s Direct Agreement with Contracting Authority.
- B. Project Co and the Construction Contractor have entered into the Design and Construction Contract, which requires the Construction Contractor to enter into, and cause the Subcontractor to enter into, this Subcontractor’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 Subcontractor’s Direct Agreement, unless the context otherwise requires:

- (a) “**Approved Purposes**” has the meaning given in the Project Agreement.
- (b) “**Business Day**” has the meaning given in the Project Agreement.
- (c) “**Construction Contractor**” means [REDACTED].
- (d) “**Construction Contractor’s Direct Agreement**” has the meaning given in the Project Agreement.
- (e) “**Contracting Authority**” means Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure as represented by the Ontario Infrastructure and Lands Corporation
- (f) “**Default Notice**” has the meaning given in Section 5(a).
- (g) “**Design and Construction Contract**” has the meaning given in the Project Agreement.
- (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 Subcontractor or Project Co, and “**Parties**” means Contracting Authority, the Construction Contractor, the Subcontractor and Project Co.
- (l) “**Project**” has the meaning given in the Project Agreement.
- (m) “**Project Agreement**” means the project agreement made on or about August 16, 2018 between Contracting Authority and Project Co.
- (n) “**Project Co**” means Bird Capital OMP Project Co Inc..
- (o) “**Step-In-Notice**” has the meaning given in Section 6(a).
- (p) “**Subcontract**” means the subcontract [●] *[NTD: Describe applicable subcontract.]*.

- (q) “**Subcontractor**” means [●].
- (r) “**Substitute**” has the meaning given in Section 6(b).
- (s) “**Works**” has the meaning given in the Project Agreement.

2. INTERPRETATION

This Subcontractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Subcontractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Subcontractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Subcontractor’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 Subcontractor’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 Subcontractor’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 Subcontractor’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 Subcontractor’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 Subcontractor’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 Subcontractor’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 Subcontractor’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 Subcontractor’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 Subcontractor’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 Subcontractor’s Direct Agreement, the Construction Contractor’s Direct Agreement, the Project Agreement and the Design and Construction Contract, this Subcontractor’s Direct Agreement shall prevail.

- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Subcontractor’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

4. AGREEMENTS

- (a) If the Subcontractor gives the Construction Contractor any notice of any default(s) under the Subcontract that may give the Construction Contractor a right to terminate the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor’s performance thereunder, then the Subcontractor shall concurrently provide Project Co and Contracting Authority with a copy of such notice, an executed copy of the Subcontract and set out in reasonable detail the default(s).

5. NO TERMINATION BY SUBCONTRACTOR WITHOUT DEFAULT NOTICE

The Subcontractor shall not exercise any right it may have to terminate the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor’s performance thereunder unless:

- (a) the Subcontractor first delivers an executed copy of the Subcontract and a written notice (a “**Default Notice**”) to Contracting Authority setting out in reasonable detail the default(s) on which the Subcontractor intends to rely in terminating the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor’s performance thereunder; and
- (b) within a period of 5 Business Days of Contracting Authority receiving the Default Notice the default(s) on which the Subcontractor intends to rely in terminating the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor’s performance thereunder have not been remedied; and provided that if, within such period of 5 Business Days, Contracting Authority agrees to pay the Subcontractor’s reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

6. NOVATION OF THE SUBCONTRACT

- (a) The Subcontractor acknowledges and agrees that where the Design and Construction Contract has been terminated:
 - (i) by Project Co; or
 - (ii) as a result of the termination of the Project Agreement; or
 - (iii) due to the insolvency of the Construction Contractor,

the Subcontract shall not terminate solely by reason of the termination of the Design and Construction Contract unless Contracting Authority shall have failed to request a novation of the Subcontract pursuant to Section 6(b) within 20 days of the date of such termination.

- (b) Contracting Authority may at any time if:
- (i) the Project Agreement and the Design and Construction Contract have been terminated; or
 - (ii) Contracting Authority’s right to terminate the Project Agreement has arisen and is continuing and as a result of such termination of the Project Agreement, the Design and Construction Contract would be terminated,

deliver a notice (a “**Novation Notice**”) electing to novate the Subcontract either to Contracting Authority or a third party designated by Contracting Authority in the Novation Notice (the “**Substitute**”), provided that Contracting Authority can demonstrate to the Subcontractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Subcontract.

- (c) Subject to Section 6(d), upon receipt by the Subcontractor of a Novation Notice:
- (i) the Construction Contractor and the Subcontractor will be deemed to be released from their existing and future obligations under the Subcontract to each other (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and Contracting Authority or the Substitute, as applicable, and the Subcontractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of the Construction Contractor against the Subcontractor under the Subcontract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and Contracting Authority or the Substitute, as applicable, and the Subcontractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Subcontractor to Contracting Authority if Contracting Authority pays for the Subcontractor’s reasonable costs of continued performance pursuant to Section 5;
 - (iii) any guarantee, bond or covenant in favour of the Construction Contractor from any third party in respect of any term, provision, condition,

obligation, undertaking or agreement on the part of the Subcontractor to be performed, observed or carried out by the Subcontractor as contained in, referred to, or inferred from the Subcontract 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 Subcontractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided, however, that where Construction Contractor shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Subcontractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Construction Contractor shall be conditional on the satisfaction of those obligations to Construction Contractor; and

- (iv) at Contracting Authority's request, the Subcontractor shall enter into, and shall cause any guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(c)(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 Subcontractor, acceptable to Contracting Authority and the Subcontractor, each acting reasonably, on substantially the same terms as the Subcontract.
- (d) The Construction Contractor shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Subcontract 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 Subcontract, ongoing supervisory activities and scheduling.
- (e) The rights granted by Section 6(b) shall be of no force or effect if, at any time the Subcontractor receives a Novation Notice, the Subcontractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Subcontract that it is or has validly exercised those step-in rights. If the Subcontractor receives any such notice on the same day as a Novation Notice, the Novation Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Novation Notice shall be effective.
- (f) If Contracting Authority gives a Novation Notice within the time provided hereunder at any time after the Subcontractor has terminated the Subcontract or treated it as having been repudiated by Construction Contractor or discontinued the Subcontractor's performance thereunder in accordance with the terms of this

Subcontractor's Direct Agreement, the Subcontractor agrees that the Subcontract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Subcontractor's reasonable costs for re-commencing the obligations it has under the Subcontract and the Subcontractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Subcontract or having treated it as being repudiated by Construction Contractor or having discontinued its performance thereunder.

- (g) The Subcontractor acknowledges that if Contracting Authority novates the Subcontract to itself pursuant to Section 6(b), Contracting Authority shall have the right to further novate the Subcontract to a Substitute in accordance with and otherwise on, and subject to, the terms and conditions of this Subcontractor's Direct Agreement.

7. SUBCONTRACTOR LIABILITY

- (a) The liability of the Subcontractor hereunder shall not be modified, released, diminished or in any way affected by:
 - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for 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 Subcontractor 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 Novation Notice, the Subcontractor shall have no greater liability to Contracting Authority or any Substitute than it would have had to Construction Contractor under the Subcontract, and the Subcontractor shall be entitled in any proceedings by Contracting Authority or any Substitute to rely on any liability limitations in the Subcontract.

8. PROJECT CO AND CONSTRUCTION CONTRACTOR AS PARTY

- (a) Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Design and Construction Contract by complying with its obligations hereunder.
- (b) Construction Contractor acknowledges and agrees that the Subcontractor shall not be in breach of the Subcontract by complying with its obligations hereunder.

9. ASSIGNMENT

- (a) Construction Contractor shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor’s Direct Agreement except to the extent entitled to do so under the Design and Construction Contract.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Subcontractor’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 47.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co, the Construction Contractor and the Subcontractor 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 Subcontractor’s Direct Agreement except as may be permitted under the Design and Construction Contract.
- (d) The Subcontractor 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 Subcontractor’s Direct Agreement except as may be permitted under the Subcontract.

10. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Subcontractor’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 Subcontractor’s Direct Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Contracting Authority:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

with a copy to:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

If to the Construction Contractor:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

If to the Subcontractor:

[Address]

Fax No.: [●]
Attn.: [●]

- (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 Subcontractor's Direct 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 Subcontractor'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 Subcontractor's Direct Agreement.

12. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Subcontractor’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.

13. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Subcontractor’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 Subcontractor’s Direct Agreement, of principal and agent.

14. ENTIRE AGREEMENT

Except where provided otherwise in this Subcontractor’s Direct Agreement, this Subcontractor’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 Subcontractor’s Direct Agreement.

15. SEVERABILITY

Each provision of this Subcontractor’s Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Subcontractor’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 Subcontractor’s Direct Agreement. If any such provision of this Subcontractor’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 Subcontractor’s Direct Agreement as near as possible to its original intent and effect.

16. ENUREMENT

This Subcontractor’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.

17. GOVERNING LAW AND JURISDICTION

- (a) This Subcontractor'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 Subcontractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

18. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Subcontractor's Direct Agreement.

19. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Subcontractor'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 déclare satisfaite.

20. COUNTERPARTS

This Subcontractor'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 Subcontractor's Direct Agreement which was so faxed.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Subcontractor’s Direct Agreement as of the date first above written.

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

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

BIRD CAPITAL OMP PROJECT CO INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

[SUBCONTRACTOR]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

SCHEDULE 8

PROJECT CO PARTIES

[REDACTED]

**SCHEDULE 9
KEY INDIVIDUALS
[REDACTED]**

SCHEDULE 10

REVIEW PROCEDURE

1. WORKS SUBMITTALS

- 1.1 The provisions 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 the 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 each Phase Completion and Substantial Completion, or after Phase Completion and Substantial Completion in respect of the completion of the applicable Phase Minor Deficiencies and Minor Deficiencies, and, if directed by Contracting Authority, the correction, rectification and Making Good of any Works, the Facilities or any part thereof as required pursuant to Sections 11.14, 11.15 and 11.16 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 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 performance of 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 Schedule;
- (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 the Works Submittals, or the Works Submittal was not submitted to Contracting Authority on the date indicated in the Current Look-ahead Schedule, such period of time shall be increased by Project Co, acting reasonably, taking into account the factors set forth in this Section 2.

- 2.5 Project Co shall include the relevant activity relationships in the Project Schedules to indicate the Works Activities dependent on the specific Contracting Authority Review Period for a specific Works Submittal.
- 2.6 Project Co shall submit all Works Submittals to Contracting Authority in accordance with the Current Look-ahead Schedule, and the Contracting Authority Representative 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 9.1 of Schedule 19 – 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 cannot review the Works Submittal 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 engineers or architects) 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 Works 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 **INTENTIONALLY DELETED**
- 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) clouded revisions (if applicable);
 - (d) document or drawing title(s);
 - (e) name of entity that prepared the Works Submittal;
 - (f) the Works Submittal history showing date and delivery information and/or log number of all previous submissions of that Works Submittal; and
 - (g) 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 with the representatives from Contracting Authority and the Design Compliance Consultant 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.

4. COMMENTS

4.1 The Contracting Authority Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.2 of this Schedule 10. The Contracting Authority Representative 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 Representative, 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 Representative, 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 Representative assigns to a Works Submittal the additional comment “RE-SUBMIT”, Project Co shall correct and re-submit such Works Submittal to the Contracting Authority Representative 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 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 Works Submittals stamped “MINOR NON-CONFORMANCE”, then Project Co will be required to modify the Works Submittals and the Works, including the Facilities if applicable, as required to ensure that the Works comply with the Output Specifications and Project Co may be required, at the Contracting Authority Representative’s discretion, to resubmit the relevant Works 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.
- 4.4 The comment “MAJOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, 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 Representative, 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 Representative, acting reasonably and as set out in writing. The Contracting Authority Representative 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 14.6(a)(iii) of the Project Agreement.
- 4.5 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 Works 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.
- 4.6 If, at any time after assigning any comment to a Works 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 Works Submittal. If the Parties agree or it is determined in accordance with Section 5 of this Schedule 10 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Works. 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 Representative and the Project Co Representative may 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 act of Contracting Authority or the Contracting Authority Representative in respect of a Works Submittal under this Schedule 10, 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 Representative 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 Representative 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 resolution of the Independent Certifier, subject to Section 10.2 of this Schedule 10, 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 of this Schedule 10, the Contracting Authority Representative may direct Project Co to revise the Works Submittals in accordance with the comments of the Contracting Authority Representative and proceed to perform and complete the Works on the basis of such revised Works Submittals. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with Section 46 of the Project Agreement and Schedule 27 - Dispute Resolution Procedure.

6. **EFFECT OF REVIEW**

- 6.1 Any review and comment by Contracting Authority or the Contracting Authority Representative 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 Works 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 Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants 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 Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications or any other Schedule to the Project Agreement, as applicable. Project Co shall provide the explanation to the Contracting Authority Representative within five (5) Business Days (or such longer period as the Parties may agree) from the date of receipt of the request from the Contracting Authority Representative.

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 current set of the most recently issued submittal documents available on site in the construction trailer for use by Contracting Authority and the Contracting Authority Representative. 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 of this Schedule 10) 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 Works to which they relate and shall advise the Contracting Authority Representative of all such corrections and modifications.
- 9.3 Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1 of this Schedule 10, 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 Works 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 Representative 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 of this Schedule 10 including for clarity, the exercise by Contracting Authority of its rights under Section 5.3 of this Schedule 10. 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 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

1. MINIMUM SUBMITTAL REQUIREMENTS FOR THE [REDACTED] DESIGN DEVELOPMENT STAGE

Project Co shall provide the following Design Development Submittals for the [REDACTED]% Design Development Stage to Contracting Authority for review and comment in accordance with this Schedule 10:

1.1 Design development documents in accordance with the requirements set forth in Section 18.3 of this Project Agreement, including:

- (a) Site plans for each Site (prepared at a scale that matches the PSOS site plans) showing:
 - (i) Full ground floor plan (see description below for Floor/Roof Plans);
 - (ii) Full hard/soft landscape plan showing integration of landscaping features/areas with floor plan elements and entrances;
 - (iii) Treatment of main approach to public entrances, including treatment of safety features, lighting, etc.;
 - (iv) Vehicular drop-off and street right-of-way improvements;
 - (v) Additional Site features, including natural features, storm water management structures and design of outdoor spaces for staff or visitor use;
 - (vi) Vehicle access/egress driveways to and from Site, including visitor/staff/operational vehicle access and showing vehicle access into the Sallyport, equipment Storage Bays and Secure Compound; and
- (b) Site design features related to Sustainable Design requirements for each Site. Site servicing plan for each Site (prepared at a scale to match those of the PSOS Indicative Site Plans) showing:
 - (i) Storm water management/storm sewers showing lengths of pipes, diameters, slopes, invert elevations, bio swale locations, pipe materials and material classifications;
 - (ii) Sanitary sewer systems showing lengths of pipes, diameters, slopes, invert elevations, pipe materials and material classifications;

- (iii) Water mains - domestic use, including locations of valves, valve chambers, pipe lengths, diameters, pipe materials and material classification;
 - (iv) Water mains – firefighting, including locations of valves, hydrants, valve chambers, pipe lengths, diameters, pipe materials and material classification;
 - (v) Gas utilities;
 - (vi) Back-up fuel system;
 - (vii) Hydro utilities; and
 - (viii) Communication systems incoming services.
- (c) Site Grading Plan for each Site (prepared at a scale that matches the PSOS site plans), including, at a minimum:
- (i) Facility Finished Floor Elevations;
 - (ii) Surface Elevations of Underground Structures;
 - (iii) Perimeter Grades of Buildings/Interface with surrounding landscape and Site Circulation Routes;
 - (iv) Grades, elevations and dimensions of ramps;
 - (v) Perimeter Grades of Site Property Lines;
 - (vi) Overland Flow Directions/Pathways;
 - (vii) Top and bottom elevations for retaining walls; and
 - (viii) Site clearances for Fire Route, including vertical clearances under any canopy.
- (d) Erosion and Sediment Control Plans.
- (e) Storm water Management Report.
- (f) Parking & Driveways Plan.
- (g) Roadway Signage and Pavement Marking Plan.
- (h) Hydrogeology conditions and conceptual approach to ground water handling.
- (i) Drainage Plan.

- (j) Typical Site and landscape details for each Site (prepared at 1:10 scale).
- (k) Traffic Impact Studies (where required for a particular site).
- (l) Architectural composite floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facilities, showing:
 - (i) All grids, walls, doors, stairs, shafts, and envelope, with detail bubbles and tags indicating the plan breaks for 1:100 scale drawings;
 - (ii) Fire separation plans with zoning and fire compartment indicated; and
 - (iii) Security plans indicating different security zones.
- (m) Architectural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), for the Facilities, showing:
 - (i) All walls and partitions in actual thicknesses including any fire or sound rating and corresponding code or standard reference;
 - (ii) All program and non-program rooms/areas, developing final room number system with a matrix to translate space allocation tables, Lists and Room Data Sheets with room numbering;
 - (iii) List of additional rooms not previously identified with additional sequential Room Codes as required;
 - (iv) Doors, screens, glazing and windows;
 - (v) Floor finishes complete with transitions and pattern/design;
 - (vi) All millwork/systems furniture and workstation layouts (including filing storage units, shelving etc.) for individual rooms;
 - (vii) All equipment for the areas for which architectural plan details have been prepared, coordinated with the updated Equipment List and Existing Equipment List;
 - (viii) Integration of structural, mechanical and electrical systems in terms of columns, service shafts, risers, etc., in sufficient detail to demonstrate that functional and net area requirements are compliant;
 - (ix) Building design features related to Sustainable Design Requirements; and
 - (x) All program rooms/areas labels to include required and actual room net areas, or just actual room net areas, in the case of non-program rooms/areas.

