

PROJECT AGREEMENT

for the Okanagan Correctional Centre Project

**Her Majesty the Queen in Right of the Province of British Columbia, as
represented by the Minister of Technology, Innovation and Citizens' Services**

and

**Plenary Justice Okanagan Limited Partnership, by its general partner,
Plenary Justice Okanagan GP Inc.**

Dated: March 18, 2014

TABLE OF CONTENTS

1. INTERPRETATION	1
1.1 Definitions	1
1.2 Interpretation.....	1
1.3 Schedules	2
1.4 Financial Administration Act	2
2. GENERAL PROJECT TERMS	2
2.1 Term and Termination	2
2.2 Document Deliveries	3
2.3 Assumption of Risk	3
2.4 Opportunities	3
2.5 General Duty of Project Co to Mitigate	3
2.6 General Duty of Province to Mitigate	3
2.7 Representatives	4
2.8 Key Individuals	4
2.9 Naming	5
2.10 Signs	5
3. PROVINCE'S GENERAL OBLIGATIONS.....	5
3.1 Payments	5
3.2 Limitation on Payments	5
3.3 Provision of Lands	5
3.4 Representations and Warranties	6
4. PROJECT CO'S GENERAL OBLIGATIONS	6
4.1 General Obligations Re: Project	6
4.2 Records and Reports	6
4.3 No Other Business	6
4.4 Project Co Persons	7
4.5 Use of Sub-Contractors	7
4.6 Material Contracts	7
4.7 Costs of Request for Consent	8
4.8 Replacement Material Contract	8
4.9 Delivery of Amended Material Contracts	8
4.10 Project Co's Representations and Warranties	9
4.11 Disclosed Data	11
4.12 Responses to the Province Inquiries	12
4.13 Intellectual Property	12
4.14 Additional Remedy for Infringement Allegation	13
4.15 Sourcing of Materials	13
4.16 HMI Software Products	13
4.17 HMI Customizations	16
4.18 Compliance with Laws and Permits	18

5.	FINANCING OF THE PROJECT	19
5.1	Compliance with Senior Financing Agreements.....	19
5.2	Changes to Senior Financing Agreements.....	19
5.3	Consent Required for Refinancing	19
5.4	Refinancing Process.....	20
5.5	The Province's Share of Refinancing Gain	21
5.6	Payment to the Province	21
5.7	Calculation of Refinancing Gain	21
5.8	The Province's Expenses.....	22
5.9	Audit Rights	22
5.10	Changes Not to Increase Province's Liability	22
5.11	Restricted Persons Prohibited.....	22
6.	INSURANCE, DAMAGE AND DESTRUCTION	23
6.1	Insurance Coverage	23
6.2	Agreement Not Affected by Damage or Destruction	23
6.3	[Not Used].....	23
6.4	Project Co's Obligations - Material Damage or Destruction.....	23
6.5	Financial Model Update.....	24
6.6	Province Election Not to Reinstate.....	25
6.7	Insufficient Insurance.....	25
6.8	Economic Reinstatement Test During Construction.....	26
6.9	Uncollectible Insurance Receivables.....	27
6.10	Application of Insurance Proceeds If No Termination	27
6.11	Application of Insurance Proceeds In Case of Termination	27
6.12	Standards of Replacement, Repair or Reconstruction	28
6.13	Mitigation	28
6.14	Risks Becoming Uninsurable.....	28
6.15	Consequences of Risks Becoming Uninsurable	28
6.16	Third Party Liability Insurance as an Uninsurable Risk.....	29
6.17	Subrogation	30
6.18	Continuing Attempts to Insure Uninsurable Risks.....	30
6.19	Uninsurable Risks Becoming Insurable.....	30
7.	CHANGES, MINOR WORKS AND INNOVATION PROPOSALS	30
7.1	Changes Required by the Province.....	30
7.2	Innovation and Value Engineering	30
7.3	Minor Works.....	31
8.	SUPERVENING EVENTS	31
8.1	Supervening Events	31
8.2	Procedures Upon the Occurrence of a Supervening Event	31
8.3	Project Co's Entitlements Upon Occurrence of a Compensation Event	32
8.4	Project Co's Entitlements Upon Occurrence of a Relief Event	33

