

SCHEDULE 2
DESIGN AND CONSTRUCTION PROTOCOLS
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SCHEDULE 2

DESIGN AND CONSTRUCTION PROTOCOLS

1. INTERPRETATION

1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 of this Agreement:

“Asset Register” has the meaning set out in Section 7.3 of this Schedule;

“Certificate of Service Commencement” has the meaning set out in Section 13.3(a) of this Schedule;

“City” means the City of Vancouver;

“Commissioning Plan” has the meaning set out in Section 12.3 of this Schedule;

“Construction Period Joint Committee” has the meaning set out in Section 2.6(a) of this Schedule;

“Consultation Group” has the meaning set out in Appendix 2B [Consultation Process].

“Core Group” has the meaning set out in Appendix 2B [Consultation Process].

“Deficiency” means a Service Commencement Deficiency;

“Deficiency Deadline” has the meaning set out in Section 13.5 of this Schedule;

“Design and Construction Representative” has the meaning set out in Section 2.1 of this Schedule;

“ECUAD Campus” means all of the land upon which ECUAD is situated;

“Facility Move-in Schedule” has the meaning set out in Section 10.5 of this Schedule;

“Facility Threat and Risk Assessment” has the meaning set out in Section 4.9 of this Schedule;

“GBC” means the Canada Green Building Council;

“Geotechnical Report” means the report entitled “Geotechnical Report Proposed Emily Carr University Great Northern Way Campus Vancouver BC” dated August 1, 2013;

“Independent Certifier” has the meaning set out in Section 3.1 of this Schedule;

“Intended Uses” means the uses for the Facility as described in the Design and Construction Specifications;

“IT” means information technology;

“LEED Gold Certification” means the award of a LEED Gold certificate from the GBC under the LEED Rating System;

“**LEED Rating System**” means the GBC’s LEED Canada rating system for New Construction and Major Renovations LEED Canada NC 2009;

“**Move Plan**” has the meaning set out in Section 12.4 of this Schedule;

“**Other Works**” has the meaning set out in Section 4.5 of this Schedule;

“**Phasing Plan**” has the meaning set out in Section 6.9(a) of this Schedule;

“**Project Co’s Quality Consultant**” has the meaning set out in Section 8.3 of this Schedule;

“**Project Schedule**” has the meaning set out in Section 10.1 of this Schedule;

“**Proposal Extracts (Design and Construction)**” means the provisions of Appendix 2G [Proposal Extracts (Design and Construction)];

“**Quality Assurance Plan**” has the meaning set out in Section 8.5 of this Schedule;

“**Quality Assurance Program**” has the meaning set out in Section 8.4 of this Schedule;

“**Quality System**” means an organizational structure, procedures, processes and resources necessary to implement a comprehensive, planned and systematic program, designed and implemented by Project Co pursuant to this Agreement, to ensure that the standards of quality control, quality management and quality assurance required by this Agreement are achieved by Project Co in every material aspect of the Design and Construction;

“**Record Documents**” has the meaning set out in Section 6.25(a)(1) of this Schedule, and includes any Record Documents provided under Schedule 4 [Service Protocols and Specifications];

“**Reviewed Drawings and Specifications**” has the meaning set out in Section 5(a) of Appendix 2C [Design Review];

“**Service Commencement Deficiency**” has the meaning set out in Section 13.1 of this Schedule;

“**Site**” means the areas identified as the site on Appendix 2H [Site Plan];

“**Submittal**” has the meaning set out in Section 1 of Appendix 2C [Design Review].

“**Submittal Schedule**” has the meaning set out in Section 2(a) of Appendix 2C [Design Review];

“**Updated Project Schedule**” has the meaning set out in Section 10.2 of this Schedule; and

2. PARTIES’ DESIGN AND CONSTRUCTION REPRESENTATIVES

2.1 Appointment of Representatives

Both parties will within 5 Business Days of the Effective Date designate in writing a person (the “**Design and Construction Representative**”) to be the party’s single point of contact with respect to the Design and the Construction. Project Co’s Design and Construction Representative will be a Key Individual.

Except as otherwise set out in this Agreement, all costs or expenses incurred by or with respect to a party's Design and Construction Representative will be for the account of that party.

2.2 Replacement

Subject to Section 2.12 of this Agreement in respect of Key Individuals, a party may at any time and in its own discretion by notice to the other party change the person appointed as the party's Design and Construction Representative. If for any reason a party's Design and Construction Representative is unable or unwilling to continue then the party will immediately appoint a replacement Representative. If at any time a party objects to a Representative of the other party then the other party will give reasonable consideration to replacing the Representative with a person reasonably acceptable to the objecting party.

2.3 Authority of Representatives

Subject to limits of authority pursuant to Section 2.11 of this Agreement, a party's Design and Construction Representative will have full authority to act on behalf of and bind the party with respect to Design and Construction under this Agreement, including giving any review, acceptance, approval or confirmations which may be given by the Authority. Notwithstanding the above, a party's Design and Construction Representative will not have the authority to execute or agree to any amendments or to give any waivers of this Agreement.

2.4 Review Procedure

The parties will comply with Appendix 2B [Consultation Process] and 2C [Design Review].

2.5 Authority Not Responsible for Design or Construction

The Authority's review, acceptance, approval or confirmation of compliance with respect to any aspect of the Design or the Construction, including pursuant to Appendix 2C [Design Review], will be for the Authority's benefit only, and no review, acceptance, approval or confirmation of compliance by the Authority's Design and Construction Representative or other representative of the Authority will in any way relieve Project Co of its obligation for all aspects of the Design and Construction of the Facility except as may be expressly set out in this Agreement.

2.6 Construction Period Joint Committee

- (a) Not less than 20 Business Days after the Effective Date, the Authority and Project Co will establish, and will maintain until Service Commencement is achieved, a joint liaison committee (the "**Construction Period Joint Committee**") consisting of the Design and Construction Representatives and such other members as the parties may agree from time to time.
- (b) The purpose of the Construction Period Joint Committee is to provide a formal forum for the parties to consult and cooperate in all matters relating to the Facility during the Construction Period and any member appointed to the Construction Period Joint Committee will not have any duties or obligations arising out of such appointment independent of such member's duties or obligations to the party making such appointment.

- (c) The Construction Period Joint Committee:
- (1) will only have the authority as expressly delegated to it by the Authority and Project Co, and both parties will give reasonable consideration to delegating appropriate authority to permit efficient decision making with respect to the Facility;
 - (2) may strike, establish terms of reference for, delegate authority and appoint members having the necessary experience and qualifications to, such sub-committees as the Construction Period Joint Committee may determine are necessary from time to time and all such sub-committees will report to the Construction Period Joint Committee;
 - (3) will establish protocols and procedures for undertaking the tasks and responsibilities delegated to it, including a co-operative and consultative process to review all documentation submitted to it in relation to the Design and Construction;
 - (4) may make recommendations to the parties on all matters relating to the Facility, which the parties may accept or reject in their complete discretion; and
 - (5) will have no authority to agree to any amendments or to give any waivers of this Agreement.
- (d) Subject to the provisions of this Agreement, the members of the Construction Period Joint Committee may adopt such procedures and practices for the conduct of the activities of the Construction Period Joint Committee as they consider appropriate from time to time and:
- (1) may invite to any meeting of the Construction Period Joint Committee such other (non-voting) persons as a member may decide; and
 - (2) receive and review a report from any person agreed by the members of the Construction Period Joint Committee.
- (e) The Construction Period Joint Committee will meet at least once each month at a location provided by Project Co at or near the Site (unless otherwise agreed by its members) and from time to time as necessary. If any member of the Construction Period Joint Committee requests an additional meeting, the parties will act reasonably in accommodating this request. Meetings of the Construction Period Joint Committee will be convened on not less than 10 Business Days' notice (which will also identify the agenda items to be discussed at the meeting) provided that in an emergency a meeting may be called at any time on such notice as may be reasonable in the circumstances. The Construction Period Joint Committee will be chaired by a representative of Project Co unless the Authority requires that a representative of the Authority chair the Construction Period Joint Committee.

- (f) Project Co will keep minutes of all recommendations and meetings of the Construction Period Joint Committee in accordance with Schedule 14 [Records and Reports] and circulate such minutes to the parties promptly within five Business Days of the making of the recommendation or the holding of the meeting.

3. INDEPENDENT CERTIFIER

3.1 Appointment

The parties will cooperate to jointly appoint a person (or firm of persons) (the “**Independent Certifier**”), who is:

- (a) qualified and experienced with respect to the design and construction of projects in British Columbia similar to the Project, and
- (b) independent from both the Authority and Project Co (and who will be impartial to the parties),

to provide certification services for the benefit of the parties during the Construction Period. The parties will enter into an agreement with the Independent Certifier on the terms generally as set out in Appendix 2A [Independent Certifier Agreement]. The parties confirm that Project Co may also appoint the Independent Certifier to provide certification services in respect of the Design-Build Agreement.

3.2 Appointment and Replacement

If within 20 Business Days of the Effective Date the Independent Certifier has not been appointed, or if for any reason during the Construction Period the Independent Certifier is unable or unwilling to continue to perform the Independent Certifier services or if the Independent Certifier’s appointment has been terminated by the Authority and Project Co, then:

- (a) within 5 Business Days of the date that is 20 Business Days after the Effective Date (or within 5 Business Days of the date of termination of the Independent Certifier’s appointment, if applicable), Project Co will provide the names of 3 candidates acceptable to Project Co for consideration by the Authority;
- (b) within 10 Business Days of receiving the candidate names, the Authority will notify Project Co of the candidates acceptable to the Authority, and the parties will cooperate to enter into a contract with an acceptable candidate generally in the form set out in Appendix 2A [Independent Certifier Agreement]; and
- (c) if none of the candidates are acceptable to the Authority, acting reasonably, or if for any reason an Independent Certifier is not appointed within 40 Business Days of the Effective Date (or within 20 Business Days of the date of termination of the Independent Certifier’s appointment, if applicable), then either party may immediately apply to the British Columbia International Commercial Arbitration Centre for the selection of an Independent Certifier, providing the other party the opportunity to participate in the selection and appointment process.