- (n) Architectural reflected ceiling plans (prepared at 1:100 scale) of every level, including the Facilities, showing:
 - (i) All walls and partitions in actual thicknesses;
 - (ii) All grids, walls, ceiling types, services, shafts, and envelope, with detail bubbles;
 - (iii) All program and non-program rooms/areas, new room numbering codes;
 - (iv) Ceiling finishes; and
 - (v) All equipment for the areas for which architectural ceiling plan details have been prepared, coordinated with the updated Equipment List and Existing Equipment List.
- (o) Structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
 - (i) Foundation plan showing preliminary locations and elevations of footings;
 - (ii) Shear walls, slab depressions, openings, slab loading and slab reinforcing for heavy loading areas
 - (iii) Structural system and framing;
 - (iv) Provisions for adaptability and flexibility, removal and replacement of building and equipment;
 - (v) Provisions for any equipment requirements in the areas for which architectural plan details have been prepared; and
 - (vi) Summary of preliminary structural loads.
- (p) Mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
 - (i) Indicating AHU zones;
 - (ii) Location and layout of equipment;
 - (iii) Routing of main feeds and associated shafts and risers;
 - (iv) Single-line drawings for all services;
 - (v) Preliminary sizing of equipment;
 - (vi) Provisions for adaptability, flexibility and expandability, removal and replacement of building and equipment;

- (vii) Provisions for any equipment requirements in the areas for which architectural plan details have been prepared;
 - (viii) Preliminary load estimates for storm and sanitary sewers, potable water supply, heating and cooling systems;
 - (ix) Preliminary flow estimates for heating and cooling systems, air supply, return and exhaust systems;
 - (x) Typical room servicing;
 - (xi) Preliminary plumbing fixture schedules;
 - (xii) Preliminary estimate of annual energy use;
 - (xiii) Climate/wind study results; and
 - (xiv) Acoustic Study.
- (q) Electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
- (i) Main and satellite electrical rooms;
 - (ii) Location and layout of power distribution equipment;
 - (iii) Routing of main feeds and associated shafts and risers;
 - (iv) Single-line drawings for all electrical services;
 - (v) Preliminary sizing of major equipment;
 - (vi) Provisions for adaptability, flexibility and expandability;
 - (vii) Provisions for any equipment requirements in the areas for which architectural plan details have been prepared;
 - (viii) Preliminary lighting loads for typical rooms and the areas for which architectural plan details have been prepared; and
 - (ix) Preliminary luminaire schedule of all building luminaires to be used.
- (r) Security floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), for Site Three, Clinton (Huron County Detachment), West Region only, showing:
- (i) Location and basic layout of equipment including, but not limited to, video surveillance, access control, duress/panic alert,;

- (ii) Riser block diagrams for the access control, duress, panic, 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; and
- (s) Composite building sections (prepared at 1:200 scale), including penthouse(s) and Roof(s), for the Facilities, showing:
- (t) Typical building sections (prepared at 1:100 scale) showing:
 - (i) All grids floor elevations, and envelope, with detail bubbles and tags indicating the breaks for 1:100 scale drawings; and
 - (ii) Fire separation and travel distance.
 - (iii) Relative thickness of floors/walls, including differentiation between opaque and transparent walls, with fire separations;
 - (iv) Major floor elevations, including those below grade, with fire separations;
 - (v) Finish grades, dotted lines through building section;
 - (vi) Relationship to each Site's contours and other important Site elements as shown in building elevation drawings;
 - (vii) Elevations beyond; and
 - (viii) Major room names.
- (u) Stair and elevator plans, sections and details, with fire separations (prepared at 1:50 scale).
- (v) Schematic sections of ceiling space (prepared at 1:50 scale):
 - (i) Take ceiling sections indicating service stacking at various ceiling height planned in the Facilities.
- (w) Exterior elevations (prepared at 1:100) showing:
 - (i) All grids, floor elevations, and envelope, with detail bubbles and tags indicating the breaks for 1:100 scale drawings.
 - (ii) Indication of surface materials for all areas, with legend and notations identifying extent and type of all proposed glazing and cladding materials;
 - (iii) Different vertical planes differentiated with line weights or shadows;
 - (iv) Finish grades;

- (v) Major floor elevations, including those below grade;
- (vi) Sections when elevation is shown by taking vertical cut-through another space;
- (vii) Significant plantings/Site elements for each Site when important in defining space and volume, such as bodies of water, hills, earth berms; and
- (viii) Identification of locations for exterior building signage.
- (x) Exterior design drawings – (prepared at 1:50 scale):
 - (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.
- (y) Exterior wall sections (prepared at 1:50 scale):
 - (i) Describe typical wall assemblies and indicate relationship of materials. Include annotation describing proposed wall assembly types.
- (z) Typical envelope / cladding details (prepared at 1:10 scale), provided with a building science report reviewing envelope design and details.
 - (i) Provide representative section and plan details of exterior wall, roof and floor slab assemblies. Show features such as Main Entry glazing, sun shading, etc. Details will indicate proposed components of assemblies and will be referenced to other drawings.
- (aa) Interior elevations (prepared at 1:50) for Public Reception, Administration Area, Uniformed Constables Area, Booking Area and other spaces, as appropriate.
- (bb) Interior finishes colour and materials selection boards for all the departments and all key public spaces, including circulation.
- (cc) Interior 3D coloured vignettes of key areas of each department and key public spaces, including circulation.
- (dd) Preliminary door, window/glazing and hardware schedules and hardware cut sheets.
- (ee) Preliminary plumbing fixtures schedules and plumbing fixtures cut sheets.
- (ff) Preliminary washroom accessories and building accessories cut sheets.
- (gg) Preliminary lighting design submittals, including fixture cut sheets and illumination level analysis.

- (hh) For Site Three, Clinton (Huron County Detachment), West Region only, provide preliminary security systems floor plan layouts, locations of all security systems equipment/devices, connection points and control points.
 - (ii) Preliminary drawings of all millwork/systems furniture elements identified in the Article 4, including Furniture schedules in the Output Specifications, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
 - (jj) For Site Three, Clinton (Huron County Detachment), West Region only, provide single line audio/visual distribution diagrams showing cable management and equipment rooms, coordinated with the updated Equipment List and Existing Equipment List and the requirements of Schedule 15 – Output Specifications.
 - (kk) For Site Three, Clinton (Huron County Detachment), West Region only, provide single line information technology distribution diagrams showing cable management and equipment rooms, coordinated with the updated Equipment List and Existing Equipment Lists.
- 1.2 Construction specifications identifying all systems, materials, and construction execution methods proposed to be used in the project. Specifications to be submitted in Master Format.
- 1.3 Updated Equipment Plan and Equipment List and Existing Equipment List.
- 1.4 Updated Construction Quality Plan.
- 1.5 Updated phasing plan (phasing and construction implementation analysis), including life safety plans, construction, occupancy, as well as temporary barriers, enclosures and temporary facilities.
- 1.6 Updated Approvals Strategy coordinated with the phasing plan.
- 1.7 Comprehensive acoustical and vibration control report reviewing all proposed assemblies, acoustical conditions, and noise and vibration control measures.
- 1.8 Ontario Building Code and Ontarians with Disabilities Act analysis and compliance strategy and accessibility measures report.
- 1.9 Accessibility measures report indicating strategies for achieving compliance with reference to the applicable standards described in Section 1.2.6 of Article 1 of Schedule 15 – Output Specifications.
- 1.10 Updated Space Program which:
- (a) Identifies net area of each room and department, listed by floor levels.

- (b) Lists line by line area variance, departmental area variance and grossing factor, and building area and grossing factor in comparison with the Output Specification Space Program described in the Output Specifications.
 - (c) Utilizes both final room numbering and the alphanumeric Room Codes used in the Space Allocation Tables and Room Data Sheets in Article 2 of Schedule 15 – Output Specifications.
 - (d) Lists additional rooms not previously identified with additional sequential Room Codes as required.
- 1.11 Follow-up to LEED registration with CaGBC, and LEED credits tracking documentation. Also provide documentation that supports achievement of all Targeted LEED Credits and Additional Sustainable Requirements described in Section 1.2.2 and 3.8.1 of Schedule 15 Output Specifications (e.g. all LEED credits that are requirements of the Output Specifications that are not contributing to the LEED Silver Rating).
- 1.12 Energy Model Report with Narrative and Inputs including a digital copy of the entire energy model.
- 1.13 Communications infrastructure design report that details the designs and strategies used to achieve performance metrics and up-time guarantees for availability.
- 1.14 Technology Equipment Centre and Technology Distribution Room design report that details the designs and strategies used to achieve performance metrics, up-time guarantees for power and cooling, and security.
- 1.15 Project Co shall provide Design Development Submittals for the [REDACTED]% Design Development Stage to Contracting Authority for review and comment in accordance with this Schedule 10.
- 1.16 Any other submissions Contracting Authority reasonably requires to understand the Works.

2. MINIMUM SUBMITTAL REQUIREMENTS FOR THE [REDACTED]% & [REDACTED]% CONSTRUCTION DOCUMENTS STAGE

Project Co shall provide the following Construction Document Submittals to Contracting Authority for review and comment in accordance with this Schedule 10:

- 2.1 Updated construction documents in accordance with the requirements set forth in Section 11.1 of the Project Agreement including:
- (a) Updated Site plan for each Site showing all previously listed requirements.
 - (b) Updated Site expansion plan for each Site showing all previously listed requirements.

- (c) Updated Site servicing plan for each Site showing all previously listed requirements, including natural gas (prepared at 1:50).
- (d) Exterior Site Lighting Plan and Details for each Site.
- (e) Updated Site grading plan for each Site.
- (f) Updated Erosion and Sediment Control Plans.
- (g) Updated and augmented landscape plans including plant schedule and landscape details (prepared at 1:10 scale).
- (h) Architectural floor plans (prepared at 1:100 scale) of every level, in addition to all other areas required to explain the design intent, including penthouse(s) and roof(s), showing all previously listed requirements and:
 - (i) Full dimensions;
 - (ii) Layout of all spaces;
 - (iii) Fire and Life safety plans;
 - (iv) Material symbols;
 - (v) Door symbols;
 - (vi) Glazed light symbols;
 - (vii) Window types and numbers;
 - (viii) Floor material changes;
 - (ix) Pits, trenches, etc.;
 - (x) Furring notes;
 - (xi) Hatch walls and partitions;
 - (xii) Depressed floor for tile, etc.;
 - (xiii) Concrete pads for Mechanical /Electrical Equipment;
 - (xiv) Sump pits, gratings;
 - (xv) Recessed mats;
 - (xvi) Expansion joints; and
 - (xvii) Low partitions;

- (i) Interior finishes colour and materials selection boards for all the departments and all key public spaces, including circulation.
- (j) Interior 3D coloured renderings of key areas, including circulation at [REDACTED]% CD and updated bid renderings at [REDACTED]% Construction Documents.
- (k) Updated structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
 - (i) Sections/elevations showing all structural elements;
 - (ii) All legends and schedules; and
 - (iii) Finalized structural loads.
- (l) Update Mechanical floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facilities, showing previous requirements.
- (m) Updated mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
 - (i) Interior building section details confirming coordination of structural/electrical/mechanical;
 - (ii) All legends and schedules;
 - (iii) HVAC, plumbing and gas details;
 - (iv) Provisions for any equipment requirements in the area for which architectural plan details have been prepared;
 - (v) Routing of main feeds and associated shafts and risers;
 - (vi) Sizing of equipment;
 - (vii) Location and layout of equipment;
 - (viii) Plumbing fixture schedules;
 - (ix) Final single-line drawings for all services (excluding sanitary and storm schematics);
 - (x) Final flow for heating and cooling systems, air supply, return and exhaust systems;
 - (xi) Enlarged equipment room plans;
 - (xii) Mechanical room plans;

- (xiii) Control schematics and final sequences of operation;
 - (xiv) Finalized estimate of annual energy use; and
 - (xv) Interior building section details confirming coordination of structural/electrical/mechanical at [REDACTED]% Construction Documents.
- (n) Updated electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
- (i) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical;
 - (ii) All legends, and schedules;
 - (iii) Location and layout of power distribution equipment;
 - (iv) Routing of main feeds and associated shafts and risers;
 - (v) Final Single-line drawings for all electrical services;
 - (vi) Final sizing of major equipment;
 - (vii) Provisions for any equipment requirements in the areas for which architectural plan details have been prepared;
 - (viii) Final lighting loads for typical rooms and the areas for which architectural plan details have been prepared;
 - (ix) Grounding details;
 - (x) Fire alarm riser diagram;
 - (xi) Telephone riser diagram;
 - (xii) Paging riser diagram;
 - (xiii) Television riser diagram (as applicable);
 - (xiv) Network cabling riser diagram;
 - (xv) Control schematics and sequences of operation; and
 - (xvi) Electrical details including electrical room equipment requirements.
- (o) Wired and wireless provisions including all field devices including voice, data, and TV outlets.

- (p) Updated network topology diagrams for intended equipment list.
- (q) Security floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
 - (i) Location and basic layout of equipment including, but not limited to, video surveillance, access control, duress/panic alert ;
 - (ii) Riser block diagrams for the access control, duress, panic, 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; and
- (r) Updated architectural reflected ceiling composite plans (prepared at 1:200 scale) of every level, for the Facilities, showing previous requirements.
- (s) Updated reflected ceiling plans (prepared at 1:100 scale) for all areas, showing previous requirements and:
 - (i) Light fixtures;
 - (ii) Grilles;
 - (iii) Diffusers;
 - (iv) Heat detectors;
 - (v) Smoke detectors;
 - (vi) Soffits (dotted);
 - (vii) Access panels;
 - (viii) Hatches;
 - (ix) Major structural members (if sight exposed);
 - (x) Other ceiling-mounted equipment;
 - (xi) Exit signs;
 - (xii) Room numbers; and
 - (xiii) Any other fixture or device to be installed in or mounted on ceiling.
- (t) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements and:

- (i) Completed ceiling space coordination diagram(s);
 - (ii) Vertical dimensions;
 - (iii) Floor elevations;
 - (iv) Column lines;
 - (v) Room numbers/names;
 - (vi) Rooftop equipment; and
 - (vii) Wall section designations.
- (u) 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.
- (v) Updated and augmented stair and elevator plans, sections and details (scales as required).
- (w) Updated exterior elevations (prepared at 1:100) showing all previously listed requirements and:
- (i) Window types and numbers;
 - (ii) Entrance types and numbers;
 - (iii) Door types and numbers;
 - (iv) Wall material indication;
 - (v) Coping materials;
 - (vi) Overhead fascia materials;
 - (vii) Top of foundation wall line;
 - (viii) Footing and foundation line;
 - (ix) Floor lines;
 - (x) Vertical dimensions;
 - (xi) Signage;
 - (xii) Section lines;
 - (xiii) Column centerlines;

- (xiv) Louvers;
 - (xv) Stairs and ramps;
 - (xvi) Stacks;
 - (xvii) Light fixtures;
 - (xviii) Other mechanical or electrical equipment;
 - (xix) Rooftop equipment screening; and
 - (xx) Exterior service access ladders and hatches.
- (x) Updated interior elevations (prepared at 1:50) for all previously listed areas and showing:
- (i) Millwork and detail designations;
 - (ii) Shelving;
 - (iii) Whiteboard;
 - (iv) Interior glazed panels (dimensions and details);
 - (v) Base indication;
 - (vi) Mechanical grilles, thermostats, gas outlets, etc.;
 - (vii) Wall handrails;
 - (viii) Graphics;
 - (ix) Equipment;
 - (x) Interior finishes;
 - (xi) Electrical receptacles, speakers, clocks, light fixtures, etc.;
 - (xii) Wall-mounted accessories;
 - (xiii) Plumbing fixture foot controls, etc.; and
 - (xiv) Locker designation.
- (y) Interior details (scaled as appropriate) showing:
- (i) Base types;

- (ii) Soffits;
 - (iii) Curbs for mechanical penetrations;
 - (iv) Door details;
 - (v) Hollow metal glazed panels;
 - (vi) Aluminum glazed panels;
 - (vii) Expansion joints;
 - (viii) Fireproofing at beams and columns;
 - (ix) Low walls;
 - (x) Expansion joint details;
 - (xi) Typical partition construction;
 - (xii) Corner guard details;
 - (xiii) Updated room finish schedule;
 - (xiv) Wall protection; and
 - (xv) Bumper railing details.
 - (z) Final door, window/glazing and hardware schedules and hardware cut sheets.
 - (aa) Final lighting design submittals, including fixture cut sheets and illumination level analysis.
 - (bb) Final security systems floor plans and equipment details, locations of all security systems equipment, connection points and control points.
 - (cc) Drawings of all millwork/systems furniture elements identified in the Article 4 of the Output Specifications, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
 - (dd) Updated and augmented audio/visual drawings and details.
 - (ee) Updated and augmented information technology drawings and details.
- 2.2 Updated construction specifications, including all previously listed requirements.
- 2.3 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.