8.5	Project Co's Entitlements Upon Occurrence of an Excusing Event	35
8.6	Parties' Entitlements Upon Occurrence of a Force Majeure Event	36
8.7	Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event	37
8.8	Parties' Entitlements Upon Occurrence of a Change in Law	39
8.9	Labour Disputes	40
8.10	Payments in Respect of Supervening Events	40
8.11	Supervening Events Mitigated by Change	40
8.12	Delay in Notification	41
8.13	Equivalent Project Relief	41
8.14	Responsibility for Participants and Trespassers	42
8.15	Allocation of Risks of Participants and Trespassers	43
9.	INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES.....	45
9.1	Project Co's Obligation to Indemnify	45
9.2	Conduct of Third Person Claims.....	46
9.3	General Obligation to Pursue Third Person Recovery	48
9.4	Waiver of Remedies	48
9.5	Remedies Cumulative	49
9.6	Limitation on Province's Remedies	49
9.7	Limitation on Project Co's Remedies	50
9.8	Limits on Monetary Compensation	50
9.9	No Liability for Indirect Losses.....	50
9.10	Province's Right of Set Off	50
9.11	Project Co's Right of Set Off.....	50
9.12	Undisputed Amounts and Interest on Disputed Amounts	50
9.13	Interest on Overdue Amounts.....	51
10.	LUMP SUM PAYMENTS AND SERVICE PAYMENT ADJUSTMENTS.....	51
10.1	Payments.....	51
10.2	Financing of Lump Sum Payment Amounts	52
10.3	Adjustments to Service Payments.....	52
10.4	Audit of Financial Model	53
11.	PROVINCE'S STEP-IN RIGHTS.....	54
11.1	Province's Step-in Rights	54
11.2	Province's Rectification Rights	55
11.3	Notice of Facility Change.....	55
11.4	No Effect on Project Co's Design and Construction Responsibility	55
11.5	Allocation of Costs for Province Actions.....	55
12.	PROJECT CO EVENTS OF DEFAULT.....	56
12.1	Project Co Events of Default	56
12.2	Notification	57
12.3	Project Co Material Breach Cure and Remedial Program	57
12.4	Province Termination Right	58

12.5	The Province's Costs.....	59
13.	PROVINCE EVENTS OF DEFAULT	59
13.1	Province Events of Default	59
13.2	Notification	59
13.3	Project Co's Options	60
13.4	Project Co's Costs	60
14.	PROCEDURE ON TERMINATION	60
14.1	Compensation on Termination	60
14.2	Transfer to the Province of Assets, Contracts, etc.	61
14.3	Transitional Arrangements	62
14.4	Project Co to Cooperate	63
14.5	Continued Performance.....	64
15.	DISPUTE RESOLUTION	64
15.1	Procedure	64
15.2	Undisputed Amounts	64
16.	ASSIGNMENT/CHANGE IN CONTROL	64
16.1	Limitations on Assignment of Project by Project Co.....	64
16.2	Limitations on Change in Control	65
16.3	Factors Province May Consider	66
16.4	Limitations on Assignment of Project by Province	66
16.5	Costs of Request for Consent	66
17.	GENERAL	66
17.1	Confidentiality	67
17.2	Personal Information	68
17.3	Security Sensitive Work.....	68
17.4	Public Communications	72
17.5	Law of Agreement	72
17.6	Attornment	73
17.7	Entire Agreement, Waivers and Consents in Writing	73
17.8	Notices.....	73
17.9	Further Assurances	74
17.10	Counterparts.....	74
17.11	No Partnership, etc.....	75
17.12	Survival.....	75

SCHEDULE 1	DEFINITIONS AND INTERPRETATION
SCHEDULE 2	DESIGN AND CONSTRUCTION PROTOCOLS
SCHEDULE 3	DESIGN AND CONSTRUCTION SPECIFICATIONS
SCHEDULE 4	SERVICES PROTOCOLS AND SPECIFICATIONS
SCHEDULE 5	INSURANCE REQUIREMENTS
SCHEDULE 6	CHANGES, MINOR WORKS AND INNOVATION PROPOSALS
SCHEDULE 7	LANDS
SCHEDULE 8	PAYMENTS
SCHEDULE 9	COMPENSATION ON TERMINATION
SCHEDULE 10	LENDERS' REMEDIES AGREEMENT
SCHEDULE 11	MATERIAL PROJECT CONTRACTOR COLLATERAL AGREEMENT
SCHEDULE 12	PROJECT CO'S OWNERSHIP INFORMATION
SCHEDULE 13	DISPUTE RESOLUTION PROCEDURE
SCHEDULE 14	RECORDS AND REPORTS
SCHEDULE 15	FINANCIAL MODEL
SCHEDULE 16	COMMUNICATION ROLES
SCHEDULE 17	KEY INDIVIDUALS
SCHEDULE 18	COMPLETION DOCUMENTS
SCHEDULE 19	PLANNED REFINANCING
SCHEDULE 20	HMI LICENSE COVENANT
SCHEDULE 21	PRIVACY PROTECTION

PROJECT AGREEMENT

THIS AGREEMENT dated as of March 18, 2014 is entered into:

BETWEEN:

Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Technology, Innovation and Citizens' Services

(the "Province")

AND:

Plenary Justice Okanagan Limited Partnership, by its general partner, Plenary Justice Okanagan GP Inc.