3.3 Monthly Inspections and Report

The parties will require the Independent Certifier to:

- (a) consult with the Design-Builder and others involved in the Design; and
- (b) conduct inspections of the Construction,

as the Independent Certifier determines is required to be generally satisfied that the Design and Construction are proceeding in accordance with the requirements of this Agreement and, no later than the 10th day of each month, prepare and deliver to the Authority and Project Co a monthly written report containing a description of:

- (c) the Design and Construction completed in the previous month;
- (d) the progress of the Design and Construction relative to the Updated Project Schedule, with an overview analysis of any variances; and
- (e) any elements of the Facility that for any reason vary from the requirements of this Agreement, with particular reference to this Schedule and Schedule 3 [Design and Construction Specifications].

3.4 Payment Certificates

The Independent Certifier will prepare and deliver to the Authority and Project Co a certificate certifying the Cost to Date all as described in Sections 1 and 2 of Appendix 8B [Construction Period Payments] no later than the 10th day of each month. The Authority and Project Co specifically agree to the following with respect to the preparation and delivery of the payment certificates by the Independent Certifier:

- (a) the certificate certifying the Cost to Date will certify actual costs incurred by or on behalf of Project Co; and
- (b) except as required under Section 3.3 of this Schedule, the Independent Certifier will have no role in inspecting, or in giving any directions or instructions, with respect to any aspect of the Design or the Construction.

3.5 Application for Certificate of Service Commencement

The parties will require the Independent Certifier to perform the obligations of the Independent Certifier described in Section 13 of this Schedule.

3.6 Permitted Access

Project Co will give the Independent Certifier access to the Design and Construction work as the Independent Certifier reasonably requests in order to be fully informed as to the progress of the Design and Construction including:

- (a) access to drawings, specifications, schedules, records, and other documents or data relating to the Design and Construction, including such information that is being produced by or in the possession of the Design-Builder or others; and
- (b) access to the Site,

and Project Co will:

- (c) permit the Independent Certifier to attend all Design and Construction meetings during the Construction Period except to the extent Project Co and the Authority expressly otherwise agree;
- (d) keep the Independent Certifier fully informed as to the progress of the Construction, including giving notice in accordance with Good Industry Practice of any part of the work on the Facility before it becomes covered up and unavailable for inspection;
- (e) provide the Independent Certifier with a copy of all accident reports required to be provided to the Authority under Section 6.15 of this Schedule.

3.7 No Responsibility for Design or Construction

Nothing in this Agreement (including this Schedule) or in the parties' agreement with the Independent Certifier will be interpreted as giving the Independent Certifier any responsibility or authority for any aspect of the Design or the Construction, or as relieving Project Co of its responsibility for the Design and Construction as set out in this Agreement, and neither Project Co nor the Design-Builder nor any Sub-Contractor will be entitled to rely on any review, acceptance, approval or confirmation that the Independent Certifier may give with respect to Design or Construction.

4. PROJECT CO'S RESPONSIBILITIES

4.1 Design/Build Responsibility

Notwithstanding any other provision of this Agreement, Project Co will:

- (a) have complete responsibility for the Design and Construction of the Facility;
- (b) perform and complete the Design and Construction:
 - (1) in accordance with all terms of this Agreement including the terms of this Schedule and the Design and Construction Specifications;
 - (2) so as to provide a new university facility that at Service Commencement:
 - (A) is complete and operational and fit for the Intended Uses;
 - (B) will permit Project Co to provide the Services in accordance with the requirements of this Agreement; and

- (C) takes into account any planned building or structure, as described in the Design and Construction Specifications; and
- (3) to reflect and capture the benefits to the Authority of the Proposal Extracts (Design and Construction).

Each of the obligations in Sections 4.1(b)(1), 4.1(b)(2) and 4.1(b)(3) of this Schedule are independent obligations, and the fact that Project Co has satisfied one obligation will be no defence to an allegation that it has failed to satisfy another.

4.2 Standard of Performance for Design and Construction

Without limiting the other requirements of this Agreement, Project Co will perform the Design and Construction to the standards as required by Section 2.1 of Schedule 3 [Design and Construction Specifications].

4.3 Defects in Design or Construction

Project Co will, without cost to the Authority, and without limiting Project Co's obligations to perform the Services as set out in this Agreement, including Schedule 4 [Services Protocols and Specifications], correct any Defect that becomes apparent at any time during the Term, subject to the terms of this Agreement, including any Scheduled Maintenance and the Handback Requirements.

4.4 Compliance with Laws

Project Co will undertake and perform the Design and Construction in accordance with applicable Laws, and so that all elements of the Design and the Construction, including all workmanship, construction equipment and materials, and the supply and installation of Equipment, meet or exceed the requirements of applicable Laws. If there is any conflict or ambiguity between the provisions of applicable Laws, or between a provision of applicable Laws and the Design and Construction Specifications, or between provisions of the Design and Construction Specifications, then the provision of higher quality or higher standard will govern.

4.5 Permits for the Design and Construction

Except as expressly provided otherwise in this Agreement, Project Co will obtain all Permits, including development permits, development variance permits and building permits, required for the Design and Construction. Project Co will:

- (a) keep the Authority's Design and Construction Representative fully informed of the details of all discussions and negotiations with Governmental Authorities with respect to all Permits for which it is responsible;
- (b) upon request from the Authority's Design and Construction Representative, provide to the Authority copies of all documentation and correspondence with a Government Authority relating to such Permits; and

- (c) provide reasonable advance notice to the Authority of any meetings with the City or other Governmental Authorities (where practicable) and upon request by the Authority permit a representative of the Authority to attend any such meetings.

Project Co assumes all risk and costs arising in relation to Permits for which Project Co is responsible as described in this Section 4.5, including delays to the Project Schedule arising from delays in obtaining Permits or inability to obtain Permits, conditions of obtaining Permits, or amendments to Permits as may be required. The Authority will provide Project Co with such information within the Authority's possession, and co-operate with Project Co, as Project Co may reasonably require in relation to all Permits for which Project Co is responsible.

The parties acknowledge that the Site is a portion of the Lands and that as a condition of Project Co obtaining one or more Permits for the Project the City will require that the beneficial owner or developer of such Lands carry out (to the degree to be determined by the City) the design and construction of certain works that will be located on the other portions of the Lands (the "**Other Works**").

The parties acknowledge that the specific timing of the Other Works has not yet been determined, but Project Co agrees it shall only be entitled to a Change or claim a Compensation Event directly resulting from a delay in substantial completion (acceptable to the City) of roadways, curbs and sidewalks (which for this purpose does not include the underlying utilities) if such substantial completion of such works is not achieved at least 30 days prior to the Target Service Commencement Date.

Project Co will coordinate Project Co's Design and Construction with the Other Works and will provide reasonable assistance to the person or persons carrying out the Other Works.

Project Co will provide a written report on the status of such coordination on a bi-weekly basis, and in addition when reasonably required by the Authority.

Project Co will give reasonable advance notice to the Authority of any anticipated adverse impact as a result of any failure by the person carrying out the Other Works to carry out the Other Works (to the degree to be determined by the City).

The Authority may proceed in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals] to address any failure by the person carrying out the Other Works to carry out the Other Works (to the degree to be determined by the City), to the extent such impacts are capable of being addressed in a Change Certificate or Change Directive.

This Section 4.5 does not limit any other obligations of Project Co that may be set out in this Agreement, including Schedule 3 [Design and Construction Specifications], in relation to the Other Works.

4.6 LEED Gold Certification

Project Co will obtain LEED Gold Certification for the Facility in accordance with the following:

- (a) Within 60 days of the Effective Date Project Co will register the Facility with GBC.
- (b) Project Co will, subject to this Section, achieve all necessary prerequisites, credits and points under the LEED Rating System required to achieve the LEED Gold Certification

and may in its discretion determine which of the credits and points to pursue in addition to those outlined in this Section and Schedule 3 [Design and Construction Specifications]. The Authority will provide reasonable cooperation to Project Co to assist Project Co in achieving the LEED Gold Certification.

- (c) Project Co will achieve the LEED credits/points required under Schedule 3 [Design and Construction Specifications].
- (d) All prerequisites required to achieve LEED Gold Certification are mandatory.
- (e) Energy & Atmosphere: Credit EA6 – Green Power will not be an acceptable credit.
- (f) If the requirements to achieve LEED Gold Certification under the LEED Rating System change at any time after Project Co obtains registration with the GBC in accordance with Section 4.6(a) of this Schedule, and Project Co is required to comply with such change in order to achieve LEED Gold Certification for the Facility, then Project Co will forthwith notify the Authority of such change and such change will be a Change pursuant to Schedule 6 [Changes, Minor Works and Innovation Proposals].
- (g) Project Co will compile and submit the required documents for certification.
- (h) If for any reason Project Co fails to obtain LEED Gold Certification for the Facility within 36 months of the Service Commencement Date then Project Co will, upon written demand from the Authority, immediately pay to the Authority \$100,000 for every point less than the number of points required to obtain LEED Gold Certification, to a maximum payment amount of \$500,000.
- (i) Upon payment of amounts, if any, owing under this Section 4.6 Project Co will have no further obligations or liabilities in respect of obtaining LEED Gold Certification, except to provide the Authority with such information and administrative assistance as the Authority may reasonably require in relation to obtaining LEED Gold Certification, and for greater certainty the failure to obtain LEED Gold Certification will not be a Project Co Event of Default.

4.7 LEED Project Checklist

As a condition of Service Commencement Project Co will deliver to the Authority:

- (a) a LEED project checklist, generally in accordance with GBC requirements, together with a written confirmation that, in Project Co's judgment:
 - (1) the LEED credits/points specified in Section 4.6(b) of this Schedule will be achieved for the Facility; and
 - (2) LEED Gold Certification will be achieved for the Facility as required by Section 4.6 of this Schedule; and
- (b) a written opinion from a LEED accredited professional that Project Co's confirmation under Section 4.7(a) above is reasonable.

4.8 Energy

Project Co will comply with the requirements of Appendix 2D [Energy].

4.9 Facility Threat and Risk Assessment

Project Co will, by the date specified in the Submittal Schedule, deliver to the Authority a comprehensive threat and risk assessment report for the Facility (“**Facility Threat and Risk Assessment**”) identifying specific risks and vulnerabilities to people, property and the Authority associated with the Facility and the surrounding community, and describing how the Design will mitigate these risks and vulnerabilities, including with reference to post-disaster management and security. The Facility Threat and Risk Assessment will be based on the preliminary facility threat and risk assessment included in the Proposal Extracts (Design and Construction). The Authority may provide comments on the Facility Threat and Risk Assessment within 15 Business Days of receiving it. Project Co will, acting reasonably, take account of the Authority’s comments in finalizing the Facility Threat and Risk Assessment and deliver to the Authority a copy of the final Facility Threat and Risk Assessment within 15 Business Days of receiving the Authority’s comments. Project Co will implement the risk mitigation strategies described in the Facility Threat and Risk Assessment in developing the Design.