- 2.4 Updated Equipment Plan and Equipment List and Existing Equipment List.
- 2.5 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.
- 2.6 Updated phasing plan (phasing and construction implementation analysis), including life safety plans, construction, decanting, occupancy, as well as temporary barriers, enclosures and temporary facilities.
- 2.7 Updated Approvals Strategy coordinated with the phasing plan.
- 2.8 Updated acoustical report, 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.
- 2.9 Updated environmental services design report, 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.
- 2.10 Updated vertical transportation analysis, 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.
- 2.11 Updated Ontario Building Code and Ontarians with Disabilities Act analysis and compliance strategy.
- 2.12 Updated accessibility measures report, if there are any changes to such report previously submitted pursuant to Section 1.9 of this Appendix A to Schedule 10, including a statement of any and all applicable matters have changed from the previous report reviewed by Contracting Authority.
- 2.13 Updated Space Program, including all previously listed requirements.
- 2.14 Report on review and adjustments of micro-climate report.
- 2.15 Progress report on LEED credits tracking documentation. Also provide documentation that supports achievement of all Targeted LEED Credits and Additional Sustainable Requirements described in Section 1.2.2 of Article 1 of Schedule 15 – Output Specifications (e.g. all LEED credits that are requirements of the Output Specifications that are not contributing to the LEED Silver Rating).
- 2.16 Energy Model Report with Narrative and Inputs including a digital copy of the entire energy model.
- 2.17 Updated Technical Specifications.
- 2.18 Updated Outline Commissioning Program.

- 2.19 Updated Mock-up Specifications
- 2.20 Any other Submittals Contracting Authority reasonably requires to understand the Works.
- 2.21 Project Co shall provide Construction Document Submittals for the [REDACTED]% Construction Document Stage to Contracting Authority for review and comment in accordance with this Schedule 10. The [REDACTED]% Construction Document Submittals are to be limited to updated compliant design solutions for items that were identified as non-compliant by Contracting Authority in the [REDACTED]% Construction Document Submittals.

3. MINIMUM SUBMITTAL REQUIREMENTS FOR THE CONSTRUCTION STAGE

Project Co shall provide the following Construction Document Submittals to Contracting Authority for review and comment in accordance with this Schedule 10:

- 3.1 Provide all updated and consolidated drawings and specifications as they are issued for construction.
- 3.2 Works Schedule in electronic native file format, which must be updated monthly by Project Co and show the complete sequence of construction by activity, identifying Works of separate stages and other logically grouped activities and indicating:
 - (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 the Works Schedule; and
 - (e) a narrative report defining:
 - (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.
- 3.3 Shop Drawings and samples which will be processed by Contracting Authority include:

- (a) Coordination drawings of all millwork, casework and modular systems furniture will be reviewed for harmonization of ergonomics, equipment layout and mechanical/electrical outlet locations;
 - (b) Major finishes and envelope systems and materials;
 - (c) All In-Contract Equipment;
 - (d) Security systems including hardware and access control;
 - (e) Signage and wayfinding systems;
 - (f) Architectural feature elements and assemblies such as handrails, guardrails, feature stairs, canopies, etc.;
 - (g) All mechanical equipment and systems;
 - (h) All electrical equipment and systems, electrical coordination study and arc flash study;
 - (i) Reflected ceiling plans indicating access panel locations;
 - (j) Building sections showing completed ceiling space coordination diagram(s); and
 - (k) Any other Shop Drawings for interior and exterior building components of the site and building not identified above.
- 3.4 All review comments from submissions to building authorities, insurance authorities and inspection authorities.
- 3.5 Progress photographs, updated monthly, from four vantage points, locations to be determined by Contracting Authority and/or the Contracting Authority Representative.
- 3.6 Material and finish samples (all exterior and interior finishes) and mock-ups, as noted in the construction specifications, including (but not limited to) mock-ups of the following:
- (a) Typical exterior glazing (curtain wall, structural glazing);
 - (b) Typical cladding module, including curtain wall/glazing integrated with stone or other cladding components;
 - (c) Sun-shading devices (fins, louvers etc.);
 - (d) Handrails or guardrails in public spaces; and
 - (e) Significant feature elements, such as convenience stairs.

- 3.7 Mock-ups must be full scale using materials that conform to materials specified, including work of all trades required to finish work and placement of all Equipment and Existing Equipment, unless otherwise specified, supplied by owner.
- 3.8 Testing and inspection reports.
- 3.9 Construction Contractor proposed substitutions.
- 3.10 Deficiency reports, updated monthly.
- 3.11 Draft of Final Commissioning Program.
- 3.12 Final Commissioning Plan.
- 3.13 The Phase Completion Certificate in respect of each Site and the Substantial Completion Certificate.
- 3.14 Any other Submittals Contracting Authority reasonably requires to understand the Works.
- 3.15 Updated Energy Model.
- 3.16 Any documents, such as, policies, procedures and protocols relating to the Project Co Services that are required to be submitted prior to Substantial Completion in respect of each Site in accordance with the Project Agreement.

SCHEDULE 11

DESIGN QUALITY PLAN AND CONSTRUCTION QUALITY PLAN

[REDACTED]

SCHEDULE 12

FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

THIS GUARANTEE is made as of the 16th day of August, 2018

BETWEEN:

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

(“**Contracting Authority**”)

AND:

[REDACTED]

(“**Construction Guarantor**”)

WHEREAS:

- A. Contracting Authority and Project Co, a corporation formed under the laws of the Province of Ontario (“**Project Co**”) have entered into a project agreement dated as of the 16th day of August, 2018 (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Project Agreement**”).
- B. As an inducement to Contracting Authority to enter the Project Agreement with Project Co, Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to Contracting Authority, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (as such term is defined in Section 1.1(c) of this Guarantee), and in furtherance thereof has agreed to enter into this Guarantee.

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

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Project Agreement.
- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement.
- (c) For the purpose of this Guarantee, the term “**Design and Construction Work**” means:
 - (i) subject to Section 1.1(c)(ii) below, all of Project Co’s covenants, obligations and activities with respect to the Works pursuant to the Project Agreement, and including, for certainty:
 - (A) all of Project Co’s covenants, obligations and activities pursuant to Sections 11.14 (Defective Works), 11.15 (Warranty Obligations), 11.16 (Prompt Repair of Warranty Work) and 22.4(d) (LEED Silver Rating) of the Project Agreement; and
 - (B) Project Co’s representations and warranties contained in Article 6 of the Project Agreement, except for:
 - (1) Section 6.1(a), which for the purposes of this Guarantee shall be amended by replacing “Project Co Event of Default” with “Project Co Construction Event of Default” as such term is defined in Schedule 1 to the Project Agreement, and
 - (2) Section 6.1(a)(xx), which for the purposes of this Guarantee shall be excluded from the definition of “Design and Construction Work” in accordance with Section 1.1(c)(ii)(5) below;
 - (ii) for the purpose of this Section 1.1(c), the term “Design and Construction Work” shall be deemed not to include any of the following covenants, obligations or activities of Project Co under the Project Agreement (including the delivery of any executed originals of the documents referred to below):
 - (1) any covenant, agreement, undertaking or obligation related to the Financing or the Cost of the Financing;
 - (2) the recitals to the Project Agreement;

- (3) Article 2;
 - (4) Sections 4.2, 4.3, 4.4 and 4.9;
 - (5) Section 6.1(a)(xx);
 - (6) Sections 8.3 and 8.4;
 - (7) Section 34.1(a)(iv);
 - (8) Sections 47.3(c) and (d);
 - (9) Article 49;
 - (10) Schedule 2 – Completion Documents;
 - (11) Schedule 4 – Lenders’ Direct Agreement;
 - (12) any of Project Co’s obligations under Schedule 5 – Construction Contractor’s Direct Agreement;
 - (13) Schedule 7 – Subcontractor’s Direct Agreement;
 - (14) Schedule 12 – Performance Guarantee of Construction Guarantor;
 - (15) Schedule 23 – Compensation on Termination;
 - (16) Schedule 24 – Financial Model;
 - (17) **INTENTIONALLY DELETED**; or
 - (18) Schedule 31 – Project Co Information.
- (d) For the purpose of this Guarantee, the Term “**DB Guarantee**” means the performance guarantee delivered by Bird Construction Inc. (the “**DB Guarantor**”) in favour of Project Co and assigned to the Senior Lenders pursuant to the Lending Agreements.

1.2 Survival

This Guarantee shall survive the termination or other expiry of the Project Agreement.

2. GUARANTEE

2.1 Guarantee

- (a) Construction Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to Contracting Authority, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (collectively, the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings and obligations of Project Co under the Project Agreement which are not expressly defined in this Section 2.1(a).
- (b) Notwithstanding any other provision of this Guarantee:
 - (i) Construction Guarantor’s undertakings and obligations are derivative of and not in excess of Project Co’s obligations under the Project Agreement and Construction Guarantor retains all rights, claims, defences and limitations of liability possessed by Project Co under the terms of the Project Agreement or arising from the Parties’ performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Project Co, including, for greater certainty, that the alleged non-performance or non-observance by Project Co of the Guaranteed Obligations arises out of or is a result of a Contracting Authority Event of Default as set out in section 35.1(a) of the Project Agreement; and
 - (ii) in no event shall the aggregate liability of the Construction Guarantor under this Guarantee and the DB Guarantor under the DB Guarantee exceed the maximum liability of the DB Guarantor under the DB Guarantee, but this limit of liability shall not extend to interest and enforcement costs payable under this Guarantee.

2.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by Project Co shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.
- (b) The Guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Project Agreement and

Construction Guarantor shall have fully and satisfactorily discharged all of its obligations under this Guarantee.

- (c) The liability of Construction Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no notice to Construction Guarantor shall be required in respect of):
- (i) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;
 - (ii) any amalgamation, merger or consolidation of Project Co or Construction Guarantor or any sale, lease or transfer of any of the assets of Project Co or Construction Guarantor;
 - (iii) any Change in Ownership of Project Co or Construction Guarantor;
 - (iv) the termination or other expiry of the Project Agreement;
 - (v) any Delay Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
 - (vi) any change in the financial condition of Project Co or Construction Guarantor;
 - (vii) any Project Co Event of Default described in Section 34.1(a)(i) of the Project Agreement, or any resulting release, stay or discharge of any Guaranteed Obligation;
 - (viii) any lack or limitation of power, incapacity or disability on the part of Project Co or any other irregularity, defect or informality on the part of Project Co with respect to the Guaranteed Obligations;
 - (ix) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, Construction Guarantor in respect of the Guaranteed Obligations or this Guarantee;
 - (x) the exercise of any rights under the Lending Agreements, including the right of Lenders to cure any Project Co Event of Default by or on behalf of Project Co hereunder and/or to assume the obligations of Project Co and complete the Design and Construction Work in the manner provided in the Project Agreement;

- (xi) the assignment by Contracting Authority in accordance with the provisions of Section 47.2 of the Project Agreement; or
 - (xii) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against Construction Guarantor.
- (d) The obligations and liabilities of Construction Guarantor hereunder shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Project Co or Construction Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) Contracting Authority shall not be bound to exhaust its recourse against Project Co or others or any securities (including the Security described in Schedule 25 of the Project Agreement) or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the Construction Guarantor and Construction Guarantor renounces all benefits of discussion and division.
- (f) It is the intent and purpose hereof that Construction Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, Construction Guarantor hereby waives notice of acceptance of this Guarantee and of the non-performance by Project Co, diligence, presentment, protest, dishonour, demand for performance from Contracting Authority and notice of non-performance or failure to perform on the part of Project Co and all other notices whatsoever. The Guarantee hereunder is a guarantee of performance and compliance. In order to hold Construction Guarantor liable hereunder, there shall be no obligation on the part of Contracting Authority at any time to demand or resort for performance to Project Co, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that Project Co be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and Contracting Authority shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against Project Co are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, Project Co shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in

respect of any such default, the Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.

- (g) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of Construction Guarantor under this Guarantee and without in any way requiring the consent of or giving notice to Construction Guarantor, Contracting Authority may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Project Co and/or Construction Guarantor or others, including any other guarantor, as Contracting Authority may see fit and Contracting Authority may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as Contracting Authority may see fit.
- (h) Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Guarantee. Construction Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of Construction Guarantor to Contracting Authority do not merge with or end Construction Guarantor's obligations hereunder.
- (i) The liability of Construction Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on Construction Guarantor.
- (j) Construction Guarantor agrees to pay to Contracting Authority any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis) incurred by it in connection with enforcing any of its rights hereunder.

3. REPRESENTATIONS AND WARRANTIES

3.1 Construction Guarantor Representations and Warranties

- (a) Construction Guarantor represents and warrants to Contracting Authority that as of the date of this Guarantee:
 - (i) Construction Guarantor is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Guarantee and the Ancillary Documents to which it is a party and to perform its obligations hereunder and thereunder;

- (ii) Construction Guarantor has the requisite power, authority and capacity to execute and deliver and perform this Guarantee and the Ancillary Documents to which it is a party, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee and the Ancillary Documents to which it is a party to be done, executed, delivered or performed;
- (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Guarantee or any of the Ancillary Documents to which it is party and such documents and agreements are in full force and effect as of the date hereof;
- (iv) this Guarantee and the Ancillary Documents (when executed and delivered) to which Construction Guarantor is a party, have been duly authorized, executed, and delivered by Construction Guarantor and constitute legal, valid, and binding obligations of Construction Guarantor, enforceable against Construction Guarantor in accordance with their respective terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (v) the authorization, execution, delivery and performance by Construction Guarantor of this Guarantee and the Ancillary Documents to which it is a party do not violate or conflict with, or constitute a default under:
 - (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Construction Guarantor;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) **[REDACTED]**

- (vii) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against Construction Guarantor, 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 Construction Guarantor or in any impairment of its ability to perform its obligations under this Guarantee or any Ancillary Documents to which it is a party, and Construction Guarantor 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 would result in any such material adverse effect or impairment; and
- (viii) Construction Guarantor is able to meet its obligations as they generally become due.

4. NOTICES

4.1 Notices to Parties

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

If to Contracting Authority:

[REDACTED]

Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**

with a copy to:

[REDACTED]

Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**

If to Construction Guarantor:

[REDACTED]

Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**

With a copy to:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

4.2 Facsimile

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 4.2.

4.3 Change of Address

Either party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 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.

4.4 Deemed Receipt of Notices

- (a) Subject to Sections 4.4(b), (c) and (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 Article 4.
- (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.

4.5 Service on Contracting Authority

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 Article 4.

5. GENERAL

5.1 Amendments

This Guarantee 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 Guarantee.

5.2 Waiver

- (a) No waiver made or given by a party under or in connection with this Guarantee 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 party. 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 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.

5.3 Entire Agreement

Except where provided otherwise in this Guarantee, this Guarantee, together with the Project Agreement and the Ancillary Documents, constitute 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 Guarantee, including the Request for Proposals.

5.4 Severability

Each provision of this Guarantee shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Guarantee 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 Guarantee. If any such provision of this Guarantee 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 Guarantee as near as possible to its original intent and effect.

5.5 Enurement

This Guarantee shall enure to the benefit of, and be binding on, Contracting Authority and Construction Guarantor and their respective permitted successors and assigns. This Guarantee may not be assigned by the Construction Guarantor.

5.6 Governing Law and Jurisdiction

- (a) This Guarantee 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) 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.

5.7 Cumulative Remedies

Except as otherwise set forth in this Guarantee, the rights, powers and remedies of each party set forth in this Guarantee 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 Guarantee or the Project Agreement or Ancillary Documents.

5.8 Further Assurance

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Guarantee.

5.9 Costs

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 Guarantee.

5.10 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Guarantee 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.
- (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 Guarantee shall be in English.

5.11 Proof of Authority

Contracting Authority and Construction Guarantor each reserve the right to require any person executing this Guarantee on behalf of the other party to provide proof, in a form acceptable to Contracting Authority or Construction Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind Contracting Authority or Construction Guarantor, as applicable.

5.12 Counterparts

This Guarantee 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 the other party an original signed copy of this Guarantee which was so faxed.

5.13 Joint and Several

If Construction Guarantor is comprised of more than one person, then each such person shall be jointly and severally liable for the obligations and liabilities of Construction Guarantor hereunder.

5.14 Copyright Notice

The parties acknowledge that the Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation

SCHEDULE 13

PROJECT CO PROPOSAL EXTRACTS

[REDACTED]

SCHEDULE 14

OUTLINE COMMISSIONING PROGRAM

[REDACTED]

SCHEDULE 15

OUTPUT SPECIFICATIONS

[REDACTED]

SCHEDULE 16

TITLE ENCUMBRANCES

“Title Encumbrances” means:

A. Specific Title Encumbrances

Site Identifier (as referred to in the Output Specifications)	Name of Facility	Specific Title Encumbrances
Site One	Moosonee (Moosonee Detachment), North East Region	[REDACTED]
Site Two	Mississauga (Port Credit Detachment), Highway Safety Division	[REDACTED]
Site Three	Clinton (Huron County Detachment), West Region	[REDACTED]
Site Four	Hawkesbury (Hawkesbury Detachment), East Region	[REDACTED]
Site Five	Little Current (Manitoulin Island Detachment), North East Region	[REDACTED]
Site Six	Parry Sound (West Parry Sound Detachment), North East Region	[REDACTED]
Site Seven	Orillia (Orillia Detachment), Central Region	[REDACTED]
Site Eight	Fort Frances (Fort Frances Detachment), North West Region	[REDACTED]
Site Nine	Marathon (Marathon Detachment), North West	[REDACTED]

Site Identifier (as referred to in the Output Specifications)	Name of Facility	Specific Title Encumbrances
	Region	

B. General Title Encumbrances

1. Liens, charges or prior claims for taxes (which term includes charges, rates 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 CLA 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 design and 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 Sites, which do not materially impair the value of the Sites or materially interfere with the use of the Sites for the purposes of the Project.
6. Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Sites.
7. 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 Sites or materially interfere with the use of the Sites for the purposes of the Project.