("Project Co")

WHEREAS:

- A. pursuant to a request for proposals dated March 20, 2013 and the Competitive Selection Process provided for therein, the Province has selected Project Co to design, build, finance, maintain and perform life cycle rehabilitation on the Facility; and
- B. the rights and obligations between the parties will be governed by the terms and conditions set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the capitalized terms will have the meanings set out in Schedule 1 [Definitions and Interpretation]. Certain words and expressions are defined within the schedules hereto and such definitions will apply, unless the context otherwise requires, in all other parts of this Agreement whether or not Schedule 1 [Definitions and Interpretation] contains a cross-reference to such definitions.

1.2 Interpretation

This Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1 [Definitions and Interpretation].

1.3 Schedules

The schedules hereto and the terms set out therein will be deemed fully a part of this Agreement.

1.4 Financial Administration Act

Project Co acknowledges that it is aware of the provisions of the *Financial Administration Act* (British Columbia).

2. GENERAL PROJECT TERMS

2.1 Term and Termination

The term of this Agreement (the "**Term**") will commence on the Effective Date and will continue to the Expiry Date unless earlier terminated:

- (a) by the Province at any time in its discretion, and at the convenience of the Province, by notice stating that termination is for convenience pursuant to this Section 2.1(a) [Term and Termination];
- (b) by the Province pursuant to Section 6.6 [Province Election Not to Reinstate] if the Province elects not to re-instate the Project after receipt of a Reinstatement Plan;
- (c) by either party pursuant to Section 6.7 [Insufficient Insurance] in connection with insufficient insurance;
- (d) by Project Co pursuant to Section 6.8 [Economic Reinstatement Test During Construction] in connection with the economic reinstatement test during Construction;
- (e) by either party pursuant to Section 6.9 [Uncollectable Insurance Receivables] in connection with uncollectible Insurance Receivables;
- (f) by the Province pursuant to Section 6.15(a) or 6.15(c)(ii) [Consequences of Risks Becoming Uninsurable] in connection with a Principal Insured Risk becoming Uninsurable;
- (g) by either party pursuant to Section 8.4(c) or 8.4(e) [Project Co's Entitlements Upon Occurrence of a Relief Event] in connection with a Relief Event;
- (h) by either party pursuant to Section 8.6(c) or 8.6(d) [Parties' Entitlements Upon Occurrence of a Force Majeure Event] in connection with a Force Majeure Event;
- (i) by the Province pursuant to Section 12.4 [Province Termination Right] in connection with a Project Co Event of Default; or
- (j) by Project Co pursuant to Section 13.3 [Project Co's Options] in connection with a Province Event of Default.

Unless otherwise specified, the Termination Date for such earlier terminations will be the date notice of termination is given by one party to the other party in accordance with this Agreement. Except as referred to in this Section 2.1 [Term and Termination], neither party will have the right to terminate this Agreement.

2.2 Document Deliveries

Concurrently with the execution and delivery of this Agreement:

- (a) the Province will deliver to Project Co the documents described in Section 3 [Documents to be Delivered by the Province] of Schedule 18 [Completion Documents]; and
- (b) Project Co will deliver to the Province the documents described in Section 2 [Documents to be Delivered by Project Co] of Schedule 18 [Completion Documents].

2.3 Assumption of Risk

Except to the extent expressly allocated to the Province or otherwise provided for under this Agreement, all risks, costs and expenses in relation to the performance by Project Co of its obligations under this Agreement are allocated to, and accepted by, Project Co as its entire and exclusive responsibility.

2.4 Opportunities

Except as expressly provided in this Agreement, or as may be specifically agreed in writing between the Province and Project Co during the Term, the Province reserves the right to all commercial and other opportunities for, or related to, the Project and the Lands.

2.5 General Duty of Project Co to Mitigate

In all cases where Project Co is entitled to receive from the Province any compensation in addition to the payments described in Section 3.1(a) [Payments], costs, damages or extensions of time, Project Co will use all reasonable efforts to mitigate such amount required to be paid by the Province to Project Co under this Agreement, or the length of the extension of time. Upon request from the Province, Project Co will promptly submit a detailed description, supported by all such documentation as the Province may reasonably require, of the measures and steps taken by Project Co to mitigate and meet its obligations under this Section 2.5 [General Duty of Project Co to Mitigate].

2.6 General Duty of Province to Mitigate

In all cases where the Province is entitled to receive from Project Co any compensation, costs or damages, but not in any other case, the Province will use all reasonable efforts to mitigate such amount required to be paid by Project Co to the Province under this Agreement, provided that such obligation will not require the Province to:

- (a) take any action which is contrary to the public interest, as determined by the Province in its discretion;

- (b) undertake any mitigation measure that might be available arising out of its status as a public body, but which measure would not normally be available to a private commercial party; or
- (c) alter the amount of any Deductions it is entitled to make in accordance with Schedule 8 [Payments].