5. DESIGN

5.1 Additional Design Considerations

In addition to other requirements of this Agreement, Project Co will undertake and perform the Design so that the Design:

- (a) is undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the Design, as of the date of this Agreement, and Project Co will appoint a design team that:
 - (1) is so qualified;
 - (2) includes (as required by applicable Law or Good Industry Practice) licensed or registered professional engineers and architects; and
 - (3) has sufficient expertise and experience to expeditiously and efficiently perform all of the Design in a proper and professional manner to the standard set out in this Agreement;
- (b) includes specific consideration of “constructability” and “life cycle” cost issues at all stages of Design, as appropriate; and
- (c) includes consideration of efficient and cost-effective operation and maintenance.

5.2 Approvals and Costs

Without limiting Section 4.5 of this Schedule, Project Co will be fully responsible to obtain and perform the obligations of, all approvals required for the Design and Construction of the Facility, any “Services Agreements”, and Project Co will be responsible for all costs incurred in relation to the following:

- (a) development cost levies;
- (b) Metro Vancouver development cost charges;
- (c) off-site service allowances;
- (d) neighbourhood energy;
- (e) conditional requirements related to completion of the Ministry of the Environment certificate of compliance to the standard for residential use; and
- (f) any other costs related to the Design and Construction or City Requirements.

5.3 Design Process

Project Co will undertake the Design:

- (a) in accordance with Appendix 2B [Consultation Process] and Appendix 2C [Design Review], including providing Submittals to the Authority in accordance with the Submittal Schedule and undertaking consultation with the Consultation Group in accordance with Appendix 2B [Consultation Process];
- (b) in phases progressively, with each phase capturing the information and detail of a previous phase, as follows:

(1) Schematic Design Phase

This phase (Schematic Design Phase) will include supplemental information not included in Appendix 2G [Proposal Extracts (Design and Construction)] and development of drawings and other documents illustrating the scale and character of the Facility, architecture and all engineering systems in sufficient detail to describe how all the parts of the Facility functionally relate to each other, such as the site plan, spatial relationship diagrams, principal floor plans, building systems, sections, and elevations; together with a written project brief.

At a minimum the following items will be addressed:

- (A) Proposal for a design vision, aesthetics, materials and building character, including Facility elevations.
- (B) How the design promotes close ties with the neighbourhood and integration with the surrounding community.

- (C) How the design promotes coherent and appropriate integration of the architectural elements and into the surrounding buildings.
- (D) Description of the provision of building services to the Facility.
- (E) Design principles: design vision, and Project Co's overall approach to achieving Facility Users' objectives, including specific characteristics of the design that will distinguish it as a university environment.
- (F) 1:500 plans: plan of the site and campus context showing building blocks and main accesses and egresses.
- (G) 1:200 plans: Site plan, focusing on access, egress and drop-offs (pedestrian, vehicle and fire trucks) and surrounding buildings.
- (H) 1:100 plans: plans of functional department blocking, layouts, building stacking and links, internal and external flow of circulation and department drawings and its integration into the adjacent buildings.
- (I) Analysis of plans for the flows of students, providers, equipment, supplies and waste including flows to and from the Facility and adjacent buildings and the ECUAD Campus.
- (J) Site and building flexibility concepts and integration into future development.
- (K) A comparison of the NSM (Net Area or Net Square Metres) (as defined in Schedule 3) and that of the proposed design on a space by space basis.
- (L) A comparison of the component gross square metres (as described in Schedule 3) and that of the proposed design on a department by department basis.
- (M) Efficient integration of Category A1 Equipment and Category A2 Equipment for optimal operations.
- (N) Description of strategy for IT and security systems and how these systems will enable and enhance functionality.
- (O) Facility Threat and Risk Assessment Report.
- (P) Sustainability report.

Before the Design Development Phase can begin, either the end of the Schematic Design phase will result in 100% Schematic Design REVIEWED status or all of the outstanding comments on a Submittal will be agreed by the Authority as not being material in nature.

(2) Design Development Phase

This phase (Design Development Phase) will include drawings and other documents, including a site plan, elevations and building and site sections, together with a written project brief detailing area calculations, detailing all building systems and outline specifications, to fully describe the size and character of the entire Facility including the architectural, landscaping, civil, structural, mechanical, electrical and IT systems, materials and other elements.

At a minimum the following items will be addressed:

- (A) Developed Design, including context plan, Phasing Plan, site plan, all floor plans and a roof plan.
- (B) Developed exterior elevations of the buildings, cross-sections, including indication of surface materials for all areas.
- (C) Developed integration of exterior spaces, including courtyards, vehicle access/egress (including drop-off and pick-up access to parking, temporary parking, parking numbers, etc.).
- (D) Developed interior concepts and key interior elevations, colours and materials.
- (E) Relevant draft policies and plans as required by Schedule 4, including Appendix 4D [Plant Services].
- (F) Developed landscape plans including integration into the overall campus landscape plan.
- (G) Developed wayfinding system and room numbering plan for Authority use.
- (H) Preliminary energy model report showing energy consumption, the Design and Construction Energy Target and the target for LEED Gold Certification.
- (I) Update of 1:100 scale drawings based on the comments from the Schematic Design Phase.
- (J) 1:100 plans of every level to include all program and non-program colour coded and numbered coordinated with Appendix 3A and Room Data Sheets.
- (K) 1:50 plans showing all rooms with dimensions, including interior elevations and reflected ceiling plans, with all furniture and all equipment shown and including mechanical and electrical layouts, clearance and service requirements. Plans will include notations confirming ceiling heights.
- (L) A full lighting and switching layout for each room and floor plate.

- (M) Develop interior finishes (flooring, walls, wall protection and ceiling finishes) for all rooms and floor plates, including three options for interior finishes' colour and materials selection boards.
- (N) Verification of the impact of the layout of the premises on the flows of students, providers, equipment, supplies and waste.
- (O) Efficient integration into the plans of all equipment and furniture for optimal operations.
- (P) Effective integration of all millwork and systems furniture.
- (Q) Door controls and hardware concepts/strategies.
- (R) Review of security strategies, systems and equipment, including updated security systems floor plans and equipment details and locations of all equipment, connection points and control points.
- (S) Review of IT and telecom detailed plans, systems and equipment.
- (T) Review of detailed plans for post disaster management.
- (U) A comparison of the NSM (Net Area or Net Square Metres) (as defined in Schedule 3) and that of the proposed design on a space by space basis at the room level.
- (V) A comparison of the component gross square metres (as described in Schedule 3) and that of the proposed design on a department by department basis.

At a minimum the following items will be addressed for the technical aspects of the Facility and any other submission that the Authority reasonably requires:

- (W) 1:100 plans of all levels including the roof plan and penthouse showing all requirements previously listed and in addition providing an indication of fire areas, fire walls and smoke zones.
- (X) Main engineering component drawings that relate to the connection of municipal infrastructures and public services.
- (Y) Main engineering component drawings that relate to equipment infrastructure.
- (Z) Main engineering component drawings that relate to the mechanical system.
- (AA) Main engineering component drawings that relate to the electrical system.

- (BB) Main engineering component drawings that relate to the plumbing system.
- (CC) Main engineering component drawings that relate to landscaping, exterior lighting, storm water retention.
- (DD) Main engineering component drawings that relate to the structural system.
- (EE) Main engineering component drawings that relate to the life safety system.
- (FF) Drawings indicating future engineering system flexibility.
- (GG) Redundancy and spare capacity calculations.

At a minimum the following items will be addressed for IT:

- (HH) Main component drawings that relate to all IT.

(3) Construction Documents Phase

This phase (Construction Documents Phase) will include construction documents consisting of drawings and specifications describing in detail the requirements for the construction of all components, systems and equipment of the Facility delivered to the Authority:

- (A) at 50% completion; and
- (B) at 95% completion,

in accordance with the Submittal Schedule, in a timely way in advance of Construction with sufficient detail to permit the Authority to understand and assess the Design of the Facility.

If Project Co intends to proceed with construction of an element of the Facility in advance of the completion of the design of the entire Facility then Project Co will deliver the 50% and 95% construction documents for that element (with sufficient accompanying detail to permit the Authority to understand and assess the design of that element) in advance of the design documents for other elements of the Facility.

- (c) so that in each phase, Project Co will provide to the Authority the level of detail and documentation that the Authority would customarily receive or expect to receive for a facility similar to the Facility in accordance with Good Industry Practice, including (as applicable to a particular phase):

- (1) dimensioned floor plans and elevations showing all millwork;

- (2) furniture, Category A1 Equipment and Category A2 Equipment, and systems furniture;
- (3) interior elevations for all rooms and spaces, including all interior finishes, millwork, IT, mechanical and electrical;
- (4) exterior building elevations;
- (5) completed site and landscaping plans;
- (6) room finish schedules;
- (7) Room Data Sheets;
- (8) reflected ceiling plans;
- (9) written reports detailing and describing the manner in which the following have been taken into account in the Design:
 - (A) operations and delivery including the following flows: Facility Users, service providers, equipment, supplies, waste and recycling;
 - (B) LEED Gold Certification, including energy efficiency/sustainability and the relevant LEED project checklist and points;
 - (C) interior, exterior materials selection;
 - (D) constructability;
 - (E) Life Cycle Requirements;
 - (F) the Facility Threat and Risk Assessment including security and post disaster management;
 - (G) building operating services;
 - (H) IT;
 - (I) audio visual;
 - (J) a comparison of the NSM (Net Area or Net Square Metres) (as described in Schedule 3) and that of the proposed design on a space by space basis;
 - (K) a comparison of the component gross square metres (as described in Schedule 3) and that of the proposed design on a department by department basis;
 - (L) vertical transportation analysis;

- (M) code report;
 - (N) outline commissioning program; and
 - (O) any other report submittals the Authority reasonably requires; and
- (10) clearly identifying sections for:
- (A) architectural design;
 - (B) site development;
 - (C) landscaping;
 - (D) structural design;
 - (E) mechanical design;
 - (F) electrical design; and
 - (G) sustainable design.

Project Co will only issue drawings and specifications for construction purposes based on Reviewed Drawings and Specifications as described in Appendix 2C [Design Review].

This Section 5.3 does not limit Project Co's obligation to comply with any requirements set out in the Design and Construction Specifications in relation to the stages and requirements for Design.