Ontario Provincial Police Modernization Phase 2 Project

8. Minor encroachments onto or from neighbouring lands which are permitted under agreements with the owners of such lands and which do not materially impair the value of the Sites or materially interfere with the use of the Sites for the purposes of the Project.
9. Registered or unregistered 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 Sites or materially interfere with the use of the Sites 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 (b) 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.
11. Any lease to which the subsection 70(2) of the *Registry Act* applies.

SCHEDULE 17

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;
 - (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:
 - (A) 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;
 - (B) “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;
 - (C) “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.
 - (D) “3. Schedule analysis”, including at least:
 - (I) The forecast Phase Completion Dates and Scheduled Substantial Completion Date and Key Works Milestones;
 - (II) the overall progress expressed as a percentage of the physical work completed;

- (III) a summary schedule indicating the current critical path as calculated using the Current Progress Works Schedule;
- (IV) “Critical path risk”, including a narrative in tabular form describing the risks to completing the critical path activities to achieve each Phase Completion and Substantial Completion and Project Co’s strategy to mitigate or avoid these risks;
- (E) “3.Variances” including:
 - (I) 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;
 - (II) 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 10 Working Days, listing:
 - a) the activity or milestone ID and name;
 - b) the baseline start and end date in accordance with the Works Schedule or current Recovery Schedule, as applicable;
 - c) the previous period’s planned start and end date in accordance with the previous Progress Works Schedule;
 - d) 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;
 - e) the actual start and end date where applicable;
 - f) the physical percentage completion;
 - (III) a table “Schedule logic changes” listing any:
 - a) Addition, deletion or changes to activity relationships;

- b) Addition or deletion of activities;
 - c) Changes or release of schedule constraints, and if so, what constraints were removed?
 - d) Changes to activity durations; and
 - e) Changes to milestones, and any other changes;
- (F) “4. Potential Delay Events” including a register of all potential Delay Events pursuant to Section 22.1(a) of the Project Agreement and for each a short description, the date on which the notice required pursuant to Section 22.2(b) and 22.2(d) of the Project Agreement was provided to Contracting Authority, the mitigation strategy implemented by Project Co, and the current status;
- (G) 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
- (H) 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
 - (k) LEED status;
 - (l) contractual outstanding decisions;
 - (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) Subcontract status, including:
- (i) consultants;
 - (ii) Subcontracts awarded;
 - (iii) tenders;
 - (iv) Shop Drawings submittals status and also shown on the Current Progress Works Schedule; and
 - (v) labour report (average workforce);
- (p) financial status, including:
- (i) INTENTIONALLY DELETED;
 - (ii) progress and Variations; and
 - (iii) cash flow projection (capital cost components) and updated cash flow report and projections in conjunction with the Current Progress Works Schedule, including a cash flow graph that depicts actual cash flow against projected cash flow;
- (q) risk management, including:
- (i) permits and regulatory approvals;
 - (ii) claims;
 - (iii) liens;
 - (iv) environmental issues;
 - (v) labour;
 - (vi) market conditions;

- (vii) outstanding disputes;
- (viii) operational risks; and
- (ix) other risks;
- (r) status of cash allowances, including:
 - (i) total contract cash allowance;
 - (ii) cash allowance approved to date;
 - (iii) cash allowance remaining; and
 - (iv) potential cash allowance quotes under review;
- (s) commissioning, occupancy and completion, including
 - (i) commissioning status;
 - (ii) training status;
 - (iii) commissioning status of the Phase of the Works;
 - (iv) occupancy status;
 - (v) deficiency review/rectification status; and
 - (vi) completion status;
- (t) Status of Testing and Inspections, including:
 - (i) Factory Testing and Inspections; and
 - (ii) Project Co Testing and Inspections;
- (u) Equipment and Existing Equipment status, including:
 - (i) planning and design;
 - (ii) progress of inventory activities in relation to Existing Equipment;
 - (iii) procurement progress of Equipment; and
 - (iv) delivery, installation and commissioning progress.

SCHEDULE 18
COMMUNICATIONS

1 DEFINITIONS

1.1 In this Schedule 18, unless the context otherwise requires:

- (a) “**Communications Protocol**” has the meaning given in Section 3.1(e);
- (b) “**Communications and Stakeholder Relations Plan**” has the meaning given in Section 4.2(a); and
- (c) “**Crisis Communications Plan**” has the meaning given in Section 4.2(b).

2 GENERAL

2.1 Communications Principles

- (a) During the Project Term, Contracting Authority and Project Co shall, in accordance with the provisions of this Schedule 18, work together to deliver communications and public engagement activities in respect of the Project that will:
 - (i) enhance the opportunities for open, transparent, effective and proactive communications with the public;
 - (ii) recognize the contributions of the Parties; and
 - (iii) be accountable to the Project’s stakeholders (including Contracting Authority’s community) for the effective implementation of the Communications Protocol, the Communications and Stakeholder Relations Plan and the Crisis Communications Plan.
- (b) The Project represents an important infrastructure commitment by the Province. Accordingly, a comprehensive Communications Protocol, Communications and Stakeholder Relations Plan and Crisis Communications Plan are required to allow the Parties to ensure the public is informed and engaged in respect of the Project where necessary, to meet Contracting Authority’s communications requirements, and to support effective communications between Project Co and Contracting Authority and with Contracting Authority’s stakeholders.

3 COMMUNICATIONS PROTOCOL

3.1 Project Co's Communications Protocol

- (a) No later than 45 days following Financial Close and in collaboration with Contracting Authority and Project Co shall prepare and submit to Contracting Authority a comprehensive and detailed draft communications protocol for the Project in accordance with this Section 3.1.
- (b) The draft communications protocol shall:
 - (i) be in compliance with Project Co's obligations under the Project Agreement, including this Schedule 18;
 - (ii) outline communication roles and responsibilities for the Project; and
 - (iii) assist Contracting Authority in the development and implementation of the Communications and Stakeholder Relations Plan.
- (c) Within the draft communications protocol, Project Co shall submit a description of Project Co's approach to all communications with respect to the Project, which shall include:
 - (i) a description of Project Co's communications team, including the roles and responsibilities of each team member and each Project Co Party who shall implement any aspect of the Communications Protocol;
 - (ii) the identification of proposed communications tools to be used by Project Co and each applicable Project Co Party to coordinate with and report to Contracting Authority 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 and, once approved by Contracting Authority, the draft communications protocol shall, for the purpose 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 shall be responsible for:

- (a) providing identified, dedicated lead communications contacts with applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project and designating Project Co to be spokesperson on any given issue, to be determined by and as set out in the Communications Protocol;
- (d) providing final review and approval of all public communications materials;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
- (f) maintaining and updating the Project website, as required; and
- (g) providing coordinated updates to internal/ external stakeholders, as required.

4.2 Contracting Authority Communications Responsibilities

Contracting Authority shall be responsible for the following matters:

- (a) Communications: To develop and implement, in cooperation with Project Co, a comprehensive communications and stakeholder relations plan (the “**Communications and Stakeholder Relations Plan**”) that includes Contracting Authority’s approach to community relations, media relations, marketing, special events, employee communications and government relations regarding issues related to the Project. The Communications and Stakeholder Relations Plan shall be developed by Contracting Authority, following consultation with Project Co, by the later of (i) the date that is 90 days following Financial Close, and (ii) 15

Business Days following the date of the finalization of the Communications Protocol pursuant to Section 3.1(e).

- (b) **Crisis Communications:** To undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. A crisis communications plan (the “**Crisis Communications Plan**”) shall be developed by Contracting Authority within 30 days following Financial Close outlining the roles and responsibilities of both Contracting Authority and Project Co during a crisis situation.
- (c) **Issues Management:** To collaborate with Project Co in identifying issues and issues trends as they emerge and develop strategies for addressing or minimizing issues, including developing messages and strategies to address issues and providing accurate and timely information to affected stakeholders.
- (d) **Website and Social Media:** Working with Project Co to:
 - (i) lead the planning, development and maintenance of a Project-related website or Project-specific web pages on Contracting Authority’s website; and
 - (ii) lead the planning, development and execution of a social media strategy for the Project, which may include timely responses to public inquiries, notification of public meetings and/or responses to issues and crisis situations.
- (e) **Government Relations:** To liaise with affected Governmental Authorities to provide information about the Project’s status, upcoming milestones and events and issues that may affect the Project.
- (f) **Special Events:** To work with Project Co to develop, plan, coordinate and implement special events, such as construction tours and milestone celebrations.
- (g) **Contracting Authority Related Communication:** To provide all communications related to the provision of the Contracting Authority Activities.
- (h) **Performance Review:** To review, on a periodic basis, Project Co’s performance in providing communications support as outlined in Section 3 of this Schedule 18.

5 PROJECT CO RESPONSIBILITIES

5.1 Support Communications Role

- (a) Project Co shall assume an active role with respect to communications related to the Project, providing support to Contracting Authority in the creation and

delivery of a successful communications program. Project Co shall, from time to time, be responsible for:

- (i) providing an identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
- (ii) responding to communications issues in accordance with agreed timeframes as set out in the Communications Protocol;
- (iii) reviewing and/ or providing communications and/ or technical materials reasonably requested by Contracting Authority for website content;
- (iv) updating, in collaboration with Contracting Authority, internal/ external stakeholders, as required, including involvement and participation in community events, including the Contracting Authority Activities;
- (v) providing Contracting Authority access to the Site for milestone events, including making persons available to lead media tours and/or tours for government or Contracting Authority officials, as required;
- (vi) directing all media enquiries and interview requests to Contracting Authority's lead communications contact and working with Contracting Authority to identify which party shall respond to the media enquiries as identified in the Communications Protocol;
- (vii) maintaining a written record of all material public enquiries, complaints and communications and providing copies to Contracting Authority's lead communications contact on a weekly basis (or immediately if urgently requested by Contracting Authority);
- (viii) reporting to Contracting Authority on communications matters on an agreed upon basis;
- (ix) providing support for the Project's websites, web pages and social media by providing written and multimedia content, including:
 - A. up-to-date professional quality (high-resolution) photos and videos, including pursuant to Section 5.1(b);
 - B. information about the project design, project features, benefits and construction activities; and
 - C. statistics about local workers/companies, training and local investments;

- (x) participating in regular communications committee meetings, as required by Contracting Authority; and
 - (xi) during a crisis situation, ensuring and making available sufficient resources to work effectively with Contracting Authority and proactively manage and perform its communications responsibilities.
- (b) Project Co shall also be responsible for complying with the requirements of Section 1.2.12(11) of Schedule 15 – Output Specifications.

5.2 Project Co Communications Responsibilities

Project Co shall:

- (a) implement and maintain the Communications Protocol, provided that Project Co shall coordinate with Contracting Authority in respect of such implementation;
- (b) update, in coordination with Contracting Authority, the Communications Protocol on an annual basis or as otherwise reasonably requested by Contracting Authority;
- (c) collaborate with Contracting Authority on the development and implementation of the Communications and Stakeholder Relations Plan and the Crisis Communications Plan;
- (d) attend regular meetings with Contracting Authority to discuss communication issues and developments;
- (e) produce monthly progress reports, which shall include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;
- (f) through Contracting Authority, provide regular updates to any affected property owners and neighbourhoods on Works related issues with particular attention to communicating the scope, schedule and status of the Works. This shall include processes to proactively address any Works related enquiries and issues (e.g., public enquiries and complaints in respect of noise, hours of work, dust, traffic, etc.);
- (g) collaborate with Contracting Authority to identify issues and issues trends as they emerge and develop strategies for addressing or minimizing issues, including developing messages and strategies to address issues and providing accurate and timely information to affected stakeholders;
- (h) seek and identify opportunities for Project recognition through industry award programs;

- (i) develop content for review and approval by Contracting Authority as required for Project award submissions;
- (j) provide support for Contracting Authority on the development of a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Works; and
- (k) follow any guidelines provided by Contracting Authority related to signage or advertising at the Site.

6 PUBLIC DISCLOSURE AND MEDIA RELEASES

6.1 Public Disclosure and Media Releases

- (a) Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the Contracting Authority Activities or any matters related thereto, without the prior written consent of Contracting Authority.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the Contracting Authority Activities or any matter related thereto, without the prior written consent of the other Party.
- (c) Project Co shall, and shall ensure that all Project Co Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with the Communications Protocol.

7 CONSTRUCTION SIGNAGE

7.1 Construction Signage Guidelines

With respect to any signage that may be erected and maintained at or on the Site or Project, Project Co, the Project Co Parties and the Lenders, as applicable, shall:

- (a) include the Contracting Authority 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 placement and size;

- (d) consider signage material suitable for long-term outdoor exposure;
- (e) provide a mock-up of the signage to the Contracting Authority Representative for written approval prior to printing; and
- (f) be responsible for installation, maintenance and removal of the signage.

7.2 Contracting Authority Signage

- (a) Without prejudice to Section 7.1, at the request of Contracting Authority, Project Co shall install and maintain signage provided by Contracting Authority in a prominent location on the fencing or hoarding or at some other location, as requested by Contracting Authority, on the Site.

8 ACCESSIBILITY

8.1 Accessibility

Project Co shall ensure that all communications materials with respect to the Project comply with the *Accessibility for Ontarians with Disabilities Act, 2005* (Ontario) and all regulations thereunder, and for the purposes thereof shall, as between Project Co and Contracting Authority, Project Co shall be deemed to be a “designated public sector organization” under such Act and regulations.

9 FAILURE TO PERFORM

Without limiting any other right of Contracting Authority or obligation of Project Co in the Project Agreement, if Project Co at any time fails to perform or comply with any of its obligations under this Schedule 18 (including, for greater certainty, under the Communications Protocol), Contracting Authority may itself, to the extent possible, perform or cause compliance with or engage others to perform or cause compliance with such obligation, at the risk and cost of Project Co, and Contracting Authority may deduct the cost of such activities from any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, provided that, except in the event that Contracting Authority is of the reasonable opinion that such activities must be performed immediately, at least 5 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

[REDACTED]

APPENDIX “B”

OUTLINE COMMUNICATIONS PROTOCOL

[REDACTED]

SCHEDULE 19

WORKS SCHEDULING REQUIREMENTS

1. DEFINITIONS

- 1.1 “**As-built Works Schedule**” means the final Progress Works Schedule with a Schedule Status Date equal to the actual Final Completion Date.
- 1.2 “**Contracting Authority Review Period**” means the time period required by Contracting Authority to review a Works Submittal measured in Business Days starting on the first Business Day after receipt of a Works Submittal from Project Co up to and including the day on which Contracting Authority returns the Works Submittal to Project Co with an assigned comment pursuant to Schedule 10 – Review Procedure.
- 1.3 “**Close-out Activity**” has the meaning given in this Schedule 19 Appendix B.
- 1.4 “**Commissioning Activity**” has the meaning given in this Schedule 19 Appendix B.
- 1.5 “**Current Look-ahead Schedule**” means the most up-to-date Look-ahead Schedule submitted by Project Co pursuant to Section 13.2(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 13.2(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 19 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 13.2(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 19 - 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 19 Appendix B.
- 1.11 **“Look-ahead Schedule”** shall be developed in accordance with Section 9 of this Schedule 19 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 19 Appendix C.
- 1.13 **“Micro-Schedule Works Activity”** has the meaning given in this Schedule 19 Appendix B.
- 1.14 **“Micro-Schedule Works Milestone”** has the meaning given in this Schedule 19 Appendix B.
- 1.15 **“Permitting, Licensing and Approvals Activity”** has the meaning given in this Schedule 19 Appendix B.
- 1.16 **“Primary Works Activity”** has the meaning given in this Schedule 19 Appendix B.
- 1.17 **“Primary Works Milestone”** has the meaning given in this Schedule 19 Appendix B.
- 1.18 **“Procurement Activity”** has the meaning given in this Schedule 19 Appendix B.
- 1.19 **“Progress Works Schedule”** shall be developed in accordance with Section 8 of this Schedule 19 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 30.2(a), (b) and (d) of the Project Agreement, actual

- claims for Delay made pursuant to Section 30.2(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 19 – Appendix A, Part 1, which includes details in support of monitoring the progress of the Works, determining the likely future progress of the Works, and to analyze the schedule impact of any and all events or circumstances reported or updated pursuant to Sections 30.2(a), (b) and (d) of the Project Agreement, actual claims for Delay made pursuant to Section 30.2(f) of the Project Agreement or Variation until such time as the Draft Works Schedule becomes the Works Schedule pursuant to Section 13.2(d) of the Project Agreement.
- 1.23 “**Recovery Schedule**” means a Progress Works Schedule generated pursuant to Section 13.4(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 19.
- 1.24 “**Recovery Schedule Report**” has the meaning given in Section 13.4(a)(iv)(B) 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 Equipment, (including all re-submittals) that Project Co is required to provide in accordance with Schedule 10 – Review Procedure from and after Financial Close through to Final Completion.
- 1.26 “**Review Procedure Activity**” has the meaning given in this Schedule 19 Appendix B.
- 1.27 “**Schedule Revision Date**” means the last date on which changes were made to the specific Project Schedule 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 19 Appendix B.
- 1.30 “**Secondary Works Milestone**” has the meaning given in this Schedule 19 Appendix B.
- 1.31 “**Transition Activities**” has the meaning given in this Schedule 19 Appendix B.
- 1.32 “**Utility Related Activity**” has the meaning given in this Schedule 19 Appendix B.
- 1.33 “**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.
- 1.34 “**Works Activity**” means any of the Design Development Activities, Permitting, Licensing and Approval Activities, Procurement Activities, Equipment Procurement and Installation Activities, Transition Activities, System Commissioning Activities, Close-Out Activities, Primary Works Activities, Secondary Works Activities, Micro-Schedule Works Activities, as defined in Appendix B to this Schedule 19 or any other activity to achieve each Phase Completion and to complete the Works as defined in this Project Agreement.
- 1.35 “**Works Area Micro-Schedule**” shall be developed at the request of Contracting Authority in accordance with Section 13.2 of the Project Agreement, and Section 10 of this Schedule 19 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 13.2(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.
- 1.36 “**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 19 or any other milestone included in the Project Schedules.
- 1.37 “**Works Schedule**” means Project Co’s baseline schedule which shall comply with Section 13.2 of the Project Agreement and Section 7 of this Schedule 19.