The Province will have no obligation to mitigate, implied or otherwise, except as set out in this Section 2.6 [General Duty of Province to Mitigate] or as otherwise expressly set out in this Agreement. Upon request from Project Co, the Province will promptly submit a detailed description, supported by all such documentation as Project Co may reasonably require, of the measures and steps taken by the Province to mitigate and meet its obligations under this Section 2.6 [General Duty of Province to Mitigate].

2.7 Representatives

Project Co and the Province will each have a Design and Construction Representative, appointed in accordance with and with the rights and responsibilities set out in Schedule 2 [Design and Construction Protocols], and an Operating Period Representative, appointed in accordance with and with the rights and responsibilities set out in Schedule 4 [Services Protocols and Specifications]. Project Co's Design and Construction Representative and Operating Period Representative may be the same person. The Province may in its discretion appoint the same person to any or all of its Representative positions.

2.8 Key Individuals

Attached as Schedule 17 [Key Individuals] is a list of persons (the "**Key Individuals**") that Project Co will utilize in undertaking the Design, the Construction, and the Services as described in that Schedule. With respect to each of the Key Individuals:

- (a) Project Co will use all reasonable efforts to retain the Key Individuals to perform the duties for the period described in Schedule 17 [Key Individuals]; and
- (b) if for any reason a Key Individual resigns or is otherwise unavailable to perform the duties described in Schedule 17 [Key Individuals] then Project Co will use all reasonable efforts to retain a replacement with similar expertise and experience to the unavailable Key Individual, satisfactory to the Province acting reasonably, and Project Co will not replace such Key Individual without the Province's consent, acting reasonably.

No later than 12 months prior to Service Commencement, Project Co will notify the Province of the name and qualifications of the person designated by Project Co to be the "Service Provider Lead" or equivalent as of the start of the Operating Period, and such person will from the date of such notice also be a Key Individual for the purposes of Section 2.8(b) [Key Individuals] above.

2.9 Naming

The Province will have the exclusive right to name the Facility and any parts thereof.

2.10 Signs

Subject to Section 5.19 [Signage] of Schedule 2 [Design and Construction Protocols], Project Co will not erect or maintain any signs on the Lands or in the Facility without the written consent of the Province. Project Co acknowledges that the Province will generally require that signage on its premises after Service Commencement display only the name and logo of the Province and that it is unlikely that the Province will consent to any signage containing the name of Project Co or any Project Contractor or Sub-Contractor after Service Commencement.

3. PROVINCE'S GENERAL OBLIGATIONS

3.1 Payments

Subject to Project Co meeting the requirements for payment set out in this Agreement, the Province will pay Project Co amounts expressly provided for herein, including:

- (a) the Construction Period Payments and the Service Payments as set out in Schedule 8 [Payments];
- (b) the Termination Payments as set out in Schedule 9 [Compensation on Termination];
- (c) amounts owing under Section 6 [Insurance, Damage and Destruction];
- (d) amounts owing under Section 7 [Changes, Minor Works and Innovation Proposals];
- (e) amounts owing under Section 8 [Supervening Events];
- (f) amounts owing under Section 9 [Indemnities and Limits on Liabilities and Remedies]; and
- (g) amount owing under Section 15 [Dispute Resolution],

in accordance with the provisions of this Agreement.

3.2 Limitation on Payments

Other than the payments expressly provided for herein, Project Co will have no right to any further payment from the Province in connection with the Design, the Construction, the Services or otherwise in connection with the Project.

3.3 Provision of Lands

The Province will make the Lands available for the Project in accordance with Schedule 7 [Lands] and the parties' rights and obligations in respect of the Lands are set out in such Schedule.

3.4 Representations and Warranties

The Province represents and warrants to Project Co, and acknowledges that the Project Co is relying upon such representation and warranty in entering into this Agreement, that, at the date of this Agreement, this Agreement has been duly authorized, executed and delivered on behalf of the Province by an authorized representative of the Minister of Technology, Innovation and Citizens' Services.

4. PROJECT CO'S GENERAL OBLIGATIONS

4.1 General Obligations Re: Project

Subject to and in accordance with the provisions of this Agreement, Project Co will:

- (a) carry out the Design and the Construction; and
- (b) perform the Services.

Project Co acknowledges and agrees that the nature of operating a correctional centre creates a higher instance of wear and tear than would be expected for other types of institutional facilities, including damage resulting from the malicious, intentional, wilful, negligent and careless conduct of inmates, visitors and others. Project Co further acknowledges and agrees that Malicious Damage is an expected occurrence throughout the Facility, but is anticipated to be particularly acute in the Segregation and Observation Unit. As a result of the expected occurrence of Malicious Damage at the Facility, Project Co, as part of its obligations pursuant to this Agreement, is obligated to maximize the Facility's sustainability and resistance to damage through the Design and Construction, in accordance with Schedule 3 [Design and Construction Specifications], and to perform the Services, including Maintenance, so as to minimize the susceptibility of the Facility to such damage.