5.4 Design Change

The following will apply to the Authority's requests for amendments to the Facility design:

- (a) revisions to drawings, specifications, equipment and additional Design requested by the Authority under the processes described in Section 5 of this Schedule and in Appendix 2C [Design Review] are not Changes and will be completed at Project Co's cost (except to the extent that any such requested revision would constitute a material change to the Design and Construction Specifications, the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply and such revision will not be implemented except under a Change Certificate issued by the Authority); and
- (b) if and to the extent the Authority requires a variation of any Design described in the Reviewed Drawings and Specifications (other than a variation required to bring the Design into conformity with this Agreement), then such variation will be a Change and the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.

5.5 Mock-Ups and Prototype Rooms

Project Co will, at its cost and as part of the design review process described in Appendix 2C [Design Review], provide and make available to the Authority for review the "mock-ups" and "prototype" rooms described in this Section 5.5. Project Co will include dates on the Submittal Schedule for construction of

and for Authority review of mock-ups. The time periods for Authority review and comments on Submittals set out in Appendix 2C [Design Review] will apply to mock-ups.

- (a) at a date to be agreed between the Authority and Project Co, at a minimum Project Co will provide 1:1 paper scale mock-ups, or computer generated 3D models in a form acceptable to the Authority, of the following rooms/areas indicating the dimensions and sizing and location of millwork, services, equipment and furniture and configuration and headwalls:
- (1) informal study pods (in conjunction with a major circulation hallway);
 - (2) individual study nodes;
 - (3) a small, medium and large classroom;
 - (4) typical faculty office;
 - (5) student services office and workstations;
 - (6) conference/meeting rooms;
 - (7) senior studio spaces;
 - (8) foundation lab;
 - (9) computer lab;
 - (10) shop fabrication zones;
 - (11) photo lab;
 - (12) server room(s);
 - (13) motion capture studio;
 - (14) radio broadcasting;
 - (15) library check-out/control;
 - (16) main reception counter;
 - (17) AV services workstation(s)/studiotech workstation(s);
 - (18) president's lounge;
 - (19) academic admin/dean(s) office;
 - (20) learning commons;
 - (21) Teaching and Learning Centre;
 - (22) Artist's Books Room;

- (23) Writing Centre;
 - (24) Library Service desk;
 - (25) Sound Editing suite;
 - (26) Critique and Screening Room;
 - (27) Multi Purpose Teaching and Screening Room;
 - (28) Senior Digital Lab;
 - (29) media centre and service desk; and
 - (30) digital output centre.
- (b) At a date to be agreed between the Authority and Project Co, at a minimum Project Co will provide fully constructed mock-ups of certain rooms to be agreed between the Authority and Project Co, which may include the following rooms/areas (at a location either within the Facility as it is under construction or at another location provided by Project Co near the Facility), including all actual materials, finishes, millwork, services, equipment, IT and furniture and locations of mechanical, electrical elements included in the design of the room/area so that the Authority and the Consultation Group can experience all features of the Design and make Design decisions:
- (1) individual study nodes;
 - (2) typical faculty office;
 - (3) student services office and workstations;
 - (4) computer lab;
 - (5) photo lab;
 - (6) server room(s);
 - (7) motion capture studio;
 - (8) radio broadcasting;
 - (9) library check-out/control;
 - (10) main reception counter;
 - (11) AV services workstation(s)/studiotech workstation(s);
 - (12) academic admin/dean(s) office; and
 - (13) media centre and service desk.

- (c) During Construction, at a date to be agreed between the Authority and Project Co, at a minimum Project Co will construct an in-situ “prototype” of certain rooms to be agreed between the Authority and Project Co, which may include the following rooms and make each prototype available to the Authority at appropriate stages of construction so that the Authority and the Consultation Group can review the prototype room/area (including all materials, services, millwork, finishes, equipment and furniture IT and locations of mechanical, electrical elements) in its actual location within the Facility at various stages of construction, and consider whether any design adjustments are necessary:
- (1) informal study pods (in conjunction with a major circulation hallway);
 - (2) a small, medium and large classroom;
 - (3) conference/meeting rooms;
 - (4) senior studio spaces;
 - (5) foundation lab;
 - (6) shop fabrication zones;
 - (7) president’s lounge;
 - (8) learning commons;
 - (9) Teaching and Learning Centre;
 - (10) Artist’s Books Room;
 - (11) Writing Centre;
 - (12) Sound Editing suite;
 - (13) Critique and Screening Room;
 - (14) Multi Purpose Teaching and Screening Room;
 - (15) Senior Digital Lab; and
 - (16) digital output centre.

Equipment and furniture may be actual pieces or replicas, but must accurately represent the actual physical dimensions.

Project Co will modify the mock-ups and prototypes as may be required as the Design develops based on feedback from the Consultation Groups and the Authority.

The purpose of the mock-ups and prototypes is to illustrate the Design. Neither party may rely on the mock-ups and prototypes. Project Co will update all Design documentation to reflect the mock-ups and

prototypes, and any input from the Authority, including the Consultation Group, and will submit all such updated Design documentation to the Authority for review under Appendix 2C [Design Review].

Project Co will provide a site for the mock-ups and prototypes in the City of Vancouver unless otherwise agreed by the Authority.

5.6 Ownership of Design

With respect to ownership and property rights relating to the Design:

- (a) the Authority will not have an ownership interest in the Design, including any of the drawings or specifications prepared and produced by Project Co, the Design-Builder or any Sub-Contractor;
- (b) Project Co grants to the Authority, or will cause the Design-Builder and all Sub-Contractors to grant to the Authority, an irrevocable perpetual license giving the Authority the non-exclusive right to use the Design, including any of the documents and information listed in Section 6.25 of this Schedule:
 - (1) in connection with the Facility during and beyond the end of the Term and as long as the Facility exists, including for operational purposes during the Term and for renovations, additions and alterations to the Facility; and
 - (2) for reference purposes in connection with other operations, projects and facilities of the Authority; and
- (c) Project Co will execute and deliver, or cause to be executed and delivered, any and all further and other documents as the Authority may reasonably request to effect and record the license referred to in Section 5.6(b) of this Schedule.

5.7 Record of Adjustments to Design and Construction

The parties wish to create a single record of adjustments to the Design and Construction that are reflected in the Reviewed Drawings and Specifications, but which do not constitute Changes for which there are adjustments to payments or the Target Service Commencement Date. The adjustments include all inconsistencies with or differences from the Design and Construction Specifications, the Proposal Extracts, this Schedule 2 and any other parts of this Agreement. Project Co will maintain a list of all such adjustments, to be referred to as "Adds/Omits" or other name agreed to by the parties. Project Co will provide a copy of such list, and proposed updates to the list, together with each of the phases of Design set out in Section 5.3 above, and will modify the list for reasonable comments made by the Authority. The parties intend to agree on documentation to reflect such adjustments and may for convenience set out such adjustments in a Change Certificate. Unless otherwise agreed, at least 90 days prior to the Service Commencement Date, Project Co will provide the Authority with a draft Change Report, without adjustments to payments or to the Target Service Commencement Date, setting out such adjustments, and the parties will seek to agree on final documentation within 30 days after the Service Commencement Date. For convenience in preparing and maintaining a record of adjustments, the parties will also seek to agree on such documentation on a preliminary basis at two reasonable times prior to Service

Commencement. This Section 5.7 will not limit Project Co's responsibilities to provide the documentation set out in Section 6.25 of this Schedule.

6. CONSTRUCTION

6.1 Construction of the Facility

Project Co will perform the Construction in strict conformity with the Reviewed Drawings and Specifications, as may be modified and amended from time to time in accordance with the terms of this Agreement, and this obligation will be in addition to all other obligations of Project Co under this Agreement.

6.2 Amendments and Changes to the Drawings and Specifications

During the Construction, Project Co will submit all amendments or additions to the Reviewed Drawings and Specifications to the Authority's Design and Construction Representative for review under Appendix 2C [Design Review].

Any Changes during the Construction will be subject to the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals].

6.3 Skilled Workers

Project Co will employ or cause the Design-Builder to employ a sufficient number of sufficiently skilled workers to perform the Construction in compliance with this Agreement. Trades and other workers will be licensed or registered as required by applicable Law or Good Industry Practice.

6.4 Control of the Construction

Project Co will have total control of the Construction and will effectively direct and supervise the Construction so that it is undertaken in compliance with the terms of this Agreement. Project Co will be responsible for all construction means, methods, techniques, sequences and procedures with respect to the Construction and for coordinating the various elements of the Construction, and nothing in this Agreement (including this Schedule) will be interpreted as giving any responsibility for the above to the Authority, the Authority's Design and Construction Representative or any other representative or agent of the Authority, or to the Independent Certifier.

6.5 Existing Utilities and Services

Project Co will confirm the location of, and protect all existing utilities and services that may be affected by the Construction.

Project Co will relocate any existing utilities and services on, in, under or over the Site that conflict with Construction.

6.6 Site Investigation

By entering into this Agreement, Project Co will be deemed to have inspected the Site and the ECUAD Campus in relation to the performance of its obligations under this Agreement and to have satisfied itself

and accepted all risks and related responsibilities relating to the Site and the ECUAD Campus (except as expressly provided to the contrary in this Agreement) including:

- (a) the adequacy of the rights of access to and through the Site for the Construction;
- (b) vehicular access and parking on the Site;
- (c) Project Co shall satisfy itself as to the location and adequacy of any construction staging and any temporary utility or service connections required for construction. Adjacent lands, other than those that may be licensed to the Authority by the owner of the adjacent lands, will be subject to Project Co obtaining rights from the owner of the adjacent lands, including responsibility for any financial consideration as may be required. Project Co will be responsible for obtaining agreements, as required, for temporary service connections for construction;
- (d) existing utilities and services on the Site and on the ECUAD Campus, including timing and adequacy of new utilities and services;
- (e) geotechnical conditions; and
- (f) conditional requirements related to completion of the Ministry of the Environment certificate of compliance to the standard for residential use.

6.7 Change to Neighbourhood Energy Utility

The Authority acknowledges that the Design and Construction proposed by Project Co as of the Effective Date assumes that energy will be supplied by a neighbourhood energy utility located off the Site, with connections to the Facility. If the neighbourhood energy utility does not provide such energy as assumed, Project Co may require a Change under Schedule 6 [Changes, Minor Works and Innovation Proposals], including if required to provide for or to accommodate a boiler and to address or mitigate any impacts that Project Co may demonstrate to its obligations under this Agreement in respect of LEED Gold Certification. Nothing in this Section 6.7 limits Project Co's rights to claim a Relief Event under paragraph (b) of the definition of "Relief Event".