1.38 “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 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 30.2 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 13.2(b) 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 19 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 19, 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 13.2 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 19 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 19 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 13.2 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 13.2(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 13.2(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 and, if applicable, a summary activity representing the Review Procedure Activities for each Major Works Elements as defined in Appendix C of this Schedule 19. 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 30.1(a) of the Project Agreement for which the notice required pursuant to Section 30.2(b) and 30.2(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 19; or
 - (ii) if the Current Look-ahead Schedule is deemed null and void pursuant to Section 9.1(a) of this Schedule 19,

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 2.6 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 each Phase Commissioning Program and the Final Commissioning Program in accordance with and pursuant to Sections 23A and 24 of the Project Agreement and Schedule 10 – Review Procedure;
- (b) inspection by Contracting Authority Parties and the Independent Certifier;
- (c) identifying and resolving Minor Deficiencies;
- (d) 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; and
- (g) 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 each Phase Commissioning Program and the Final Commissioning Program in accordance with Sections 23A and 24 of the Project Agreement and Schedule 10 – Review Procedure;
- (b) any activity to obtain an approval or acceptance pursuant to the Project Agreement to complete the commissioning process;
- (c) joint Contracting Authority and Project Co inspections, testing and walk through activities;
- (d) commissioning coordination meetings, workshops and draft document page turns;
- (e) all notices to be issued pursuant to Sections 23A and 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 23A.3(b) and 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 11.3 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 to be submitted prior to Substantial Completion, pursuant to Schedule 10 – Review Procedure;
- (g) other design development activities outlined in Section 11 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 as reasonably requested by Contracting Authority,

and “**Design Development Activities**” means collectively all of the Design Development Activities.

1.4. “**Equipment Procurement and Installation Activities**” means the activities described in Section 21.4 and 21.5 of the Project Agreement, including, the procurement, decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning, and training, in respect of the Equipment.

1.5. “**Key Works Milestone**” means any of the following milestone events:

- (a) Commercial Close;
- (b) Financial Close;
- (c) completion of each Phase of the Works by the applicable Phase Completion Date;
- (d) Substantial Completion;
- (e) Final Completion;
- (f) Longstop Date; and
- (g) 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 required 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, procurement, construction, testing, commissioning, start-up and/or handover,

and **“Primary Works Activities”** means, collectively, all of the Primary Works Activities.

1.10. **“Primary Works Milestone”** means any of the following milestones associated with the Primary Works Activities, and any other milestones required by Project Co to fulfill the requirements of the Project Agreement:

- (a) any milestone dates associated with Primary Works Activities;

and **“Primary Works Milestones”** means, collectively all of the Primary Works Milestones.

1.11. **“Procurement Activity”** any of the following activities or milestone events for subcontracts, long-lead or architecturally significant equipment:

- (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 required 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 depict 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. “**Transition Activities**” means all activities related to Transition as outlined under Section 24.17(a) of the Project Agreement.
- 1.16. “**Utility Related Activity**” means for each system per phase or section of the Works any of the following activities:
 - (a) approvals by Utility Companies;
 - (b) relocation for each specific occurrence of Utilities;
 - (c) inspection, acceptance and hand-back of the Utilities to the Utility Companies; and
 - (d) any other activity related to or associated with any of the foregoing required for Project Co to fulfill the requirements of this Project Agreement,

and “**Utility Related Activities**” means, collectively all of the Utility Related Activities.

APPENDIX “C”

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 13.2 of the Project Agreement. Where software specific terminology is used in this Schedule 19 to define 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 D of this Schedule 19. 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 (i.e. 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 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 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 20

INTENTIONALLY DELETED

SCHEDULE 21

INTENTIONALLY DELETED

SCHEDULE 22

VARIATION PROCEDURE

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) **“Direct Cost”** has the meaning given in Appendix A of this Schedule 22.
 - (ii) **“Estimate”** has the meaning given in Section 1.4(a) of this Schedule 22.
 - (iii) **“Overhead and Profit”** has the meaning given in Appendix B of this Schedule 22.
 - (iv) **“Project Co Variation Notice”** has the meaning given in Section 2.1(a).
 - (v) **“Variation”** means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
 - (vi) **“Variation Confirmation”** has the meaning given in Section 1.7(a)(ii).
 - (vii) **“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.
 - (viii) **“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 or 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.

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 Guaranteed Price (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 Works, and any of such Permits, Licences, Approvals and Agreements 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 Works, 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 Works (except those Works 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 Facilities;
 - (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); or
 - (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.

- (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 a Scheduled Phase Completion Date, the Scheduled Substantial Completion Date and any other schedule impact on the provision of any Phase of the Works, the Facilities and the completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iii) any impact on the performance of the Works 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 amendments to the Project Agreement 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;
 - (v) 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;
 - (vi) either, subject to Section 1.9:

- (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;
- (vii) Project Co's preliminary indication of the potential increase or decrease, if any, to the Guaranteed Price;
- (viii) 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
- (ix) the proposed methods of certification of any construction or operational aspect of the Works 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 Works, 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 Works, 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 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 1.7(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 1.8.
- (b) Within five Business Days following Project Co’s receipt of a Variation Confirmation issued pursuant to Section 1.7(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 1.7(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 1.8:
 - (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 1.7(d)(i), all provisions of the Project Agreement applicable to the Works shall apply to the Works 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 1.7(d)(i).
- (e) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.8, 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 1.7(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.

1.8 Financing

- (a) Subject to Section 1.9, if Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if Contracting Authority requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and Contracting Authority, provided that, Project Co shall not be required to seek financing from any source other than the 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) Subject to Section 1.9, 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) Subject to Section 1.9, 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 1.8(b), 1.8(c) or 1.8(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).

1.9 Increase or Decrease in the Cost of the Financing

- (a) If there is an increase or a decrease in the Cost of the Financing as a result of a Variation, the Guaranteed Price shall be increased or decreased by the increase or decrease to the Cost of the Financing. Project Co shall provide the calculation of the increase or decrease in the Cost of the Financing, together with a certificate of the Lenders' Agent verifying such calculation. Where the increase in the Cost of the Financing includes breakage costs, but the impact of the Variation on the Cost of the Financing could also be accommodated without incurring breakage costs, calculations for both options shall be provided to Contracting Authority, together with a certificate of the Lenders' Agent addressed to Project Co (which will expressly provide that the certificate may be relied upon by Contracting Authority) verifying such calculations. Contracting Authority shall, in its sole discretion, within 5 Business Days of receiving such certificate from the Lenders' Agent, select its preferred option by providing written notice to Project Co and the Lenders' Agent. For greater certainty, the increases or decreases in the Cost of the Financing shall be calculated in a commercially reasonable manner and in accordance with the Lending Agreements, and without regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices.

- (b) If a Variation gives rise to a net benefit to Project Co through a reduction of the Cost of the Financing, then Project Co shall pay any net benefit received by Project Co to Contracting Authority.

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 Guaranteed Price shall be adjusted as set out in the Variation Confirmation; or
 - (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.

For greater certainty, (I) the Substantial Completion Payment shall only be adjusted as a result of a Variation if the Guaranteed Price is adjusted pursuant to Section 1.10(a)(i), and (II) neither the Guaranteed Price nor the Substantial Completion Payment shall be adjusted as a result of the Variation if Project Co is paid for Capital Expenditures pursuant to Section 1.10(a)(ii).

- (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 CLA, 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 MCSCS, Contracting Authority and/or Contracting Authority's board of directors in connection with a proposed Variation.

1.11 Reduction in Works

- (a) If a Variation involves any reduction in the Works 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 the Substantial Completion Payment (as applicable, at Contracting Authority's discretion) shall be reduced accordingly.

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 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
 - (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.

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 Works on a Site;
- (ii) salaries, wages and benefits of Project Co’s or each Subcontractor’s personnel when stationed at the office on any 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 the 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 and any entity not at arm's-length from Project Co or the Construction Contractor;
- (ix) the amount paid for any design services;
 - (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 Works;
 - (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 Works, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
 - (xv) the cost of debt financing provided by the Lenders;
 - (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;
- (xviii) the cost of obtaining all Project Co Permits, Licences, Approvals and Agreements; and
- (xix) reasonable fees and disbursements of the external legal advisors of Project Co and its Subcontractors.

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 Works 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 amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by [REDACTED] 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 location in which the applicable Facility is located.
- (v) any amounts paid in accordance with this Appendix A for wages, salaries and benefits charged by Project Co or any Subcontractor shall be reasonable and shall not exceed commercially competitive rates available in the location in which the applicable Facility is located
- (vi) the amounts paid to the Lenders' Consultant cannot exceed, in the aggregate, 0.1 percent of the Direct Cost;
- (vii) 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 Works (including any cost due to any negligence, improper work, deficiencies or breaches of contract by Project Co and/or any Subcontractor);

- (B) except as permitted under Section 1.1(xix) of this Appendix A, the fees, costs or expenses, or any other form of compensation, paid or payable by Project Co or any Subcontractor to any person performing advisory, 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; 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 and 3 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.
- (c) Project Co and the Construction Contractor 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 and the Construction Contractor 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

Entity	Overhead and Profit		
	<i>For a Variation with a Direct Cost under \$[REDACTED]</i>	<i>For a Variation with a Direct Cost of between \$[REDACTED] and \$[REDACTED]</i>	<i>For a Variation with a Direct Cost over \$[REDACTED]</i>
1. Project Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
2. Construction Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
3. Construction Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%

SCHEDULE 23

COMPENSATION ON TERMINATION

1 DEFINITIONS

1.1 Definitions

The following terms shall have the following meanings:

- (a) **“Contracting Authority Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (b) **“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.
- (c) **“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 5.1(a) of this Schedule 23.
- (d) **“Junior Debt Amount”** means [REDACTED].
- (e) **“Junior Debt Makewhole”** means [REDACTED].
- (f) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.

- (g) **“Project Co Amount”** means any amount payable to Project Co as a return and/or profit to Project Co shown in the Financial Model, including for greater certainty any loans made or capital contributed to Project Co by any Affiliate of Project Co or a Project Co Party, prorated by a fraction, the numerator of which is the period between the date of commencement of the Works and the Termination Date, and the denominator of which is the period between the date of commencement of the Works and the Scheduled Substantial Completion Date.
- (h) **“Project Co Default Termination Sum”** has the meaning given to it in Section 3.1(b) of this Schedule 23.
- (i) **“Senior Debt Amount”** means [REDACTED].
- (j) **“Senior Debt Makewhole”** means [REDACTED].
- (k) **“Subcontractor Losses”** means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Subcontractors, the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Design and 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 the Subcontractors fail to take commercially reasonable steps to mitigate such amount; provided that, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
 - (l) 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);
 - (i) 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
 - (ii) 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.

**2 COMPENSATION ON TERMINATION FOR CONTRACTING AUTHORITY
DEFAULT OR CONVENIENCE**

2.1 Compensation

- (a) If Project Co terminates this Project Agreement pursuant to Section 35 of this Project Agreement or Contracting Authority terminates this Project Agreement pursuant to

Section 36.3 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 32.2(b) and 33.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and the Subcontractor Losses;
 - (v) any reasonable costs properly incurred by Project Co to wind up its operations; and
 - (vi) the Project Co Amount;

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 Works, 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 Works, 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;
- (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 4.12(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)(viii) of this Schedule 23 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 5 of this Schedule 23.

3 COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) If Contracting Authority terminates this Project Agreement pursuant to Section 34 of this Project Agreement, Contracting Authority shall pay to Project Co the Project Co Default Termination Sum.
- (b) The "Project Co Default Termination Sum" shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of this Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) any amount of the Substantial Completion Payment and any other amounts paid by Contracting Authority on or before the Termination Date;
 - (ii) Contracting Authority's estimate of the cost to complete the Works, including the cost to remedy any defective or deficient Works determined on a reasonable basis in consultation with the Independent Certifier and Contracting Authority's other

consultants and including all reasonable and proper costs incurred by Contracting Authority in re-tendering the Works or any portion thereof;

- (iii) Contracting Authority’s estimate of the aggregate of all Direct Losses suffered, sustained or incurred by Contracting Authority as a result of, in respect of, or arising out of the event or events which resulted in the termination of this Project Agreement and arising out of the termination together with all costs of entering into a new design and construction contract to complete the Works, including any warranty obligations for the Works in place and to be performed, on substantially the same terms and conditions as this Project Agreement;
 - (iv) the Completion Holdback as at the time the Project Co Default Termination Sum is required to be made;
 - (v) the Legislative Holdback required to be maintained by Contracting Authority as at the time the Project Co Default Termination Sum is required to be made, which amount will be paid by Contracting Authority in accordance with the *Construction Lien Act* (Ontario); and
 - (vi) amounts which Contracting Authority is entitled to set off pursuant to Section 4.13(a)(i) of this Project Agreement.
- (c) To the extent that any amounts that Contracting Authority has estimated or determined pursuant to Sections 3.1(b)(ii), 3.1(b)(iii) or 3.1(b)(iv) of this Schedule 23, are in excess of what is required by Contracting Authority to complete the Work or compensate for Direct Losses, the Completion Holdback or the Legislative Holdback, as applicable, Contracting Authority shall promptly return such excess amounts to Project Co.
- (d) Contracting Authority shall pay the Project Co Default Termination Sum in accordance with Section 5 of this Schedule 23.

4 CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION FOR RELIEF EVENT

4.1 Consequences

- (a) If either Party terminates this Project Agreement pursuant to Section 36.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 36.2 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 32.2(b) and 33.2(b) of this Project Agreement; and
- (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit);

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 Works, 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 Works, 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
- (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;

- (vii) any amount of the Substantial Completion Payment and any other amounts paid by Contracting Authority on or before the Termination Date; and
- (viii) amounts which Contracting Authority is entitled to set off pursuant to Section 4.13(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)(vi) of this Schedule 23 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 5 of this Schedule 23.

5 GENERAL

5.1 Payment and Interest Following Termination

- (a) In respect of the termination payments to be made pursuant to either Section 2 or 4 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) In respect of the termination payments to be made pursuant Section 3 of this Schedule 23, as soon as practicable, and in any event, within 120 days after the Termination Date, Contracting Authority shall calculate and notify Project Co of the Project Co Default Termination Sum under Section 3.1(b) of this Schedule 23, and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (c) Contracting Authority shall:
 - (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date or the date of delivery of the notice described in Section 5.1(b) of this Schedule 23, as applicable, and so long as all of demobilization of the Works has been completed; and
 - (ii) indemnify Project Co as provided in Section 44.2(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 or the date of delivery of the notice described in Section 5.1(b) of this Schedule 23, as applicable; and

- (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (d) In respect of the termination payments to be made pursuant to Section 3 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 also thereafter indemnify Contracting Authority as provided in Section 44.1(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.

5.2 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.

5.3 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 5 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

5.4 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
FINANCIAL MODEL
[REDACTED]**

SCHEDULE 25

INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS

1. WORKS PHASE INSURANCE COVERAGE

1.1 Subject to Section 6, from and after execution of this Project Agreement and until each Phase Completion Date or the Substantial Completion Date, as applicable, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the IO 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 Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability); and
- (d) Project Specific Professional Liability.

1.2 Subject to Section 6, from and after execution of this Project Agreement and until each Phase Completion Date or the Substantial Completion Date, as applicable, 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.

2. NO LIMIT ON RECOVERY

2.1 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.

3. ADDITIONAL COVER

3.1 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.

3.2 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 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.

4. RESPONSIBILITY FOR DEDUCTIBLES

4.1 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.

5. COOPERATION WITH INSURER'S CONSULTANT

5.1 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).