4.2 Records and Reports

Project Co will, at its own cost and expense, retain and maintain the records and reports referred to in Schedule 14 [Records and Reports] in accordance with such Schedule and in a form that is capable of audit by the Province. Project Co will:

- (a) make all such records available to the Province for inspection and copying (at the Province's expense) during normal business hours upon reasonable notice; and
- (b) upon request from the Province provide the Province with electronic copies of any such records as soon as reasonably practicable.

4.3 No Other Business

Project Co will not engage in any business or activity other than the business or activities conducted for the purpose of the Project or otherwise expressly permitted hereunder.

4.4 Project Co Persons

Project Co will, as between itself and the Province, be responsible for, and not relieved of its obligations hereunder by the acts, omissions, breaches, defaults, non-compliance, negligence and wilful misconduct of each Project Co Person and all references in this Agreement to any act, omission, breach, default, non-compliance, negligence or wilful misconduct of Project Co will be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence or wilful misconduct committed by a Project Co Person.

4.5 Use of Sub-Contractors

Without prejudice to Section 4.4 [Project Co Persons], the Province acknowledges that Project Co may carry out the Design, the Construction and the Services by contracting such obligations to Project Contractors who in turn may contract all or part of their obligations under any Project Contract to one or more Sub-Contractors. In respect of the Project, Project Co will not contract with, or allow any of its Project Contractors or any Sub-Contractors to contract with, any Person that is a Restricted Person. Notwithstanding the use of Project Contractors or Sub-Contractors, Project Co:

- (a) will not be relieved or excused from any of its obligations or liabilities under this Agreement; and
- (b) will remain principally liable to the Province for the due observance and performance of all the covenants, obligations, agreements and conditions of this Agreement that are to be observed and performed by Project Co.

4.6 Material Contracts

Project Co will not:

- (a) terminate, or agree to or permit the termination of, all or any material part of any Material Contract except:
 - (i) as required to do so by the Province pursuant to the provisions of this Agreement; or
 - (ii) if there is an event of default under a Project Contract and Project Co terminates it in order to prevent or cure a Project Co Event of Default;
- (b) make, or agree to or permit the making of:
 - (i) any material amendment of any Material Contract, other than amendments (whether made by change order or otherwise) that are the direct and reasonable consequence of a Change; or
 - (ii) any departure by any party from any material provision of any Material Contract;
- (c) permit any Material Contract Party to assign or transfer to any Person any of such Material Contract Party's rights or obligations under a Material Contract other than by way

of a Sub-Contract that is not a subcontract of all or substantially all of the obligations under the Material Contract or by way of assignment by way of security by a Material Contract Party; or

- (d) enter into, or permit the entering into of, any Material Contract other than those entered into on or before the Effective Date,

unless Project Co has, at its earliest practicable opportunity, submitted to the Province notice of the proposed course of action (and any relevant documentation) and the Province has consented to such course of action, such consent not to be unreasonably withheld or delayed. The Province will give or deny such consent within: (i) 10 Business Days of receipt of such notice and all relevant documentation, if Project Co is seeking to terminate a Material Contract and such Material Contract may, in accordance with its terms, be terminated immediately; and (ii) 30 Business Days of receipt of such notice and all relevant documentation in all other cases, and if the Province fails to give or deny its consent within such time periods it will be deemed to have given its consent.

4.7 Costs of Request for Consent

If Project Co requests consent to a proposed course of action pursuant to Section 4.6 [Material Contracts], Project Co will pay, without duplication, the Province's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Project Co will make a payment to the Province in the amount of \$15,000 (Index Linked) against its obligations under this Section 4.7 [Costs of Request for Consent]. After the Province renders its decision, the Province will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 4.7 [Costs of Request for Consent] and Project Co will promptly pay such amount to the Province.

4.8 Replacement Material Contract

If any Material Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise), unless the goods, services or rights which were the subject matter of such Material Contract are no longer reasonably required for the Project:

- (a) Project Co will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and
- (b) if the Province and the relevant Material Contract Party had entered into a Material Project Contractor Collateral Agreement with respect to the replaced Material Contract, Project Co will forthwith enter into, or cause the replacement Material Contract Party to enter into, a Material Project Contractor Collateral Agreement.

4.9 Delivery of Amended Material Contracts

If at any time any amendment is made to any Material Contract, or a replacement Material Contract (or any agreement which materially affects the interpretation or application of any Material Contract) is entered into, Project Co will deliver to the Province a copy of each such amendment or agreement within

10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

4.10 Project Co's Representations and Warranties

Project Co represents and warrants to the Province that:

- (a) Project Co is a limited partnership duly created and validly existing under the *Partnership Act* (British Columbia) and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;
- (b) the General Partner is a duly incorporated and validly existing company under the *Business Corporations Act* (British Columbia) and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all of Project Co's obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;
- (c) the information set out in Schedule 12 [Project Co's Ownership Information] is true and correct and, except as set out in Schedule 12 [Project Co's Ownership Information], there is as at the date of this Agreement no outstanding offer, agreement or other arrangement pursuant to which:
 - (i) any Person is obligated to subscribe for or take by means of transfer or by conversion any form of investment, security or voting rights in Project Co or the General Partner; or
 - (ii) the partnership agreement governing Project Co will be amended or otherwise altered;
- (d) none of Project Co, the General Partner, Persons who control Project Co or any Affiliates of those Persons, the Project Contractors and Sub-Contractors is a Restricted Person;
- (e) the execution and delivery of this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary partnership action on the part of Project Co and corporate action on the part of the General Partner, and this Agreement has been duly executed and delivered by the General Partner on behalf of Project Co and constitutes a legal, valid and binding obligation of Project Co enforceable in accordance with its terms, subject to limitations by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar Laws of general application affecting the enforceability of remedies and rights of creditors and subject to availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;

- (f) all required third party consents to the execution by Project Co of, and performance of its obligations under, this Agreement have been received, other than the Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project; and
- (g) it has carefully reviewed the whole of this Agreement, including the Design and Construction Protocols, the Design and Construction Specifications, the Services Protocols and Specifications and all applicable Laws, and has taken all steps it considers necessary to satisfy itself that nothing contained herein inhibits or prevents Project Co from performing and completing the Design, the Construction and the Services in accordance with this Agreement in a good and safe manner in accordance with Good Industry Practice so that Project Co achieves and satisfies the requirements of this Agreement.

The representation and warranty of Project Co in Section 4.10(g) [Project Co's Representations and Warranties] is included only for the purpose of allowing the Province to rely on it for the purpose of defending or contesting any action brought against the Province pursuant to this Agreement or any claim by Project Co for damages, extensions of time, additional compensation or any other relief arising pursuant to this Agreement and the Province may not rely on such representation and warranty for the purpose of bringing any action against Project Co or for the purposes of terminating this Agreement.

- (h) Project Co together with all other Project Co Persons have all rights, titles and interests necessary to grant to the Province the licenses to Project Intellectual Property, including the HMI Software Products and the HMI Customizations set forth in this Agreement, including in Sections 4.13 [Intellectual Property], 4.16 [HMI Software Products] and 4.17 [HMI Customizations];
- (i) in carrying out the Design and the Construction and performing the Services, Project Co will not, and will not permit any other Person to, use any work or information or do any act that infringes, violates or misappropriates the Intellectual Property of any Person; and
- (j) the possession or Use of Project Intellectual Property by or on behalf of the Province in accordance with this Agreement will not infringe, violate or misappropriate the Intellectual Property or any other rights of any Person, except that the foregoing does not apply to an infringement, violation or misappropriation caused by either of the following:
 - (i) a modification of the Project Intellectual Property by the Province or on behalf of the Province by a Person other than Project Co or a Project Co Person; or
 - (ii) Project Intellectual Property created specifically for the Province pursuant to this Agreement in order to provide a feature or functionality required by the Province as expressly set forth in this Agreement but only if: (A) Project Co gave express written notice to the Province that the required feature or functionality could not be provided without a material likelihood of infringing, violating or misappropriating the Intellectual Property of a Person; and (B) after receipt of

Project Co's notice, the Province expressly authorized in writing the creation of the Project Intellectual Property notwithstanding Project Co's warning of the material likelihood of infringing, violating or misappropriating the Intellectual Property of a Person.

4.11 Disclosed Data

Except as otherwise expressly provided in any other provision of this Agreement or as a result of any breach of any express obligation of the Province under this Agreement, the Province shall not have any liability to Project Co (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or any Province Person) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.

The Province does not give, has not given nor shall the Province be deemed to have given any representation, warranty or undertaking that the Disclosed Data represents or includes all of the information in its possession or control (either during the procurement process for the Project or at or after the date of execution of this Agreement) relevant or material to the Project, the Facility, the Site or the obligations undertaken by Project Co under this Agreement. Without limiting the generality of the foregoing, the Province shall not have any liability to Project Co (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Province or any Province Person) in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to Project Co any information, documents or data, any failure to keep the Disclosed Data up to date, or any failure to inform Project Co (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.

Project Co acknowledges, represents, warrants and confirms that:

- (a) Project Co shall be deemed to have conducted prior to executing this Agreement its own investigations, examinations, interpretations, analysis and review of the Disclosed Data and has satisfied itself as to the accuracy, completeness, applicability and adequacy of all such Disclosed Data upon which it places reliance; and
- (b) Project Co shall not be entitled to make, and shall not make, any claim against the Province or any Province Person, or any other Governmental Authority whether in damages or for losses or for extensions of time, compensation or additional payments or other relief, and whether under this Agreement or otherwise, and shall not be released from any risks or obligations imposed on or undertaken by Project Co under this Agreement, on any grounds relating to the Disclosed Data, including:
 - (i) on the grounds of any misrepresentation, misunderstanding or misapprehension in respect of or reliance upon the Disclosed Data or any of the matters referred to in this Section; or

- (ii) on the grounds that incorrect, insufficient or incomplete information relating to the Disclosed Data or to the Site or the structures, improvements, infrastructure and works in, on, over, under or in the vicinity of the Site was given to it by any Person (whether or not in the employ of the Province) including any Province Person or any other Governmental Authority, except for an otherwise valid claim by the Project Co:
 - (A) pursuant to any other express provision of this Agreement; or
 - (B) in respect of any breach of any express obligation of the Province under this Agreement.