6.8 Geotechnical Report

The Authority has made available the Geotechnical Report. The Authority makes no representation whatsoever as to the accuracy or completeness of any information in the Geotechnical Report and Project Co specifically acknowledges that the Authority assumes and accepts no responsibility that the geotechnical information, as may be available in the Geotechnical Report, is accurate or completely describes actual site conditions including geotechnical or soil conditions (including presence of boulders, rock, low-strength soil and voids) and ground water conditions (including presence of underground streams or water table conditions) that may affect the Design or Construction or other responsibilities of Project Co under this Agreement.

6.9 Site Issues

Project Co will:

- (a) carry out the Construction in accordance with a phasing plan (the “**Phasing Plan**”) that includes the details for Project Co’s phasing of all parts of the Construction, including:
- (1) provide hoarding with visible access to the construction site and with the capacity to support the application of art and design banners around the perimeter of the site;
 - (2) Site preparation;
 - (3) Construction of the Facility, including:
 - (A) the requirements and timing for construction and commissioning (including all systems and equipment) for each room;
 - (B) temporary signage plans during construction;
 - (C) providing temporary safe and convenient handicapped accessible pedestrian and vehicle access routes/walkways; and
 - (D) addressing all requirements of the Design and Construction Specifications,

and Project Co will submit the Phasing Plan to the Authority not less than 30 days after the Effective Date and will not proceed until the Phasing Plan has received the notation “Reviewed” under Appendix 2C [Design Review];
- (b) comply with the reviewed Phasing Plan;
- (c) construct the Facility within the Site;
- (d) perform all Construction activities on the ECUAD Campus within the areas identified as the Site on Appendix 2H [Site Plan];
- (e) cause Project Co Persons, Construction workers and suppliers to enter or exit the Site only at the access routes approved by the Authority;
- (f) take reasonable steps to ensure that Construction workers or suppliers do not
- (1) use any streets within 1km of the Site for vehicular parking;
 - (2) interfere with regular vehicle circulation routes; or
 - (3) interfere with occupants of adjacent lands.
- (g) provide a 24-hour hotline (and post the phone number in a prominent location on the Site) for:
- (1) Authority staff to notify Project Co of any Construction related emergencies; and
 - (2) neighbours and passers-by to contact Project Co;

and Project Co will respond to any phone calls made on the hotline within 1 hour;

- (h) provide a community liaison officer to provide a single point of contact regarding construction and development issues;
- (i) from the commencement of Construction until Service Commencement, provide a high quality colour webcam service with one or more webcams that are linked to the Authority's public website for the Project and that provide frequently refreshed high quality images showing the Construction activities at the Site without compromising construction site security, with Project Co to install cameras and supporting infrastructure and services (including internet service), and such installation will supply still shot images at suitable intervals to assemble a video record of the construction of the Project; and
- (j) before commencing the Construction, prepare and implement in co-operation with the Authority a construction fire safety plan and emergency response plan for the Project, which plan will describe emergency access routes to and from the Facility and the ECUAD Campus during an emergency.

6.10 [Not Used]

6.11 [Not Used]

6.12 The Authority's Access to the Site

Subject to complying with all relevant safety procedures, including any relevant health and safety plans for the carrying out of the Construction, Project Co's safety policies and procedures and Project Co's and/or the Design-Builder's Site rules, the Authority's Design and Construction Representative and its delegates and any other person designated by the Authority will have access at all reasonable times during normal working hours to:

- (a) attend the Site and view the Construction and any test or investigation being carried out in respect of the Construction;
- (b) access the Site for all reasonable purposes of the Authority; and
- (c) subject to obtaining the consent of the relevant manufacturer or supplier (which Project Co will use all reasonable efforts to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Construction for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Construction.

The Authority's Design and Construction Representative and its delegates will have the right to attend all monthly progress meetings and Site meetings, including meetings between Project Co and the Design-Builder or its Sub-Contractors.

Project Co will cooperate with the Authority to arrange for tours of the Site at reasonable times during Construction, in a way that does not interfere with the progress of the Construction.

Except as set out above or as otherwise provided for in this Agreement, the Authority will not grant any person access to the Site or Facility during the Construction Period without the consent of Project Co, such consent not to be unreasonably withheld or delayed.

6.13 Inspection

Prior to the Service Commencement Date, Project Co will, upon request by the Authority's Design and Construction Representative including detailed reasons for the request, open up for inspection by the Authority's Design and Construction Representative any part of the work on the Facility which the Authority's Design and Construction Representative, acting reasonably, believes is defective and:

- (a) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are no Defects in the relevant part of such work, and Project Co complied with the requirements of Section 3.6 of this Schedule, then any delay caused by the exercise of such rights will be treated as a Compensation Event and be subject to Section 8.3 of this Agreement;
- (b) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that any relevant part of the work on the Facility is defective, then:
 - (1) Project Co will rectify and make good such Defect(s);
 - (2) any consequence of such rectification or making good Defect(s) will be carried out by Project Co at no cost to the Authority; and
 - (3) Project Co will not be entitled to any extension of time to the Project Schedule in relation to such rectification and making good of such work; and
- (c) if the parties are unable to reach agreement in accordance with Sections 6.13(a) or (b) above, then the matter will, at the request of either party, be referred to the Dispute Resolution Procedure. If, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of the matter in Dispute, the parties will proceed in accordance with the position of the Authority, provided that Project Co proceeding in accordance with the Authority's position will be a Compensation Event if the relevant matter in Dispute is determined in favour of Project Co.

6.14 Builders Lien Act and Builders Liens

With respect to builders liens and the requirements of the *Builders Lien Act* (British Columbia):

- (a) the Authority will not have any responsibility to be the payment certifier under any contract related to Construction;
- (b) Project Co will make all required builders lien holdbacks;
- (c) no builders lien holdback will be retained by the Authority under this Agreement;

- (d) if it is determined that any builders lien holdback is required to be retained by the Authority, then Project Co agrees that it is making and will make all of its required holdbacks as agent for the Authority;
- (e) Project Co will indemnify the Authority from any damages, costs, claims and expenses of any kind, including actual solicitors costs, arising from the failure of the Authority to retain a builders lien holdback; and
- (f) failure to hold back payment of amounts due to any Person in accordance with section 4 of the *Builders Lien Act* (British Columbia) will not constitute a Project Co Event of Default.

6.15 Safety

Project Co will be solely responsible for safety during the Construction Period, including the safety of all persons on the Site and any other location where the Construction is performed (whether on the Site or other location lawfully or not) and members of the public, and will comply with the requirements of applicable Laws, applicable construction safety legislation, regulations and codes and Good Industry Practice. Project Co will immediately notify the Authority of any accident and will provide the Authority with all accident reports within 48 hours.

6.16 Protection of Property

Project Co will:

- (a) protect the Authority's property (and any third party's property) from damage caused by the Construction, including buildings, roadways, drainage systems, landscaping, surfaces, services and infrastructure; and
- (b) promptly repair any damage to property caused by Project Co in undertaking the Construction, including any damage caused by site settlement or ground vibration.

6.17 Survey and Monitoring

Project Co will:

- (a) prior to start of any Construction, conduct a pre-construction survey of the Site and pre-construction surveys of all adjacent properties, infrastructure, roadways (including all underground services and installations) within a radius required by the Authority and in a form and detail satisfactory to the Authority, acting reasonably, and deliver a copy of the pre-construction survey reports to the Authority; and
- (b) conduct monitoring surveys at monthly intervals throughout the Construction Period until structure is complete and at 12 months following Service Commencement, and deliver monitoring surveys to the Authority in a form and detail satisfactory to the Authority, acting reasonably.

The monitoring will include of all locations identified in the Design and Construction Specifications.

6.18 [Not Used]**6.19 Noise Control**

Project Co will minimize and limit noises and disturbances to occupants of adjacent lands and the adjacent community.

6.20 Pest Control

Project Co will provide and implement a pest control strategy and necessary control measures, including to address any pest control concerns arising as a result of proximity to nearby railway lands.

6.21 Control of Dust and Noxious Odours

Project Co will take all reasonable steps (including any specific steps reasonably required by the Authority) to minimize dust, and noxious odours (including diesel exhaust) from the Construction (including any demolition and preparation of the Site).

6.22 Signage

Project Co may erect signage at the Site during Construction to identify Project Co, the Design-Builder and Project Contractors provided such signs are acceptable to the Authority's Design and Construction Representative, acting reasonably.

6.23 Temporary Works

During the Construction Period, Project Co will:

- (a) have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use; and
- (b) provide its own services necessary for Project Co's construction use including but not limited to power, telephone, water and sewage.

6.24 Project Meetings

Without limiting the obligations pursuant to Section 2.6 of this Schedule in respect of the Construction Period Joint Committee, at the Authority's request, Project Co's Design and Construction Representative will attend meetings to update the Authority on the progress of Construction and to discuss any issues that have arisen. The meetings will be at least weekly unless agreed otherwise by the Authority.

6.25 Project Records

Notwithstanding any other provision of this Agreement:

- (a) Record Documents:

- (1) Project Co will, throughout the Construction, update the Reviewed Drawings and Specifications, including all final shop drawings, so as to produce accurate and complete record documents for the Facility (the "Record Documents").
- (2) The Record Documents will include all revisions permitted under this Agreement to the requirements of the Design and Construction Specifications, the Project Extracts (Design and Construction) or other provisions of this Agreement.
- (3) Project Co will cause the Record Documents to be prepared by the Architect unless otherwise agreed by the Authority.
- (4) Project Co will, as requested from time to time during the Construction, provide to the Authority the Record Documents in hard copy and in electronic copy in a format acceptable to the Authority (individual file pdf and electronic format (AutoCAD) complete with block references intact and attached and with individual files identified with drawing/specification name and number), including to permit the Authority to monitor Project Co's compliance with the requirements of this Agreement and for the Authority's operational and other uses.
- (5) Project Co will provide to the Authority three full-size hard copies and two electronic copies in a format acceptable to the Authority (individual file pdf and electronic format (AutoCAD) complete with block references intact and attached and with individual files identified with drawing/specification name and number) of the completed Record Documents on or before Service Commencement.
- (6) Project Co will provide and update, as applicable, the Record Documents during the Operating Period in accordance with Schedule 4 [Service Protocols and Specifications].

Project Co will submit all electronic copies in compliance with the standards established by the Authority from time to time for electronic copies.