6. UNINSURABLE RISKS

- 6.1 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 insurance 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 insurance 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.

Project Co has the onus of demonstrating, to Contracting Authority’s reasonable satisfaction that the foregoing definition applies to a particular risk.

- 6.2 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.
- 6.3 Project Co and Contracting Authority shall, as soon as possible following the provision of the notice referred to in Section 6.2, 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.
- 6.4 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 6.2, Contracting Authority may, in its absolute discretion, either:
- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable

Risk, in which case this Project Agreement shall continue in full force and effect;
or

- (b) terminate this Project Agreement in accordance with Section 36.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 36.2 of the 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.

6.5 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 36.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 36.2 of the 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.

6.6 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 6.6(a), Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.

6.7 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 Section 6 shall no longer apply to such risk.

7. TOTAL OR SUBSTANTIAL DESTRUCTION

7.1 In the event of damage to, or destruction of, all or substantially all of any 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 such Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Works, all in accordance with the terms of the Insurance Trust Agreement.

8. SUBCONTRACTORS

8.1 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.

8.2 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 cause 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 applicable Site and ensure that such Subcontractor does not perform any further part of the Works 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 the Project Agreement regarding new and replaced Subcontractors shall be complied with.

9. RENEWAL

9.1 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 cause 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.

10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION

10.1 All insurance provided by Project Co, shall:

- (a) include Project Co, MCSCS, Contracting Authority, Construction Contractor, Account Trustee and Lenders' Agent as Named Insureds to the extent specified in Appendix A of this Schedule 25;
- (b) include Contracting Authority, the Lenders and the Lenders' Agent and MCSCS and Her Majesty the Queen in right of Ontario, Her Ministers, agents, appointees and employees, as the case may be, as Additional Insureds, or loss payees to the

extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25;

- (c) except with respect to the Project Specific Professional Liability, Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 25, contain a waiver of subrogation as against the Lenders and the Lenders' Agent, Contracting Authority, the Contracting Authority Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
- (d) 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
- (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to Contracting Authority or the Lenders without any right of contribution of any insurance carried by Contracting Authority or the Lenders.

11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

- 11.1 Prior to the execution of the Project Agreement, 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.
- 11.2 Prior to the execution of the Project Agreement, 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.

12. FAILURE TO MEET INSURANCE REQUIREMENTS

- 12.1 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.
- 12.2 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.

13. MODIFICATION OR CANCELLATION OF POLICIES

- 13.1 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, MCSC 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.
- 13.2 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, MCSCS and the Lenders' Agent.
- 13.3 With respect to insurances described in Section 1.1(a), (b) and (c), and Section 1.2(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, MCSCS and the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

14. INSURERS

- 14.1 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.
- 14.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than "A-" for three out of the previous five years but not lower than "B" at any time during those five years, and a

Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (**Best**); or

- (b) a Long-Term Financial Strength Rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (**S&P**); or
- (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to Contracting Authority and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

15. POLICY TERMS AND CONDITIONS

- 15.1 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, its insurance advisors and Lenders, acting reasonably.
- 15.2 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.

16. FAILURE TO COMPLY

- 16.1 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.

17. PERFORMANCE SECURITY REQUIREMENTS

- 17.1 [REDACTED]
- 17.2 [REDACTED]
- 17.3 [REDACTED]
- 17.4 [REDACTED]
- 17.5 [REDACTED]

18. INSURANCE TRUST AGREEMENT

- 18.1 All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to each Phase

Completion Date or Substantial Completion of the Works, as applicable, which relate to equipment purchased or owned by Contracting Authority or MCSCS shall be payable solely to Contracting Authority and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

**APPENDIX A TO SCHEDULE 25
INSURANCE REQUIREMENTS**

Works Insurance – Ontario Provincial Police Modernization Phase 2 Project

From Commercial Close until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductible	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 Facilities, including Property of Every Description, all Equipment and Existing Equipment and all other property supplied by the Contracting Authority Parties for incorporation into the Facilities.</p> <p>All Existing Equipment from the start of decommissioning or removal from its original location, by or on behalf of Project Co, until such existing equipment has been relocated to the Facilities and has become Contracting Authority's responsibility.</p> <p>Soft Costs \$[REDACTED] (representing [REDACTED]% of Recurring / Continuing Soft Costs)</p> <p>Extra and Expediting Expense (minimum \$[REDACTED] sub-limit)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Replacement Cost Valuation (Property) • Most Recent Technology Replacement Cost Valuation (Equipment or Machinery) • Flood (to policy limit with annual aggregate) 	<p>[REDACTED]% of loss value / \$[REDACTED] minimum</p> <p>Earthquake</p> <p>\$[REDACTED] Flood</p> <p>\$[REDACTED] Testing and Commissioning</p> <p>\$[REDACTED] All other losses</p> <p>48 hour waiting period applicable to Off Premises Services Service Interruption</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, Soft Costs, with no early occupancy restriction.</p> <p>This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by Contracting Authority, MCSCS or the Lenders.</p>	TBD

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) • Electronic Data Processing equipment and media, including data restoration and re-creation costs • Transit • Unnamed locations • Bylaws (with respect to Existing or Renovated Buildings) (minimum \$[REDACTED] sub-limit) • Debris Removal (minimum \$[REDACTED] sub-limit) • Off Premises Services (\$[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) • 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 measuring, testing or medical equipment and subject to a \$[REDACTED] sub-limit) • Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit) • Ammonia Contamination 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<p>(minimum \$[REDACTED] sub-limit)</p> <ul style="list-style-type: none"> • LEED Certification, Building Commissioning and Air Testing and Outdoor Ventilation of the Reconstructed Air Spaces Expenses (\$[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 (27 Months), included in Soft Costs coverage • Margin of Profit Extension for Contractors • Testing and Commissioning (120 limitation each component) <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum DE4 standard • War risk • Terrorism • Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use • Contractors' Equipment and Existing Equipment • Sanctions clause 			

<i>Comments</i>	<ul style="list-style-type: none">• Named Insured includes Project Co, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Contracting Authority and MCSCS as their respective interests may appear; with Lenders' Agent as a Loss Payee• 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 Project– Losses payable in accordance with the Insurance Trust Agreement– Waiver of subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, Contracting Authority, MCSCS, 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
Underwriters	Principal underwriters in compliance with Clause 14 of this Schedule 25.

Ontario Provincial Police Modernization Phase 2 Project

Works Insurance – Ontario Provincial Police Modernization Phase 2 Project

From Commercial Close until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
<p>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability</p>	<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 Administrations • \$[REDACTED] Contractors Rework • \$[REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94) • \$[REDACTED]/\$[REDACTED] Medical Payments <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Owner’s and Contractor's Protective • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Employee Benefits Administrations • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations 	<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, Tenants’ Legal Liability, Employee Benefits Administrations 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 date of Phase Completion or Substantial Completion, as applicable.</p> <p>Coverage shall be maintained continuously from Commercial Close until Phase Completion or Substantial Completion, as applicable, at which time the Products and Completed Operations extension will take effect.</p> <p>Sudden and Accidental Pollution and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by Contracting Authority, MCSCS or the Lenders.</p>	TBD

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • 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 Liability • 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 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 			
	<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, 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 			

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> other professional consultants Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use Sanctions clause 			
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured includes Project Co and its Affiliates, Contracting Authority, MCSCS and Project Co parties involved in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants, (other than for professional liability), Lenders' Agent included as Additional Insured 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 Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds Her Majesty the Queen in right of Ontario, Her Ministers, agents, appointees and employees are added as an Additional Insured Insurance shall be 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 Pollution and Hostile Fire Pollution, "All Risks" Tenants' Legal Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted 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 of insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, Contracting Authority, MCSCS, the Construction Contractor, subcontractors, sub-subcontractors, professional consultants, engineers, 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 14 of this Schedule 25.			

Ontario Provincial Police Modernization Phase 2 Project

Works Insurance – Ontario Provincial Police Modernization Phase 2 Project

From Commercial Close until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p>Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability):</p> <p>Combined Limit subject to Contractors' 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 any Facility or Site during the Policy Period Microbial Matter (including Fungus/Mould) Underground / above ground storage tanks First Party Restoration and Clean-up Costs Disposal Site Extension, including Transportation (reporting required) Duty to Defend Canada and US Territory Contractual Liability Emergency Response Costs <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> Terrorism War Intentional Non-compliance Prior Knowledge/Known Conditions WSIB Employers' Liability Professional Liability Nuclear Liability Property Damage to Motor Vehicles during Transportation 	<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 Sites and off-Site, as required.</p> <p>Extended Reporting Period: Minimum of 36 months after Phase Completion or Substantial Completion, as applicable.</p> <p>This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by Contracting Authority, MCSCS or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> Sanctions clause 			
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured will include Project Co, its Affiliates, Project Co parties and all other parties engaged in the Works, including the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants Contracting Authority, MCSCS and the Lenders' Agent will be identified as Additional Insureds or insured clients of Project Co and its Affiliates The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds 			
Underwriters	Principal underwriters in compliance with Clause 14 of this Schedule 25.			

Ontario Provincial Police Modernization Phase 2 Project

Works Insurance – Ontario Provincial Police Modernization Phase 2 Project

From First Commercial Close until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Self-Insured Retention	Principal Cover	Estimated Premium
Project Specific Professional Liability	<p>[\$REDACTED] minimum per claim / [\$REDACTED] in the aggregate (inclusive of defence 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 • 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 	<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 Phase Completion or Substantial Completion, as applicable, plus coverage for an extended reporting period of not less than 36 months.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by Contracting Authority, MCSCS or the Lenders.</p>	

Type	Amount	Self-Insured Retention	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • 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 • Sanctions clause • Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies 			
<i>Comments</i>				<ul style="list-style-type: none"> • Named Insured: Construction Contractor (as applicable), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project • Professional Services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services, and procurement services, including their replacements and/or sub-consultants of any tier • Retroactive Date: Full retroactive coverage from date of first design activity • Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy
Underwriters			<ul style="list-style-type: none"> • Principal underwriters in compliance with Clause 14 of this Schedule 25. 	

Ontario Provincial Police Modernization Phase 2 Project

Works Insurance – Ontario Provincial Police Modernization Phase 2 Project

From First Access to the Sites until the Substantial Completion Date

Insurances to be provided, or caused to be provided by Project Co

Type	Amount	Maximum Deductible	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 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 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 and the Lenders’ Agent.</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 Liability, Products and Completed Operations Liability, and Owner’s and</p>	<p>§[REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and 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, 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 Umbrella and/or Excess, or primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Construction Contractor):</p> <ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability • §[REDACTED]n Prairie or Forest Fire Fighting 		<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 Substantial Completion Date.</p> <p>Policies shall be endorsed to preclude cancellation,</p>	

Confidential

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Contractor's Protective extensions	<p>Expenses</p> <p>Principal Extensions (required to be provided by the Project Co. and the Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other persons involved in the Works):</p> <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/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works as applicable • Elevator and Hoist Collision Liability • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Permission for Unlicensed Vehicles' (partial road use) • 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 		<p>except upon 90 days prior written notice provided to Contracting Authority and the Lenders' Agent.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> Products and Completed Operations Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Sites 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 			
<i>Comments</i>	<ul style="list-style-type: none"> Contracting Authority, MCSCS and the Lenders' Agent will be identified as Additional Insureds or insured clients of Project Co and its Affiliates 			
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 and the Lenders' Agent.	
<i>Comments</i>	<ul style="list-style-type: none"> Contracting Authority, MCSCS and the Lenders' Agent 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 for property damage	\$[REDACTED]	Property of Every description destined for incorporation into the Facilities during marine transit, on a full replacement value basis, with no co-insurance provision. This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by Contracting Authority or the Lenders.	
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured includes Project Co, the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants, Contracting Authority and MCSCS as their respective interests may appear. Lenders' Agent will be shown as a Loss Payee 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p>“All Risks” Contractors’ Equipment</p> <p>To cover Project Co, the Construction Contractor, 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>	
<p><i>Comments</i></p>	<ul style="list-style-type: none"> Waiver of subrogation rights against Project Co, Contracting Authority, MCSCS the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders’ Agent as well as officers, directors, shareholders and employees of the foregoing 			
<p>Comprehensive Crime</p>	<p>\$(REDACTED) per loss with respect to Employee Dishonesty</p>		<p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Project Co Parties including additional coverage for 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, MCSCS or the Lenders.</p>	
<p>Underwriters (All non-IOCIP Works Phase insurances that are to be provided or</p>	<p>Principal underwriters in compliance with Clause 14 of this Schedule 25.</p>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
caused to be provided by Project Co)				
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 Sites.</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 Facilities, 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 and MCSCS evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person’s exemption from WSIB coverage.</p>	

**APPENDIX B TO SCHEDULE 25
PERFORMANCE BOND**

**THIS BOND IS SUBJECT TO THE TERMS AND CONDITIONS OF
THE MULTIPLE OBLIGEE RIDER ATTACHED HERETO**

[REDACTED]

EXHIBIT 1 TO APPENDIX B

FORM OF MULTIPLE OBLIGEE RIDER TO PERFORMANCE BOND

[REDACTED]

**APPENDIX C TO SCHEDULE 25
FORM OF LABOUR AND MATERIAL PAYMENT BOND**

[REDACTED]

EXHIBIT 1 TO APPENDIX C

**LABOUR AND MATERIAL PAYMENT BOND
MULTIPLE OBLIGEE RIDER**

[REDACTED]

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, 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 and the Construction Contractor'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 26 of the Project Agreement; and
 - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records 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 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 in accordance with its terms, 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 an Contracting Authority Event of Default or pursuant to Section 36.3 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 year or partial year of the Project Term, Project Co shall deliver to Contracting Authority a report, as reasonably requested by Contracting Authority in connection with Contracting Authority's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against Contracting Authority or that may be owing by Contracting Authority to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.

1.11 Project Co shall provide to Contracting Authority:

- (a) not later than 45 days after the end of the first three fiscal quarters of Project Co in each fiscal year, part or all of which falls in a year of the Project Term, a copy of Project Co's unaudited financial statements in respect of that period, including an unaudited balance sheet and an unaudited statement of income, all prepared in accordance with GAAP (as defined in the Lending Agreements), and
- (b) not later than 120 days after the end of each fiscal year, a copy of Project Co's annual audited financial statements, in respect of that period, prepared in accordance with Applicable Law and GAAP (as defined in the Lending Agreements), together with a certificate of the auditors of Project Co setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary or advisable and confirming that in their opinion such statements present fairly the financial position of Project Co and the results of its operations for the fiscal year reported on and have been defined in accordance with GAAP (as defined in the Lending Agreements),

all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 40 of the 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 Ancillary 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 Facilities or the Sites, including any roadways;
- (f) any notices, reports, results and certificates relating to any Phase Completion, Substantial Completion, Final Completion and completion of the Phase Project Co Commissioning and Project Co Commissioning;
- (g) all operation and maintenance manuals;
- (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events and Relief Events;
- (i) all documents submitted in accordance with Schedule 22 - Variation Procedure;
- (j) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (k) any documents related to a Project Co Change in Ownership or Change in Control;
- (l) any documents relating to any Refinancing;
- (m) 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;
- (n) the financial accounts of Project Co referred to in Section 1.11;
- (o) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Works;
- (p) any documents relating to insurance and insurance claims;

- (q) all Jointly Developed Materials; and
 - (r) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.
- 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 Articles 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 Articles 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 Article 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 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 Article 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 Articles 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.
 - 4.2 All Disputes related to the Works and that:
 - (a) arise prior to, or otherwise in relation to a Phase Completion or Substantial Completion;
 - (b) relate to completion of Phase Minor Deficiencies or 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 Article 38 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 shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date and a Dispute in relation to the Substantial 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 Section 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

5. INTENTIONALLY DELETED

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 Section 4.2 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Section 4.4 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 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) pursuant to the *Arbitration Act* (Ontario) as if the adjudicator was an arbitrator under the *Arbitration Act* (Ontario) and shall:
- (a) be independent of and at arm's length to Project Co, Contracting Authority, any Government Entity, the Lenders and any other person having an interest in any Facility or any of the Project Documents;
 - (b) if the Dispute arises during the Project Term, be familiar with building operations and management and the activities of a facility similar to the Facilities; and

- (c) be a person who has the 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 Contracting Authority Activities, then such qualifications and experience should include relevant experience in the provision of activities similar to the Contracting Authority Activities in a facility similar to the Facilities.
- 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 any Facility is permitting the Contracting Authority Activities to proceed 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 and/or Compensation Event. 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* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator (other than as set out in Section 6.2 of this Schedule 27) 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 shall be final and binding solely in respect of determining the Substantial Completion Payment Date and a Dispute in relation to the Substantial 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 Project Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event, 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 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 the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Section 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 10 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 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 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 Section 6 of this Schedule 27 applies 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 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 Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, the Adjudicator shall not 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 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.

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 Contracting Authority Activities, then such qualifications and experience should include relevant experience in the provision of activities similar to the Contracting Authority Activities in a facility similar to the Facilities.

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 Works 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 Works, 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 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 decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Section 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 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 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 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 10 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27.