4.12 Responses to the Province Inquiries

Unless otherwise specified in this Agreement, Project Co will respond in writing to all written inquiries received from the Province as soon as reasonably practicable and in any event within 10 Business Days of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require.

4.13 Intellectual Property

- (a) **General:** Project Co hereby irrevocably and unconditionally grants and agrees to grant to the Province, and will (in the case of Persons, other than the Project Contractors and Sub-Contractors, on a reasonable efforts basis) cause all other Persons (including the Design-Builder and all Sub-contractors) to irrevocably and unconditionally grant to the Province, an irrevocable, perpetual, non-exclusive, fully paid up and royalty-free license, during and after the Term, to Use all Project Intellectual Property (other than COTS Software Products, HMI Software Products and HMI Customizations) solely in connection with the Facility (including for operational purposes and any modification, repair, renovation or addition to, alteration of or connection or interconnection with the Facility) and for reference purposes in connection with other operations, projects and facilities of the Province. Project Co will do such acts and will execute and deliver, or cause to be executed and delivered, any and all further actions or documents as may be reasonably required to give full effect to the license granted under this Section 4.13 [Intellectual Property].
- (b) **COTS Software Products:** Subject to Section 4.13(c), if Project Intellectual Property includes a COTS Software Product then: (i) Project Co will ensure that the license agreement that governs the Use of the COTS Software Product as Project Intellectual Property (the "**COTS Software License Agreement**") and all related Ancillary Software Service Agreements are freely assignable to the Province without payment of any additional fees or other charges; and (ii) upon request by the Province Project Co will, and will (in the case of Persons other than the Project Contractors and Sub-Contractors, on a reasonable efforts basis) cause all other Persons (including the Design-Builder and all Sub-contractors) to irrevocably and unconditionally assign the COTS Software License Agreement and all related Ancillary Software Service Agreements to the Province.

- (c) **HMI Software Products and HMI Customizations:** Section 4.13(b) does not apply to HMI Software Products (which are governed by Section 4.16 [HMI Software Products]) or HMI Customizations (which are governed by Section 4.17 [HMI Customizations]).

4.14 Additional Remedy for Infringement Allegation

In addition to Project Co's obligations under Section 9.2(g) [Conduct of Third Person Claims], if an item of Project Intellectual Property is, or if Project Co or the Province reasonably believe that an item of Project Intellectual Property is reasonably likely to become, the subject of an Infringement Allegation against Project Co, the Province or any other Person, or if the creation, possession, provision or Use of an item of Project Intellectual Property in accordance with this Agreement is enjoined by order of a court or tribunal of proper jurisdiction and authority, then Project Co will at its own expense either:

- (a) promptly obtain for Project Co and the Province and its successors and assigns the right to Use and continue Using the impugned Project Intellectual Property in accordance with this Agreement without risk of the Infringement Allegation; or
- (b) promptly replace or modify the impugned Project Intellectual Property (including by entering into new HMI License Agreements and new HMI Customization License Agreements in accordance with the requirements of Section 4.16 [HMI Software Products] or Section 4.17 [HMI Customizations], as applicable) so that it is no longer subject to the Infringement Allegation without any loss of functionality, operation, performance, results or benefit of the impugned Project Intellectual Property or any other Project Intellectual Property, in which case the Project Co and the Province will use the replacement or modified Project Intellectual Property and will cease using the impugned Project Intellectual Property.

Notwithstanding any other provision of this Agreement and for greater certainty, the replacement of impugned Project Intellectual Property with replacement or modified Project Intellectual Property pursuant to section 4.14(b) will not be a breach of any provision of this Agreement that requires the license for Project Intellectual Property to be perpetual and irrevocable.

4.15 Sourcing of Materials

Project Co shall ensure that all systems, equipment, products, components and other materials incorporated into the Facility are sourced or procured (i) solely through the applicable manufacturer's authorized distribution channels for the Province of British Columbia; or (ii) directly from the applicable manufacturer.

4.16 HMI Software Products

For each HMI Software Product, Project Co will enter into a written software license agreement with the relevant HMI Vendor (an "HMI License Agreement") that includes provisions that are substantially the same as the following:

- (a) **Deliverables:** For each HMI Software Product, the HMI Vendor will deliver to Project Co: (i) a full and complete electronic version of the HMI Software Product in execution code

(computer readable) format; and (ii) copies of all related HMI Documentation in: (A) electronic PDF format; and (B) unlocked native electronic (MS Office) format if reasonably available..