(b) Maintenance Manuals: Project Co will:

- (1) on or before Service Commencement, make available all maintenance manuals, specifications, warranties and related information, in written and electronic form, for all the equipment and systems that have been included in the Design and Construction of the Facility for review by the Authority's Design and Construction Representative; and
- (2) organize and store such information in accordance with Schedule 14 [Records and Reports];

(c) Design Records: Project Co will retain records of the Design process;

(d) Minutes of Meetings: Project Co will retain minutes of all meetings between the Authority and Project Co relating to the Design and Construction. Project Co will circulate such minutes to the Authority's Design and Construction Representative for review and

comment within the time period specified in this Agreement for the particular meeting or if no time period is specified then as soon as reasonably possible after the relevant meeting, and a reasonable period before any subsequent meeting so that all parties may consider the minutes and take required actions in advance of the subsequent meeting;

- (e) Inspection Reports and Tests Results: Project Co will retain official reports and certified test records of all inspections and tests which were undertaken as part of the Construction;
- (f) Monitoring Results: Project Co will retain all survey and monitoring records obtained in connection with Section 6.17 (Survey and Monitoring);
- (g) Utility Plans: Project Co will retain utility plans for the Facility and the Site;
- (h) Landscape and Irrigation Plans: Project Co will retain landscape and irrigation plans for the Facility and the Site;
- (i) Copies of all Permits: Project Co will retain copies of all Permits for the Construction and occupation of the Facility; and
- (j) Signed Quality Assurance Plan: Project Co will retain a signed copy of the Quality Assurance Plan for the Construction and all records of the Quality Assurance Program implemented as required by this Agreement.

7. EQUIPMENT SUPPLY AND INSTALLATION

7.1 Design and Construction Requirements

The parties will comply with Appendix 2E [Equipment and Furniture].

Without limiting Appendix 2E [Equipment and Furniture], Project Co will complete the Design and Construction to accommodate in the Facility the installation, operation, repair and maintenance of all the Equipment, including as required all electrical and plumbing connections, structural support, seismic restraints and space for efficient access, all to the tolerances and specifications as may be specified and required by the manufacturers or suppliers of such equipment (which may be of a higher standard than specified in Schedule 3 [Design and Construction Specifications]).

Any items of equipment or systems referred to in the Design and Construction Specifications that are not specifically listed in the Equipment List referred to in Appendix 2E [Equipment and Furniture] are the sole responsibility of Project Co to be supplied and included as part of the Facility.

7.2 Asset Tagging

Project Co will, in consultation with the Authority, affix an Authority approved asset identification tag to each piece of equipment installed in the Facility, including:

- (a) all Equipment (excluding Category F1 Equipment, Category F3 Equipment and non-physical Equipment such as software licences); and

- (b) all mechanical, HVAC and communications systems equipment.

Each asset identification tag with include a unique numerical identifier.

7.3 Asset Register

Project Co will create, maintain, update and share with the Authority, an asset register of all equipment installed in the Facility (the “**Asset Register**”), including:

- (a) all Equipment (excluding Category F1 Equipment and Category F3 Equipment); and
- (b) all mechanical, HVAC and communications systems equipment.

For each item of equipment recorded on the Asset Register, Project Co will, as applicable, record the following information:

- (c) make, model and device type;
- (d) equipment item number;
- (e) asset tag number;
- (f) serial number;
- (g) purchase order or equipment purchase contract identifier;
- (h) equipment supplier and contact information for the equipment supplier;
- (i) installed location (room number);
- (j) date installed;
- (k) anticipated replacement date or timeframe;
- (l) warranty start date and expiry date;
- (m) required utility, HVAC, or other connections; and
- (n) any other information that may be agreed upon by the Authority and Project Co.

8. QUALITY MANAGEMENT

8.1 Quality of the Design and Construction

Project Co is solely responsible for the quality of the Design and Construction.

8.2 Quality System

Project Co acknowledges that a comprehensive Quality System is critical for the proper and timely completion of the Design and Construction and accordingly Project Co will implement and follow a Quality System.

8.3 Project Co's Quality Consultant

Project Co will appoint a qualified expert in quality management ("**Project Co's Quality Consultant**") to develop, implement and oversee a Quality Assurance Program and Quality Assurance Plan. Project Co will not permit Project Co's Quality Consultant to perform any role in the Design and Construction except for the role described in this Section 8.

8.4 Quality Assurance Program

Project Co's quality assurance program (the "**Quality Assurance Program**") will:

- (a) detail Project Co's measures required to complete all aspects of the Design and Construction pursuant to its Quality System and in accordance with the requirements of this Agreement including this Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications];
- (b) address and be applicable to all aspects of the Design and Construction;
- (c) provide for a graded approach to quality in which the appropriate level of quality assurance requirements for various elements of the Design and Construction are defined;
- (d) describe or comply with the following:
 - (1) the required quality level for each process or activity involved in the Design and Construction and the means of achieving it;
 - (2) the steps to ensure that everyone participating in the Design or Construction is committed to the Quality Assurance Program;
 - (3) the steps to ensure that the management and organizational structure and responsibilities are defined and understood by everyone participating in the Design or Construction;
 - (4) require that all persons participating in the Design or Construction are competent to do their required tasks;
 - (5) require that individuals involved with the Quality Assurance Program will be held accountable for their work;
 - (6) provide that the right people will have the right information at the right time;
 - (7) provide that relevant experience for each process or activity will be sought and used;
 - (8) Design and Construction activities are planned and controlled;
 - (9) the right items, processes, and practices will be used;

- (10) materials and services are verified to confirm that they are correct; persons giving verification will be sufficiently qualified and will be independent from those who perform or install the materials or services;
- (11) peer reviews and inspections will be performed on structured planned basis on all elements of the Design and Construction and:
 - (A) errors and deficiencies will be identified and recorded;
 - (B) errors and deficiencies remedied or corrected and a record maintained of the remedy or correction, and
- (12) maintain records as required by this Agreement;
- (e) provide for design verification in accordance with Good Industry Practice;
- (f) provide that professionals of record will:
 - (1) carry out on-site reviews, review materials testing and inspector's reports, undertake required surveying, measuring, and verification of materials and construction methods to ensure conformance with the Reviewed Drawings and Specifications and the Design and Construction Specifications; and
 - (2) provide a letter of assurance that is an attestation that the Design and Construction has been performed in accordance with the Reviewed Drawings and Specifications and the Design and Construction Specifications.

8.5 Quality Assurance Plan

Project Co will develop a reasonable quality assurance plan (the "**Quality Assurance Plan**") that describes the implementation of the Quality Assurance Program in accordance with the following:

- (a) Project Co will deliver to the Authority a preliminary draft of the Quality Assurance Plan (that is based on the preliminary quality assurance plan included in the Proposal Extracts (Design and Construction)) not less than 20 Business Days after the Effective Date, failing which, the Authority will be entitled to make a Deduction of \$2,500 for each week or part thereof after the date falling 20 Business Days after the Effective Date until Project Co has delivered to the Authority a preliminary draft of the Quality Assurance Plan but if Project Co has not delivered to the Authority a preliminary draft of the Quality Assurance Plan by the date falling 40 Business Days after the Effective Date, the Deduction applicable under this Section 8.5(a) will increase to \$5,000;
- (b) the Authority will provide its comments, if any, on the preliminary draft to Project Co within 20 Business Days of receipt of the preliminary draft;
- (c) Project Co will deliver a revised draft of the Quality Assurance Plan to the Authority not less than 20 Business Days after receiving the Authority's comments, failing which, the Authority will be entitled to make a Deduction of \$5,000 for each week or part thereof after the date falling 20 Business Days after the Authority's comments were received by Project

Co until Project Co has delivered to the Authority a revised draft of the Quality Assurance Plan;

- (d) the Authority will, within 15 Business Days of receipt of the revised draft, advise Project Co whether the Authority accepts the Quality Assurance Plan, and if the Authority does not accept it the Authority will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (e) if the Authority does not accept the Quality Assurance Plan, the parties will, acting reasonably, diligently work together with a view to revising the Quality Assurance Plan to address the Authority's reasons for non-acceptance;
- (f) if the Authority has not accepted the Quality Assurance Plan by the date that is 90 Business Days after the Effective Date, Project Co may refer the dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Quality Assurance Plan is reasonable;
- (g) any Deduction the Authority is entitled to make pursuant to Section 8.5(a) or Section 8.5(c) of this Schedule will be made from the first Service Payment payable to Project Co pursuant to Schedule 8 [Payments]; and
- (h) Deductions made pursuant to this Section 8.5 will not be counted for the purposes of Sections 11.1 or 12.1(g) of this Agreement or Sections 6.7 or 6.8 of Schedule 4 [Services Protocols and Specifications].

Project Co will promptly implement and strictly comply with the Quality Assurance Plan developed under this Section.

8.6 Reporting

Project Co will deliver to the Authority a monthly report of the Quality Assurance Plan prepared by Project Co's Quality Consultant covering all aspects of the Design and Construction completed in the reporting period that are relevant to the Quality Assurance Plan. Project Co will highlight any deficiencies identified and corrective actions taken to address such deficiencies during the period covered by such report. The report will include all supporting documentation including field reviews, photographs, reports and other material.

8.7 Quality Review by the Authority

The Authority may, at its discretion, perform its own audits of the Quality Assurance Program and for that purpose Project Co will make available for review by the Authority, upon request from the Authority, all records of the Quality Assurance Program and the Quality Assurance Plan to permit the Authority to be satisfied that Project Co is following its Quality Assurance Plan.

9. WORKERS COMPENSATION

9.1 Evidence of WorkSafe BC Compliance

Project Co will provide evidence, satisfactory to the Authority's Design and Construction Representative, of compliance by Project Co and all Project Contractors with the requirements of the *Workers Compensation Act*, as amended, and all regulations and successor legislation thereto, including payments due thereunder at the following times:

- (a) prior to commencing the Construction; and
- (b) at any time during Construction, upon request of the Authority's Design and Construction Representative acting reasonably.

9.2 Indemnity for WorkSafe BC Non-Compliance

If Project Co or anyone employed by or through Project Co in the performance of any Construction does not comply with the requirements of the *Workers Compensation Act*, as amended, and all regulations and successor legislation thereto, including payment and deduction and remittance of any and all contributions, fees, assessments and charges required to be made pursuant to the above, Project Co will indemnify the Authority from any cost, loss, liability or obligation which the Authority may incur as a result.