10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation

- 10.1 For all Disputes in respect of a Phase of the Works that arise prior to such Phase of the Works' Phase Completion, unless

- (a) both Parties otherwise agree;
- (b) the issue in a particular Dispute arises in connection with the Review Procedure;
- (c) the issue in a particular Dispute is such that waiting until after the applicable Phase Completion to resolve that Dispute will cause irreparable harm to one of the Parties;
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving the applicable Phase Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with any Third Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27,

all adjudication, arbitral and litigation proceedings between the Parties prior to such Phase 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 such Phase Completion.

- 10.2 For all Disputes in respect of any Facility, except for any Phase of the Works, that arise prior to Substantial Completion, unless:

- (a) both Parties otherwise agree;
- (b) the issue in a particular Dispute arises in connection with the Review Procedure;
- (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;
- (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 any Third Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27,

all adjudication, arbitral and litigation proceedings between the Parties in respect of any Facility (except for any Phase of the Works) 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. INTENTIONALLY DELETED

13. Miscellaneous

13.1 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 30 of this Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 31 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.

- 13.2 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.
- 13.3 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 44.1(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 44.2(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.
- 13.4 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 a court of competent jurisdiction, are made available in a timely manner to Contracting Authority and the Contracting Authority Representative.
- 13.5 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.

13.6 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 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; and
- (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.

SCHEDULE 28

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 Sites; 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: this statement 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 shall include an illustration
3.0	Project Health and Safety Objectives and Performance Measurement Description of methodology for measuring health and safety performance, including key performance indicators to assess whether objectives are being met
4.0	Roles and Responsibilities Description of the specific roles and responsibilities of the following individuals/entities in relation to meeting the health and safety objectives.

4.1	Project Co
4.2	Project Director
4.3	Safety Manager
4.4	Construction manager
4.5	Safety Coordinator
4.6	Joint Occupational health and Safety Committee/Trades Committee
4.7	Subcontractor
4.8	Subcontractor Supervisor
4.9	Workers
4.10	Visitors
4.11	External Parties
4.12	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	Meeting 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 and Records
10.0	Incident Reporting and Investigation 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 Provision of a plan that details guidelines for implementing safety on the Sites.

12.1	Methodology for Securing the Sites and Restricting Trespassers
13.0	Hazard Identification 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 29

REFINANCING

1. DEFINITIONS

1.1 The following terms shall have the following meanings:

- (a) “**Exempt Refinancing**” means:
- (i) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
 - (ii) 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;
 - (iii) any Qualifying Bank Transaction;
 - (iv) any Rescue Refinancing;
 - (v) 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;
 - (vi) any amendment, variation or supplement of any agreement approved by Contracting Authority as part of any Variation under this Project Agreement; or
 - (vii) any Permitted Borrowing.
- (b) “**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 are inconsistent with Contracting Authority’s role as a police facility or may compromise Contracting Authority’s reputation or integrity or the nature of the Province’s police system, so as to affect public confidence in that system.

- (c) “**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.
- (d) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (e) **“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.
- (f) **“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 29, 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 29, 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 Works to the date of the Refinancing;
 - (iv) macroeconomic assumptions; and
 - (v) all other relevant factors.

- (g) “**Refinancing Gain**” means an amount equal to the greater of zero and (A - B), where:

A = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing).

B = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing).

- (h) “**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 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 under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing.

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 time act in good faith with respect to any Refinancing.

2.5 Contracting Authority's share of the Refinancing Gain shall be received as a reduction in the amount of the Substantial Completion Payment.

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. 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. Both Contracting Authority and Project Co shall work collaboratively to establish the rate setting process required to complete the Refinancing.

2.7 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.

**SCHEDULE 30
INSURANCE TRUST AGREEMENT**

THIS AGREEMENT is made as of the 16th day of August, 2018

AMONG:

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

(“**Contracting Authority**”)

AND:

[REDACTED], acting as agent for and on behalf of the Lenders

(the “**Lenders’ Agent**”)

AND:

BIRD CAPITAL OMP PROJECT CO INC., [REDACTED]

(“**Project Co**”)

AND:

[REDACTED], a trust company formed 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.
- D. Contracting Authority, the Lenders’ Agent and Project Co have agreed that the Bonds are to be held in trust by the Account Trustee in accordance with the terms of this Insurance

Trust Agreement and that no releases of the original copy of the Bonds shall be made other than in accordance with the terms of this Insurance Trust Agreement.

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

1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) “**Account Trustee**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (b) “**Appointed Representative**” has the meaning given in the Lenders’ Direct Agreement.
- (c) “**Bank**” means [REDACTED].
- (d) “**Bonds**” means [REDACTED].
- (e) “**Business Day**” has the meaning given in the Project Agreement.
- (f) “**Change of Authorization Event**” has the meaning given in Section 9(a)(ii) of this Insurance Trust Agreement.
- (g) “**Change of Authorization Notice**” has the meaning given in Section 9(b)(ii) of this Insurance Trust Agreement.
- (h) “**Contracting Authority**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (i) “**Default Notice**” means a written notice given by the Lenders’ Agent to the Account Trustee and Contracting Authority that an event of default under the Lending Agreements has occurred and is continuing.
- (j) “**Default Period**” means the period commencing on the date upon which the Account Trustee and Contracting Authority receives a Default Notice and ending on the date upon which the Account Trustee and Contracting Authority 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.
- (k) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (l) “**Insurance Policies**” has the meaning given in Section 4 of this Insurance Trust Agreement.

- (m) **“Insurance Proceeds”** has the meaning given in Section 6(a) of this Insurance Trust Agreement.
- (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 introductory paragraph of this Insurance Trust Agreement.
- (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) **“Multiple Obligee”** means a multiple obligee under the applicable Bond.
- (u) **“Multiple Obligee Rider(s)”** means the multiple obligee rider(s) applicable to the Bonds pursuant to which Project Co, Contracting Authority and the Lenders’ Agent are multiple obligees under the Bonds.
- (v) **“Notice Period”** has the meaning given in the Lenders’ Direct Agreement.
- (w) **“Order”** has the meaning given in Section 8(k) of this Insurance Trust Agreement.
- (x) **“Party”** means any of Contracting Authority, Project Co, the Lenders’ Agent or the Account Trustee, and **“Parties”** means all of Contracting Authority, Project Co, the Lenders’ Agent and the Account Trustee.
- (y) **“Project”** has the meaning given in the Project Agreement.
- (z) **“Project Agreement”** means the project agreement made on or about August 16, 2018 between Contracting Authority and Project Co.
- (aa) **“Project Co”** has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (bb) **“Project Co Event of Default”** has the meaning given in the Project Agreement.
- (cc) **“Replacement Project Agreement”** has the meaning given in the Lenders’ Direct Agreement.
- (dd) **“Replacement Project Co”** has the meaning given in the Lenders’ Direct Agreement.

- (ee) “**Step-In Notice**” has the meaning given in the Lenders’ Direct Agreement.
- (ff) “**Step-In Period**” has the meaning given in the Lenders’ Direct Agreement.
- (gg) “**Surety**” has the meaning given in the Project Agreement.
- (hh) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the original copy of the Bonds, 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 and shall not constitute a part of this Insurance Trust Agreement or 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 and time shall be of the essence hereof.
- (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. BONDS AND INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the original copy of the Bonds 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 original copy of the Bonds and 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 original copy of the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of Contracting Authority.

- (b) The Account Trustee shall not release the original copy of the Bonds or release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders' Agent, Contracting Authority, and Project Co agree that (x) if Project Co or the Lenders' Agent receives the original copy of the Bonds, the Bonds will be enforced for the purpose of completion of the Project, and (y) if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration or replacement of the Facilities or any other assets, materials or goods necessary or desirable for the carrying out of the Works in respect of which such Insurance Proceeds have been paid;
 - (ii) the completion of the Project; or
 - (iii) indemnification for any Contracting Authority 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 Works.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if Contracting Authority is entitled to indemnification under the Insurance Policies in respect of any loss incurred by Contracting Authority, such related insurance proceeds are to be paid directly to Contracting Authority by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty it is understood and agreed that Contracting Authority shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. DELIVERY OF ORIGINAL BONDS AND INSURANCE POLICIES

Project Co shall deliver, or cause to be delivered, to the Account Trustee an original copy of all Bonds Project Co is required to obtain under the Project Agreement and certified copies or originals of all insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the original copy of the Bonds and Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.

5. BONDS

- (a) If the Account Trustee and Contracting Authority have received a Default Notice, and if Lenders’ Agent presents to the Account Trustee (and the other parties to this Insurance Trust Agreement) a declaration that it or any person Lenders’ Agent designates requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, and the Account Trustee has received written authorization from Contracting Authority confirming Lenders’ Agent’s right to receive the original copy of the Bonds, the Account Trustee shall provide the original copy of the Bonds to Lenders’ Agent or such designated party, without the need for further investigation or inquiry by the Account Trustee, provided that, if at any time prior to the release of the original copy of the Bonds to Lenders’ Agent or a person designated by it, pursuant to the foregoing, the Account Trustee receives a Change of Authorization Notice and Contracting Authority presents to the Account Trustee a declaration that it or any person designated by it requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, the Account Trustee shall provide the same to Contracting Authority or such designated party, without the need for further investigation or inquiry by the Account Trustee that Contracting Authority or the designated party presenting the declaration is entitled to receive the original copy of the Bonds. Contracting Authority shall provide, no later than 5 Business Days following receipt by Contracting Authority of a request by the Lenders’ Agent, either (i) the written authorization referred to in this Section 5(a); or (ii) written justification detailing Contracting Authority’s rationale for refusing to provide such authorization.
- (b) Project Co agrees to obtain or cause to be obtained from the Surety any required amendment to the Bonds to provide for the foregoing provisions by way of amendment or replacement of the Multiple Obligee Rider now attached to and forming part of the Bonds.
- (c) Contracting Authority, Lenders’ Agent and Project Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the Lender’s Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of Lender’s Direct Agreement and this Insurance Trust Agreement, the

provisions of the Lender's Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

6. INSURANCE PROCEEDS

- (a) Subject to Section 3(d), 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) in the case of third party legal liability or employer's liability insurance, to the relevant claimant in satisfaction of the claim, demand, proceeding or liability in respect of which such Insurance Proceeds are payable;
 - (ii) in the case of any property builders' risk "All Risk" insurance, 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 in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, 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 in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, 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

- (iii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to Contracting Authority, to be distributed to the parties entitled thereto.
- (b) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 5(a) 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.
- (c) Each of Project Co, the Lenders' Agent and Contracting Authority shall forthwith deliver, or cause to be delivered, to the Account Trustee, any and all Insurance Proceeds it received from time to time and is not otherwise entitled to in accordance with the terms of this Insurance Trust Agreement.
- (d) The Account Trustee shall deposit to the Insurance Trust Account all amounts that are paid over to it pursuant to the Insurance Policies or otherwise by Project Co, Contracting Authority or the Lenders' Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance Trust Agreement.

7. 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.

8. 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, Contracting Authority, 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 8(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 or of Contracting Authority or of Project Co, 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 8(b).
- (f) Except as otherwise provided in Sections 8(c), 8(d) and 8(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 8(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 8(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 8(a) of this Insurance Trust Agreement, 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.

9. LENDERS' AGENT AND CONTRACTING AUTHORITY RIGHTS TO DIRECT

- (a) Until the first to occur of:
 - (i) the expiry of the Notice Period under the Lenders' Direct Agreement where no Step-In Notice has been delivered thereunder;
 - (ii) the expiry of the Step-In Period under the Lenders' Direct Agreement where:
 - (A) there has been no assignment to a Replacement Project Co;
 - (B) no Replacement Project Agreement has been entered into; or
 - (C) the Appointed Representative has not cured the Project Co Event of Default,

(each, a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds 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, the Bonds 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 original copy of the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds.

10. TERMINATION

- (a) Subject to the provisions of Section 10(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 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 Lenders' 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 to the Lenders' Agent, the Lenders and Contracting Authority.

11. ASSIGNMENT

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.

12. 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]
Fax No.: [REDACTED]
Attn.: [REDACTED]

with a copy to:

[REDACTED]
Fax No.: [REDACTED]
Attn.: [REDACTED]

If to the Lenders' Agent:

[REDACTED]
Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Project Co:

[REDACTED]
Fax No.: [REDACTED]
Attn.: [REDACTED]

With a copy to:

[REDACTED]
Fax No.: [REDACTED]
Attn.: [REDACTED]

If to the Account Trustee:

[REDACTED]
Fax No.: [REDACTED]
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 12(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 12(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(e), 12(f) and 12(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.
- (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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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 hereby irrevocably attorn to the exclusive jurisdiction of such courts.

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all reasonable further documents necessary to give full effect to this Insurance Trust Agreement.

21. 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.

22. 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.

23. COPYRIGHT NOTICE

The Parties acknowledge that the Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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
Infrastructure as Represented by the Ontario
Infrastructure and Lands Corporation**

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation

[REDACTED]

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation

BIRD CAPITAL OMP PROJECT CO INC.

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation

[REDACTED]

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation

SCHEDULE 31

PROJECT CO INFORMATION

[REDACTED]

SCHEDULE 32

TRUST ACCOUNT AGREEMENT

THIS TRUST ACCOUNT AGREEMENT is made as of the 16th day of August, 2018

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Infrastructure as represented by the 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:

BIRD CAPITAL OMP PROJECT CO INC., [REDACTED]

(“**Project Co**”)

AND:

[REDACTED], a trust company formed under the laws of Canada

(the “**Trustee**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. The Parties wish to establish a trust account for certain monies in connection with the Project.
- C. Contracting Authority is, under the Project Agreement, obligated to pay certain amounts to Project Co, including the Substantial Completion Payment and any Compensation Payment.
- D. Under the Lenders’ Direct Agreement, Contracting Authority has been authorized and instructed to pay all sums payable to Project Co under the Project Agreement to the Proceeds Account.
- E. Project Co has granted to the Lenders’ Agent for the benefit of the Lenders a security interest in all of its properties, including an assignment of its rights under this Trust Account Agreement and its interest in the Trust Funds.

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 Trust Account Agreement, unless the context otherwise requires:

- (a) **“Beneficiaries”** has the meaning given in Section 3(a) of this Trust Account Agreement.
- (b) **“Business Day”** has the meaning given in the Project Agreement.
- (c) **“Compensation Payment”** has the meaning given in the Project Agreement.
- (d) **“Dispute Resolution Procedure”** has the meaning given in the Project Agreement.
- (e) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (f) **“IO”** has the meaning given in the Project Agreement.
- (g) **Lenders”** has the meaning given in the Project Agreement.
- (h) **“Lenders’ Agent”** means [REDACTED], acting as agent for and on behalf of the Lenders.
- (i) **“Lenders’ Direct Agreement”** means the lenders’ direct agreement made on or about the date hereof between Contracting Authority, Project Co and the Lenders’ Agent.
- (j) **“Major Bond Rating Agency”** means any one of Dominion Bond Rating Service Limited, Standard & Poor’s Rating Group, Moody’s Canada Inc. or any of their successors.
- (k) **“MCSCS”** has the meaning given in the Project Agreement.
- (l) **“Non-Payment Notice”** has the meaning given in Section 4(d)(ii) of this Trust Account Agreement.
- (m) **“Party”** means any of Contracting Authority, Project Co or the Trustee, and **“Parties”** means all of Contracting Authority, Project Co and the Trustee.
- (n) **“Payment Instruction”** means a written instruction to the Trustee from:
 - (i) Contracting Authority in accordance with Section 4(b)(iii) and in the form attached as **Appendix A hereto**; or
 - (ii) Contracting Authority and Project Co in accordance with Section 4(b)(i) or 4(b)(ii) and in the form attached as **Appendix B hereto**,

in each case directing the disposition of Trust Funds.

- (o) **“Permitted Investments”** means:
 - (i) demand deposits, term deposits, bankers’ acceptances or certificates of deposit of or guaranteed by any bank or other financial institution which are rated by a Major Bond Rating Agency at least AA (low) or AA-; and
 - (ii) any bonds, debentures, notes, bills of exchange, securities or other evidences of indebtedness (including specific interest and principal payments thereof) issued or guaranteed by:
 - (A) the Government of Canada; or
 - (B) any Province of Canada,provided that such instruments are rated by a Major Bond Rating Agency at least AA (low) or AA- (as such ratings are determined as of the date hereof by [Dominion Bond Rating Service Limited and Standard & Poor’s Rating Group], respectively).
- (p) **“Privacy Laws”** has the meaning given in Section 7(g) of this Trust Account Agreement.
- (q) **“Proceeds Account”** means [REDACTED].
- (r) **“Project”** has the meaning given in the Project Agreement.
- (s) **“Project Agreement”** means the project agreement made on or about August 16, 2018 between Contracting Authority and Project Co (as may be amended, restated and/or supplemented from time to time).
- (t) **“Substantial Completion Payment”** has the meaning given in the Project Agreement.
- (u) **“Termination Date”** has the meaning given in the Project Agreement.
- (v) **“Trust Account”** [REDACTED].
- (w) **“Trust Account Agreement”** means this trust account agreement.
- (x) **“Trust Funds”** means, as of any particular time, all monies which have been transferred, conveyed or paid to, or acquired by the Trustee pursuant to this Trust Account Agreement, including all income, earnings, profits and gains therefrom, and which at such time are held by the Trustee.
- (y) **“Trustee”** has the same meaning given in the preamble.