9.3 Prime Contractor

For the purposes of applicable legislation and regulations, Project Co agrees to be, or will cause the Design-Builder to be, at all times during the Construction Period, the prime contractor as defined in the *Workers Compensation Act* for the Site and accordingly will comply, or will cause to be complied, with all resulting requirements and obligations including:

- (a) ensuring continuing coordination of the occupational health and safety activities of all employers on the Site, including the Authority, the Authority's Design and Construction Representative, any other contractors and everyone engaged by or through any of them;
- (b) delivering any notices of the Project as required by applicable regulations; and
- (c) complying with the obligations of a prime contractor for a multi-employer workplace as prescribed by the applicable regulations.

If for any reason WorkSafe BC (the Workers Compensation Board of British Columbia) refuses to recognize Project Co or the Design-Builder as the prime contractor then, to the extent permitted by law, Project Co will cooperate with the Authority and perform on behalf of the Authority the obligations which the Authority is required to undertake as prime contractor in connection with the Construction by virtue of the *Workers Compensation Act* and Regulations, or other statutes.

9.4 Failure to Comply with WorkSafe BC Requirements

If at any time the Construction is stopped because Project Co, or any Project Co Person providing services or work on the Project, unreasonably fails or refuses to comply with an order issued pursuant to

the *Workers Compensation Act*, then such failure or refusal will be considered a Project Co Material Breach.

10. PROJECT SCHEDULE AND SCHEDULING

10.1 Initial Project Schedule

Attached as Appendix 2F [Initial Project Schedule] is the initial project schedule (the “**Project Schedule**”), which the parties have relied upon in entering into this Agreement.

10.2 Project Schedule Updates

Project Co will, as required from time to time until Service Commencement, but no less than once per calendar month by the 15th day of each month, in consultation with the Authority update the Project Schedule so that it is at all times an accurate, reasonable and realistic representation of Project Co's plans for the completion of the Design and Construction of the Facility in accordance with the requirements of this Agreement. The updates will include:

- (a) adjustments resulting from Supervening Events and Changes, if any, as permitted by this Agreement;
- (b) best estimates of the following:
 - (1) the start and completion dates for the Design phases described in Section 5.3 of this Schedule;
 - (2) the commencement of Construction; and
 - (3) the planned start and completion dates of the major activities of Construction; and
- (c) the Target Service Commencement Date, which (except to the extent necessary to reflect adjustments made in accordance with Section 10.2(a) of this Schedule) may not be updated or otherwise changed unless the Authority, in its discretion, consents.

Project Co will deliver an updated Project Schedule monthly to the Authority and the Independent Certifier and upon delivery the updated Project Schedule (the “**Updated Project Schedule**”) will be the Project Schedule under this Agreement in substitution for the previously issued Project Schedule. If at any time the Authority does not agree with the proposed updates that may be required to the Project Schedule then the disagreement may be referred to the Dispute Resolution Procedure.

10.3 Failure to Update Project Schedule

If Project Co fails or refuses to deliver an Updated Project Schedule as required under Section 10.2 of this Schedule, then such failure or refusal will be deemed to be a Project Co Material Breach.

10.4 Compliance with Project Schedule

Project Co will undertake the Design and Construction of the Facility in compliance with the Updated Project Schedule, as may be updated pursuant to this Agreement.

10.5 Move-In Schedules

Project Co acknowledges that the Authority will rely on the Service Commencement Date as set out in the Project Schedule (as may be adjusted under Section 10.2 of this Schedule).

As soon as reasonably practicable, but in any event no later than 180 days prior to the Target Service Commencement Date, Project Co will deliver to the Authority's Design and Construction Representative a move-in schedule in respect of the Facility (the "**Facility Move-in Schedule**"), indicating the anticipated dates when such areas will become available for occupation by the Authority so as to facilitate and permit the Authority to progressively take up occupation in an efficient manner.

In order to enable the Authority to install the Authority's IT in the Facility, Project Co acknowledges that the Facility will be available to the Authority at least two months prior to the Target Service Commencement Date, and that from that date the Authority may access the Facility as reasonably required to install the Authority's IT subject to complying with all relevant safety procedures, including any relevant health and safety plans for the carrying out of the Construction, Project Co's safety policies and procedures and Project Co's and/or the Design-Builder's Site rules.

The Authority's Design and Construction Representative will advise Project Co of any key or significant moves or move-in requirements, and Project Co will, as reasonably possible, accommodate the Authority's requirements and requests. Project Co will, as may be required from time to time, update the Facility Move-in Schedule.

11. DELAYS AND ACCELERATION

11.1 Delay Costs

If, other than due to a Supervening Event or a Change, Project Co fails to achieve Service Commencement by the Target Service Commencement Date, then Project Co will reimburse the Authority for any additional out-of-pocket costs which the Authority reasonably incurs and evidences to Project Co because the Authority relied on the Facility Move-in Schedule, which are in excess of the costs which the Authority would have incurred had Project Co achieved the dates set out in the relevant move-in schedule. Notwithstanding anything contained in this Agreement (including any Schedule), the liability of Project Co for failing to achieve Service Commencement by the Target Service Commencement Date will not exceed \$10,000 per day.

11.2 Acceleration to Advance Service Commencement

If at any time the Authority determines that it requires the Construction to proceed in advance of the Updated Project Schedule then the Authority may give written notice to Project Co to provide the Authority with a written proposal to accelerate the Construction, including cost estimates and an estimate of the time saved. If the Authority acting reasonably decides to proceed with the acceleration then:

- (a) the Authority will notify Project Co in writing;
- (b) Project Co will implement the directed acceleration in accordance with its proposal;
- (c) the Authority will reimburse Project Co for costs that were described in Project Co's proposal and reasonably incurred by Project Co (but not for any other costs); and
- (d) if the acceleration involves a Change (other than to the Updated Project Schedule) then such Change will be made in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

12. COMMISSIONING AND OPERATIONAL READINESS

12.1 Testing and Commissioning

Project Co will, prior to applying for a Certificate of Service Commencement, retain a qualified independent commissioning agent (who is neither a Project Co Person nor an Affiliate of a Project Co Person; and who is acceptable to the Authority, acting reasonably), to test and commission all equipment (including Equipment on the Equipment List) and systems in the Facility to demonstrate to the Authority's Design and Construction Representative that the Facility equipment and systems, including all major systems, are operating so that the Authority may occupy the Facility for its Intended Uses and the Availability Conditions are satisfied for all Functional Units. The commissioning agent will prepare a written report to confirm the foregoing and completion of the commissioning activities scheduled in the Commissioning Plan to be completed before Service Commencement. Testing and commissioning will include the following:

- (a) a complete and successful demonstration in real time under full stress conditions for all equipment and systems that require or are provided with redundancy or spare capacity;
- (b) end to end testing and commissioning of key equipment and systems; and
- (c) testing and commissioning will have validation of proper function of equipment and systems and all points of integration between equipment and systems.

12.2 Equipment and Systems Operation and Training

Project Co will be knowledgeable on the proper use and maintenance of all equipment and systems Project Co installs in the Facility, including all equipment and systems described in the Design and Construction Specifications and any other communication systems, and will provide sufficient training and education to the Authority staff to enable the Authority to properly utilize such equipment and systems, including any training and education with respect to Equipment required under Appendix 2E [Equipment and Furniture]. The Authority will identify the relevant Authority staff and make such staff available for training at reasonable times before the Service Commencement Date. All training will be completed before the Service Commencement Date unless agreed by the Authority, acting reasonably. Training may be after Service Commencement if required by the Authority, or at the request of Project Co with the consent of the Authority, acting reasonably.

12.3 Commissioning Plan

Project Co will, in consultation with the Authority, prepare and deliver to the Authority's Design and Construction Representative and the Independent Certifier a detailed plan (the "**Commissioning Plan**") setting out the testing, commissioning, training and other activities Project Co intends to carry out to satisfy Sections 12.1, 12.2 and 12.3 of this Schedule and to achieve Service Commencement, including:

- (a) a description of all equipment, IT, individual systems and interconnected systems to be tested and commissioned before Service Commencement and the associated commissioning requirements, which will at a minimum, include a schedule and description of programming, training, and hand over;
- (b) supporting documentation, including as appropriate:
 - (1) design calculations and/or assumptions;
 - (2) manufacturer's specifications;
 - (3) identification of all equipment and systems that require or are provided with redundancy or spare capacity and that will include complete successful demonstration in real time under full stress conditions;
 - (4) identification of post-disaster requirements and protocols for all equipment and systems to be commissioned;
 - (5) a description of all systems which will be tested and commissioned for integration to other systems; and
 - (6) a description of all systems and equipment where the Authority's staff will be required to develop functional scenarios and to test and witness these functional scenarios;
- (c) a description of the training and education that Project Co intends to provide to the Authority's staff to enable the Authority to properly utilize the equipment and systems installed in the Facility, including all training and education to be completed before Service Commencement;
- (d) the name of the commissioning agent and the names of other persons to be involved in testing, commissioning and training;
- (e) a description of Project Co's system for managing records of tests, inspections, quality assurance and training;
- (f) a general description of Project Co's transition plans for handover to the Authority of the Facility at Service Commencement;
- (g) a schedule, related to the Project Schedule, showing:
 - (1) the timing of all testing and commissioning and training;

- (2) for each requirement of Service Commencement (described in Schedule 1 [Definitions and Interpretation]), the date upon which Project Co anticipates achieving the requirement;
- (3) a matrix of all equipment and systems, including all integrated Equipment and systems, and how they integrate with each other, along with an overview of the procedures that will be followed to demonstrate that integration of all equipment and systems has been and will be achieved; and
- (4) the timing and development of the functional scenarios with the Authority's staff.

The Commissioning Plan must be reasonable having regard to the requirements of Sections 12.1, 12.2 and 12.3 of this Schedule and will be developed and finalized as follows:

- (h) Project Co will deliver a preliminary draft of the Commissioning Plan to the Authority not less than 12 months before the Target Service Commencement Date, failing which, the Authority will be entitled to make a Deduction of \$2,500 for each week or part thereof after the date falling 12 months before the Target Service Commencement Date until Project Co has delivered to the Authority a preliminary draft of the Commissioning Plan, but if Project Co has not delivered to the Authority a preliminary draft of the Commissioning Plan by the date falling 9 months before the Target Service Commencement Date, the Deduction applicable under this Section 12.3(h) will increase to \$5,000;
- (i) the Authority will provide its comments, if any, on the preliminary draft Commissioning Plan to Project Co within 40 Business Days of receipt of the preliminary draft;
- (j) Project Co will deliver a revised draft of the Commissioning Plan to the Authority not less than 40 Business Days after receipt of the Authority's comments on the preliminary draft, failing which, the Authority will be entitled to make a Deduction of \$5,000 for each week or part thereof after the date falling 40 Business Days after the Authority's comments were received by Project Co until Project Co has delivered to the Authority a revised draft of the Commissioning Plan;
- (k) the Authority will, within 40 Business Days of receipt of the revised draft, advise Project Co whether the Authority accepts the Commissioning Plan, or if the Authority does not accept it, the Authority will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (l) if the Authority does not accept the Commissioning Plan, the parties will, acting reasonably, diligently work together with a view to revising the Commissioning Plan to address the Authority's reasons for non-acceptance;
- (m) if the Authority has not accepted the Commissioning Plan by the date that is 6 months before the Target Service Commencement Date, Project Co may refer the Dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Commissioning Plan is reasonable;

- (n) any Deduction the Authority is entitled to make pursuant to Section 12.3(h) or Section 12.3(j) of this Schedule will be made from the first Service Payment payable to Project Co pursuant to Schedule 8 [Payments]; and
- (o) Deductions made pursuant to this Section 12.3 will not be counted for the purposes of Sections 11.1 or 12.1(g) of this Agreement or Sections 6.7 or 6.8 of Schedule 4 [Services Protocols and Specifications].

12.4 Move Plan

Project Co will prepare and deliver to the Authority's Design and Construction Representative a detailed plan (the "**Move Plan**") setting out the coordination, planning, preparation, relocation, installation, testing, commissioning, training and other activities Project Co will carry out to satisfy Sections 10 of Appendix 2E [Equipment and Furniture], including:

- (a) a description of the specific equipment, room by room furniture layouts, Equipment Data Sheets, Room Data Sheets for the room locations of the Category H Equipment, location for workstation power/data outlets, IT equipment and wall-mounted items to be disconnected, removed, relocated, installed, tested and commissioned and the associated commissioning requirements;
- (b) supporting documentation, including as appropriate:
 - (1) design calculations and/or assumptions, signage and door keying requirements;
 - (2) manufacturer's specifications;
 - (3) identification of all equipment and systems that require or are provided with redundancy or spare capacity and that will include complete successful demonstration in real time under full stress conditions; and
 - (4) identification of post-disaster requirements and protocols for all equipment and systems to be commissioned;
- (c) the name of the commissioning agent and the names of other persons to be involved in relocation, installation, testing, commissioning and training;
- (d) a description of Project Co's system for managing records of equipment inventory, installation, tests, commissioning, inspections, quality assurance and training;
- (e) a general description of Project Co's relocation plans and any other transition plans required in order to coordinate the move, installation and commissioning of Category H Equipment, office contents and wall-mounted items to the Facility;
- (f) a schedule, related to the Project Schedule, showing:
 - (1) the timing of all planning, disconnecting, removal, moving, installation, testing and commissioning and training;

- (2) a matrix of all equipment and systems, including all integrated equipment and systems, and how they integrate with each other, along with an overview of the procedures that will be followed to demonstrate that integration of all equipment and systems has been and will be achieved; and
 - (3) the Move Plan and schedule must be developed in consultation with the Authority and in consideration to minimize any operational impacts;
- (g) Project Co will deliver a preliminary draft of the Move Plan to the Authority not less than 12 months before the Target Service Commencement Date, failing which, the Authority will be entitled to make a Deduction of \$2,500 for each week or part thereof after the date falling 12 months before the Target Service Commencement Date until Project Co has delivered to the Authority a preliminary draft of the Commissioning Plan but if Project Co has not delivered to the Authority a preliminary draft of the Commissioning Plan by the date falling 11 months before the Target Service Commencement Date, the Deduction applicable under this Section 12.4(g) will increase to \$5,000;
- (h) the Authority will provide its comments, if any, on the preliminary draft to Project Co within 30 Business Days of receipt of the preliminary draft;
- (i) Project Co will deliver a revised draft of the Move Plan to the Authority not less than 40 Business Days after receipt of the Authority's comments on the preliminary draft, failing which, the Authority will be entitled to make a Deduction of \$5,000 for each week or part thereof after the date falling 40 Business Days after the Authority's comments were received by Project Co until Project Co has delivered to the Authority a revised draft of the Move Plan;
- (j) the Authority will, within 20 Business Days of receipt of the revised draft, advise Project Co whether the Authority accepts the Move Plan, and if the Authority does not accept it the Authority will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (k) if the Authority does not accept the Move Plan, the parties will, acting reasonably, diligently work together with a view to revising the Move Plan to address the Authority's reasons for non-acceptance;
- (l) if the Authority has not accepted the Move Plan by the date that is 6 months before the Target Service Commencement Date, Project Co may refer the Dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Move Plan is reasonable;
- (m) any Deduction the Authority is entitled to make pursuant to Section 12.4(g) or Section 12.4(i) of this Schedule will be made from the first Service Payment payable to Project Co pursuant to Schedule 8 [Payments]; and
- (n) Deductions made pursuant to this Section 12.4 will not be counted for the purposes of Sections 11.1 or 12.1(h) of this Agreement or Sections 6.7 or 6.8 of Schedule 4 [Services Protocols and Specifications].

The Move Plan must be reasonable having regard to the requirement of this Schedule and will be developed and finalized as part of the Commissioning Plan.

12.5 Moves

Project Co will coordinate and, through a Sub-Contractor consented to by the Authority, provide moving services to the Authority for purposes of moving contents from other facilities to the Facility. The services will be performed and completed within 30 days after the Service Commencement Date or such later date as directed by the Authority. The Authority may require such Sub-Contractor to execute the Authority's Privacy Protection Schedule or other similar documentation to ensure the protection and privacy of personal and confidential information.

Project Co and the Authority will each designate a representative to conduct a walk-through of the other facilities for the purpose of identifying and designating items (not constituting relocated Equipment) to be relocated. Project Co will at its cost:

- (a) detach or otherwise remove the designated items from the other facilities and repair any damage and move them to the Facility; and
- (b) be responsible for the coordination, receipt, Setup, storage and Installation of the designated items within 30 days after the Service Commencement Date, or such later date as directed by the Authority.

12.6 Move Costs

The Authority estimates that the cost of moving services to move contents, including relocated Equipment and items designated in accordance with Section 12.5 of this Schedule, from other facilities to the Facility will be \$300,000. The parties acknowledge and agree that the actual costs of providing such moving services may vary from the estimated amount, and that Project Co will be fully responsible for providing such moving services notwithstanding any variation in actual costs from the estimated amount, provided however that the Authority in its discretion may perform or cause to be performed some or all of the moving services. If the actual costs reasonably incurred by Project Co in providing such moving services are different from the estimated amount, then the Authority will pay, or Project Co will refund, as applicable, the difference from the estimate in accordance with Section 10.1 of this Agreement. Unless otherwise agreed by the parties, the cost of moving services will not exceed the amount calculated on the same basis as would be calculated for Minor Work Rates under Section 3.1(c) of Schedule 6.

13. COMPLETION

13.1 Deficiency List

Prior to and as a condition of issuance of the Certificate of Service Commencement, the parties will require the Independent Certifier to, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative, prepare a complete list of Defects that are apparent upon inspection of the Facility at that time (the "**Service Commencement Deficiencies**") and deliver to Project Co and the Authority's Design and Construction Representative the list of Service Commencement Deficiencies.

The Authority or Project Co may refer matters relating to the accuracy or completeness of the list of Service Commencement Deficiencies to the Dispute Resolution Procedure.

13.2 Advance Notice of Application for Service Commencement

Project Co acknowledges that the Independent Certifier will need sufficient time to complete any inspections, consult with the Authority, and prepare the list of Service Commencement Deficiencies, and accordingly Project Co will:

- (a) at least 30 days (but no more than 60 days) before the Target Service Commencement Date, deliver to the Independent Certifier and the Authority's Design and Construction Representative a notice setting out:
 - (1) a description of all outstanding Design and Construction to be completed by Project Co prior to Service Commencement; and
 - (2) a list of all Defects that Project Co is aware of at the time of the notice; and
- (b) assist the Independent Certifier to make any advance inspections requested by the Independent Certifier.

13.3 Application for Certificate of Service Commencement

If Project Co believes it has achieved the requirements for Service Commencement and complied with Section 13.2 of this Schedule then Project Co may apply to the Independent Certifier (with a copy to the Authority's Design and Construction Representative) for a Certificate of Service Commencement. No later than 5 Business Days after application by Project Co for a Certificate of Service Commencement, the parties will require the Independent Certifier to, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative, make an inspection of the Facility, review the basis for Project Co's application for Service Commencement, and then within a further 5 Business Days:

- (a) if Service Commencement has been achieved, issue a certificate indicating that Service Commencement has been achieved (the "**Certificate of Service Commencement**"), together with the list of Service Commencement Deficiencies (if any); or
- (b) if Service Commencement has not been achieved, provide Project Co and the Authority's Design and Construction Representative with a list of all incomplete Design and Construction that must be completed prior to Service Commencement.

A Certificate of Service Commencement issued by the Independent Certifier will be final and not referable to the Dispute Resolution Procedure or otherwise subject to dispute between the parties. A Certificate of Service Commencement issued by the Independent Certifier will be evidence that the Independent Certifier reviewed the basis for the Architect's certification that "substantial performance", as defined in the *Builder's Lien Act* (British Columbia) has been achieved, and found no apparent error.

13.4 No Early Service Commencement

Notwithstanding any other provision of this Schedule, Project Co is not entitled to achieve Service Commencement or receive any Service Payments prior to the relevant Target Service Commencement Date in effect as of the Effective Date.

13.5 Correction of Deficiencies

Upon issuance of the Certificate of Service Commencement, Project Co will proceed expeditiously to correct each Deficiency by the date that is 30 days after the Service Commencement Date with respect to the Service Commencement Deficiencies, or such later date as may be reasonably required to provide sufficient time to correct the Deficiency and that is agreed by the Authority, acting reasonably (each Deficiency having its own "**Deficiency Deadline**"). Each Deficiency which has not been fully corrected by its Deficiency Deadline will be deemed (without the requirement for any further action by the Authority) to have generated a Demand Maintenance request on that day and thereafter the applicable provisions of this Agreement, including applicable Rectification Periods and Deductions, will apply to each such deemed request. Nothing in this Section 13 limits Project Co's responsibilities for correction of Defects that are identified after the preparation of the list of Service Commencement Deficiencies.