2. INTERPRETATION

This Trust Account Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Trust Account Agreement are for convenience of reference only, shall not constitute a part of this Trust Account Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Trust Account 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 Trust Account Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Trust Account 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 Trust Account 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 Trust Account 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 Trust Account Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Trust Account 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 Trust Account 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 Trust Account 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 Trust Account Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. DECLARATION OF TRUST

- (a) The Trustee hereby declares that it holds in trust as trustee all Trust Funds deposited in the Trust Account for the benefit of Project Co and Contracting Authority (collectively, the “**Beneficiaries**” and, individually, a “**Beneficiary**”), in accordance with and subject to the provisions of this Trust Account Agreement.
- (b) The purpose of this Trust Account Agreement is to establish the Trust Account for the benefit of the Beneficiaries and to provide for the delivery and distribution of the Trust Funds in accordance with this Trust Account Agreement.
- (c) The Trustee hereby accepts the trusts and other obligations in this Trust Account Agreement declared and provided and agrees to perform the same upon the terms and conditions herein set forth.

4. PURPOSE

- (a) Contracting Authority and Project Co acknowledge and agree that the Trust Account is established for the purpose of, in accordance with the related Payment Instructions, paying to the applicable payee (or as it may direct), any payment that is outstanding under the Project Agreement.
- (b) The Trustee shall not accept any Payment Instruction to distribute Trust Funds other than as follows:
 - (i) for the Substantial Completion Payment or a Compensation Payment to Project Co, in accordance with a Payment Instruction signed by both Contracting Authority and Project Co;
 - (ii) for any other amounts that may from time to time be payable by Contracting Authority to Project Co under the Project Agreement, in accordance with a Payment Instruction signed by both Contracting Authority and Project Co; or

- (iii) in accordance with a Payment Instruction signed only by Contracting Authority if:
 - (A) the monies are to reimburse MCSCS for any amount over-contributed by MCSCS in respect of MCSCS's share of the Substantial Completion Payment, any Compensation Payment or any other amounts that may from time to time be payable by Contracting Authority to Project Co under the Project Agreement;
 - (B) the monies are to reimburse Contracting Authority for any monies expended by Contracting Authority in respect of which Contracting Authority at that time has a right of set-off or is entitled to reimbursement under the Project Agreement; or
 - (C) the monies are to pay to Contracting Authority interest earned in accordance with Section 8(b),

and Contracting Authority certifies as to (A) and/or (B), as applicable. A Payment Instruction given by Contracting Authority pursuant to this 4(b)(iii) shall be addressed to Project Co and the Lenders' Agent as well as the Trustee.

- (c) The Trustee shall deliver a copy of any Payment Instruction signed only by Contracting Authority under Section 4(b)(iii) to Project Co and the Lenders' Agent forthwith upon receipt and, in any event, not less than five (5) Business Days before the Trustee distributes any Trust Funds pursuant to such Payment Instruction. At any time prior to the distribution of Trust Funds by the Trustee pursuant to the aforementioned Payment Instruction, Project Co may deliver to the Trustee an objection to the distribution of such Trust Funds.
- (d) Project Co agrees that the basis of an objection is limited to:
 - (i) that the Payment Instruction is not for any of the purposes set out in Sections 4(b)(iii)(A), 4(b)(iii)(B) or 4(b)(iii)(C) in whole or in part; or
 - (ii) that Contracting Authority is, at the time, in default of any of its payment obligations under the Project Agreement and Project Co has issued a notice of non-payment to Contracting Authority under Section 35.1(a) of the Project Agreement (the "**Non-Payment Notice**").
- (e) Project Co shall state in its objection the amount under the Payment Instruction that is disputed which, in the case of 4(d)(ii) above shall not exceed the amount set out in the Non-Payment Notice. The Trustee shall not distribute any disputed Trust Funds until any disputed Payment Instruction has been resolved in accordance with Section 4(g).
- (f) Where the objection is only in respect to a portion of the amount under a Payment Instruction or where the amount under the Non-Payment Notice is less than the amount under the Payment Instruction, the objection of Project Co shall state the amount under the Payment Instruction that is not disputed and the undisputed portion of the amount under the Payment Instruction may be distributed by the Trustee.

- (g) Where Project Co objects to a Payment Instruction signed only by Contracting Authority, such dispute shall be resolved in accordance with the Dispute Resolution Procedure and, to the extent that such resolution confirms the entitlement of Contracting Authority to a withdrawal of disputed Trust Funds, the Trustee shall distribute such Trust Funds pursuant to a supplementary Payment Instruction signed only by Contracting Authority.

5. PAYMENT OF TRUST PROPERTY

- (a) Subject to Sections 4(c) to 4(g), the Trustee will comply with Payment Instructions from Contracting Authority under Section 4(b)(iii) and from Contracting Authority and Project Co under Sections 4(b)(i) and 4(b)(ii) from time to time given to the Trustee. Contracting Authority and Project Co agree that all Payment Instructions shall be consistent with the Project Agreement.
- (b) The Trustee will have the power to incur and make payment of any charges or expenses which in the reasonable opinion of the Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Trust Account Agreement and the administration of the Trust Account.
- (c) The Trustee will be entitled to be paid by Project Co, in default of which the Trustee is entitled to be paid from the Trust Funds, without any requirement of a passing of accounts in respect thereof or approval of any Beneficiary, such fees as the Trustee, Contracting Authority and Project Co may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration and execution of this Trust Account Agreement until all the duties of the Trustee shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 7(a) by the Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Trustee, Contracting Authority and Project Co may agree from time to time. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Trustee as the then current rate charged by the Trustee or its successors from time to time to its corporate customers, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payments to Beneficiaries. Project Co agrees with Contracting Authority that any amount not paid by Project Co to the Trustee in accordance with the foregoing and which the Trustee has satisfied by payment out of the Trust Funds may be set-off by Contracting Authority against any amounts that may from time to time be payable by Contracting Authority to Project Co under the Project Agreement. This Section 5(c) shall survive the termination of this Trust Account Agreement or the resignation or removal of the Trustee.
- (d) Payment Instructions purporting to be given to the Trustee under this Trust Account Agreement will, subject to Sections 4(c) to 4(g), be conclusive authority for the Trustee to act in accordance with that Payment Instruction. The Trustee is not obliged or required to

monitor any requirements or obligations of Contracting Authority or any other person pursuant to this Trust Account Agreement or any other agreement and has no duty to question any Payment Instruction provided to the Trustee. Subject to Sections 4(c) to 4(g), each of Project Co and Contracting Authority authorizes the Trustee to act on any such Payment Instruction and waives any claim or action against the Trustee in connection therewith.

6. REPLACEMENT OF TRUSTEE

- (a) If the Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Trust Account Agreement, it shall provide not less than 60 days prior notice in writing thereof, or such lesser notice as Contracting Authority and Project Co may accept. Contracting Authority and Project Co may, by instrument in writing, jointly appoint a successor trustee that is acceptable to replace the Trustee. If Contracting Authority and Project Co fail to appoint a successor trustee within a reasonable period of time, then application will be made by the Trustee to a Justice of the Ontario Superior Court of Justice at Toronto for appointment of a successor trustee hereunder. The resignation of the Trustee shall not be effective until the appointment of its successor in accordance with the provisions of this Section 6(a). The expense of any act, document, deed or other instrument or thing required under this Section 6(a) will be satisfied from the Trust Funds.
- (b) The term of office of the Trustee will automatically terminate and a vacancy will occur in the event of the bankruptcy or insolvency of the Trustee or inability of the Trustee to exercise its duties under this Trust Account Agreement. No vacancy shall operate to annul this Trust Account Agreement. If a vacancy occurs in the office of the Trustee for any reason, Contracting Authority and Project Co may, by instrument in writing, jointly appoint a trustee to replace the Trustee. If Contracting Authority and Project Co fail to make such appointment, then an application will be made to a Justice of the Ontario Superior Court of Justice at Toronto for appointment of a successor trustee hereunder. Such application will be made by the Trustee or, if the Trustee elects not to do so, by Contracting Authority and Project Co. The expense of any act, document, deed or other instrument or thing required under this Section 6(b) will be satisfied from the Trust Funds.

7. STANDARD OF CARE, LIMITATION OF LIABILITY OF TRUSTEE AND OTHER MATTERS

- (a) The Trustee will exercise its powers and carry out its obligations hereunder as trustee honestly, in good faith and in the best interests of the Beneficiaries and in connection therewith will exercise that degree of care, diligence, and skill that a reasonable and prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Trustee will not be required to give a bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The duties, responsibilities and obligations of the Trustee shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Trustee shall not be subject to, nor required to comply with, any other agreement between or among any or all of the parties hereto, 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 Trustee shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

- (b) The Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise, in connection with the Trust Funds, to the Beneficiaries, or to any other person, for any action taken or permitted by it to be taken or for its failure to take any action including, without limitation, the failure to compel in any way any former or acting trustee to redress any breach of trust in respect of the execution of the duties of its office or in respect of the Trust Funds, provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of a duty by the Trustee. The Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Trust Funds, is and will be conclusively deemed to be acting as trustee of the Trust and not in any other capacity. Except to the extent provided in this Section 7(b), the Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Account, 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 the duties of its office or for or in respect of the Trust Funds or the Trust activities and resort will be had solely to the Trust Funds for the payment or performance thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution, or other enforcement procedure with regard to any obligation under this Trust Account Agreement.
- (c) Subject as hereinafter specifically provided, the Trustee, its officers, directors, employees and agents, will at all times be indemnified and saved harmless by Project Co, in default of which the Trustee is entitled to be paid out of the Trust Funds, without any requirement of a passing of accounts in respect thereof or the approval of any Beneficiary, from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, including without limitation, arising out of or related to actions taken or omitted to be taken by any agent appointed hereunder, reasonable legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity, which the Trustee may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as the Trustee or which it sustains or incurs in or about or in relation to the Trust Funds. Further, the Trustee will not be liable to any Beneficiary or to any other person for any loss or damage relating to any matter regarding the Trust Account, including any loss or diminution in the value of the Trust Funds. The foregoing provisions of this Section 7(c) do not apply to the extent that in any circumstances there has been dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of a duty by the Trustee or its employees or agents engaged by the Trustee in the performance of its duties or obligations hereunder. Notwithstanding any other provision hereof, this indemnity shall survive the removal or resignation of the Trustee and termination of any trust created hereby. Project Co agrees with Contracting Authority that any amount

not paid by Project Co to the Trustee in accordance with the foregoing and which the Trustee has satisfied by payment out of the Trust Funds may be set-off by Contracting Authority against any amounts that may from time to time be payable by Contracting Authority to Project Co under the Project Agreement.

- (d) The 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 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 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 Trust Account Agreement.
- (e) The Trustee may rely and act upon any statement, report or opinion prepared by or any advice received from Contracting Authority and Project Co, and shall not be responsible or held liable for any loss resulting from so relying or acting if the Trustee acted reasonably in relying thereon.
- (f) The 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 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 Trustee, in its sole judgment, determine at any time that its acting under this Trust Account 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) of this Trust Account Agreement, provided that (i) the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.
- (g) The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") may apply to obligations and activities under this Trust Account Agreement. Despite any other provision of this Trust Account Agreement, neither party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. Project Co and Contracting Authority shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Trustee agrees: (a) to have a designated chief privacy officer or any other such individual or individuals designated to ensure compliance with all Privacy Laws; (b) to maintain policies

and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Trust Account Agreement and not to use it for any other purpose except with the consent of or direction from Project Co or Contracting Authority or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

- (h) Subject to Section 7(c), the Beneficiaries will not be held to have any personal liability as such, and no resort will be had to their private property for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation in respect of which the Beneficiaries would otherwise have to indemnify the Trustee for any liability incurred by the Trustee as such, but rather the Trust Funds only will be subject to levy or execution for such satisfaction.
- (i) Any written instrument creating an obligation of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as the Trustee. Any written instrument creating an obligation of the Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Trustee except in its capacity as the Trustee, nor will resort be had to the property of the Trustee except in its capacity as the Trustee, but that the Trust Funds or a specific portion thereof only will be bound, and may contain any further provisions which the Trustee may deem appropriate, but the omission of any such provision will not operate to impose liability on the Trustee except as aforesaid.
- (j) If at any time the 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 Funds (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 Funds), the Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate. The 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 Trustee complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.
- (k) The Trustee 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 Trustee (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).

- (l) Each of Contracting Authority and Project Co shall provide to the Trustee an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Trustee hereunder. The Trustee shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Trustee 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.
- (m) The Trustee agrees to provide prompt written notice of all payments to or withdrawals from the Trust Funds and any amendments to this Trust Account Agreement to each of the Parties hereto and IO and MCSCS.

8. RECORDS AND OTHER MATTERS

- (a) The Trustee will keep or cause to be kept at Toronto, Ontario or at such other place in Canada designated by it proper records and books of account as are by law or good business practice necessary. Such books and records will be available for inspection by either Beneficiary upon reasonable notice during the normal business hours of the Trustee.
- (b) Any monies held by the Trustee may be invested and reinvested in the name or under the control of the Trustee in Permitted Investments, on the written direction of Contracting Authority. Pending such investment, such monies may be placed by the Trustee on deposit in any chartered bank in Canada against demand deposit certificates or with its own deposit department. No Party shall be responsible for ensuring the rate of return, if any, on the Permitted Investments. The Trustee shall have no responsibility or liability for any diminution of the funds invested which may result from any investment made in accordance with this Section 8(b). All interest (and interest on interest) earned shall be the property of Contracting Authority.

9. TERMINATION OF THIS AGREEMENT

This Trust Account Agreement will continue in full force and effect from the date hereof until the Termination Date and thereafter for so long as any Trust Funds remain with the Trustee unless earlier terminated by joint written direction of the Beneficiaries.

10. ASSIGNMENT

The Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Trust Account Agreement without the prior written consent of Contracting Authority and Project Co.

11. NOTICES

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

If to Contracting Authority: **[REDACTED]**
Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**

with a copy to: **[REDACTED]**
Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**

If to Project Co: **[REDACTED]**
Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**
Email: **[REDACTED]**

with a copy to: **[REDACTED]**
Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**
Email: **[REDACTED]**

If to the Trustee: **[REDACTED]**
Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Trust Account 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 Trust Account 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 Trust Account Agreement.

13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Trust Account 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 Trust Account 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 Trust Account Agreement, of principal and agent.

15. ENTIRE AGREEMENT

Except where provided otherwise in this Trust Account Agreement, this Trust Account 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 Trust Account Agreement.

16. SEVERABILITY

Each provision of this Trust Account Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Trust Account 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 Trust Account Agreement. If any such provision of this Trust Account 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 Trust Account Agreement as near as possible to its original intent and effect.

17. ENUREMENT

This Trust Account 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 Trust Account 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 Trust Account Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

19. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Trust Account Agreement.

20. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Trust Account 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 Trust Account 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 Trust Account Agreement which was so faxed.

22. COSTS

Each of Project Co and Contracting Authority shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Trust Account Agreement. Project Co shall be responsible for paying the Trustee's costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Trust Account Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

BIRD CAPITAL OMP PROJECT CO INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

APPENDIX A

FORM OF PAYMENT INSTRUCTION BY CONTRACTING AUTHORITY ONLY

[Address of Trustee]

[Address of Project Co, if applicable]

[Address of Lenders’ Agent, if applicable]

Dear Sir or Madam,

Re: Instruction for Payment

We refer to the Trust Account Agreement made as of August 16, 2018 (the “**Trust Account Agreement**”), between Contracting Authority, Bird Capital OMP Project Co Inc. and [REDACTED].

In accordance with Section 4(b)(iii) of the Trust Account Agreement, this letter constitutes a Payment Instruction with respect to the payment of Trust Funds by the Trustee. **OR** In accordance with Section 4(g) of the Trust Account Agreement, this letter constitutes a supplementary Payment Instruction with respect to the payment of Trust Funds by the Trustee.

Please transfer the sum of \$[●] to [●] for credit to Account No. [●] maintained in the name [●].

[Where the Payment Instruction is signed by Contracting Authority pursuant to Section 4(b)(iii), Contracting Authority must also certify that the monies are being drawn as permitted by Section 4(b)(iii) and the Payment Instruction must also be addressed to each of Project Co and Lenders’ Agent.]

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

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

APPENDIX B

**FORM OF PAYMENT INSTRUCTION BY CONTRACTING AUTHORITY AND
PROJECT CO**

[Address of Trustee]

Dear Sir or Madam,

Re: Instruction for Payment

We refer to the Trust Account Agreement made as of August 16, 2018 (the “**Trust Account Agreement**”), between Contracting Authority, Bird Capital OMP Project Co Inc. and [REDACTED].

In accordance with Section 4(b)(i) or 4(b)(ii) of the Trust Account Agreement, this letter constitutes a Payment Instruction with respect to the payment of Trust Funds by the Trustee.

Please transfer the sum of \$[●] to [●] for credit to Account No. [●] maintained in the name [●].

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

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

BIRD CAPITAL OMP PROJECT CO INC.

Per: _____
Name:
Title:

Per: _____
Name:

Title:

I/We have authority to bind the corporation.

**SCHEDULE 33
LIST OF FACILITIES
[REDACTED]**

SCHEDULE 34

LIST OF SITES

[REDACTED]

SCHEDULE 35

REPORTS

[REDACTED]

SCHEDULE 36

CONSTRUCTION PROCEDURES AGREEMENT

[REDACTED]