- (b) **HMI Software License:** The HMI Vendor grants and agrees to grant to Project Co and its successors, assigns and licensees a non-exclusive, royalty-free and fully paid-up, irrevocable and perpetual license (the “**HMI Software License**”) to Use and authorize other Persons to Use the HMI Software Product and all related HMI Documentation on an enterprise basis (without any restriction or limitation as to the number or identity of locations, sites, systems, installations, copies, users, platforms, interfacing software, equipment, hardware or otherwise) solely in connection with the Facility.
- (c) **HMI Service Providers:** For greater certainty, pursuant to the HMI Software License Project Co may in its discretion: (i) engage HMI Service Providers to assist Project Co to exercise its rights and perform its obligations under the HMI License Agreement, including Using the HMI Software Product and related HMI Documentation and providing services (including maintenance and technical support and the creation of enhancements) to Project Co and the Province regarding the HMI Software Product and related HMI Documentation; and (ii) disclose and provide the HMI Software Product and related HMI Documentation to HMI Service Providers and authorize HMI Service Providers to Use the HMI Software Product and related HMI Documentation for those purposes, provided that Project Co is fully responsible for HMI Service Providers’ Use of the HMI Software Product and related HMI Documentation.
- (d) **Enhancements:** For greater certainty, pursuant to the HMI Software License Project Co and its successors, assigns and licensees may create, or engage Persons other than the HMI Vendor to create, customizations, enhancements (including new functionalities), modifications, additions and derivative works to or from an HMI Software Product or HMI Documentation (each an “**HMI Software Enhancement**”), provided that an HMI Software Enhancement is Used solely in connection with the Facility.
- (e) **Perpetual:** The HMI Software License is and will remain perpetual and irrevocable and will survive indefinitely after the expiration or termination of the HMI License Agreement or any other agreement between Project Co and the HMI Vendor. The HMI Vendor will not terminate, revoke or rescind the HMI Software License for any reason or cause whatsoever; and if Project Co or any other Person commits any breach (whether fundamental or not) of the HMI License Agreement, and whether the breach is or is not capable of being cured, the HMI Vendor’s sole rights and remedies in respect of the breach are limited to the HMI Vendor’s rights and remedies other than termination, revocation or rescission of the HMI Software License. For greater certainty, nothing in the HMI License Agreement restricts or limits the HMI Vendor’s remedies of damages and injunctive relief to restrain any Use of an HMI Software Product or HMI Documentation in breach of the HMI Software License. No breach of the HMI License Agreement by Project Co will constitute a repudiation of the HMI License Agreement by Project Co.

- (f) **No Locks:** The HMI Vendor represents and warrants that an HMI Software Product or an HMI Documentation does not and will not contain a Lock; and upon notice by Project Co that an HMI Software Product or an HMI Documentation contains a Lock, the HMI Vendor will promptly remove the Lock or procure and provide a Lock-free HMI Software Product or HMI Documentation to Project Co.
- (g) **Confidentiality:** Notwithstanding any other provision of the HMI License Agreement or any other express or implied agreement between the HMI Vendor and Project Co, the provisions (if any) in the HMI License Agreement or any other express or implied agreement between the HMI Vendor and Project Co relating to the HMI Vendor's confidential information will not apply to the HMI Software Product and HMI Documentation or any related information and will not in any way restrict, impair or otherwise prejudice the right and ability of Project Co and its successors, assigns and licensees to retain, Use and authorize other Persons to Use the HMI Software Product and HMI Documentation in accordance with the HMI Software License or impose on Project Co or its successors, assigns and licensees or any other Person any obligations, restrictions or requirements regarding the Use of the HMI Software Product and HMI Documentation which are in addition to those set out in the HMI Software License.
- (h) **Assignability:** Project Co may in its discretion and without any notice to the HMI Vendor assign to the Province the HMI License Agreement (including the HMI Software License) and all related agreements for the provision of services (including maintenance services, technical support services and professional services) relating to the HMI Software Product and all source code escrow agreements (if any) relating to the HMI Software Product, and after the assignment the Province may exercise any and all of Project Co's rights under the HMI License Agreement and all related agreements for the provision of services (including maintenance services, technical support services and professional services) relating to the HMI Software Product and all source code escrow agreements (if any) relating to the HMI Software Product. Promptly after any such assignment, Project Co will provide notice of the assignment to the HMI Vendor.
- (i) **Representation/Warranty:** The HMI Vendor represents and warrants to Project Co that the HMI Vendor has all rights, title and interests required to enter into and perform HMI Vendor's obligations under the HMI License Agreement and grant the HMI Software License.
- (j) **HMI License Covenant:** For each HMI Software Product, concurrently with the installation of the HMI Software Product for use in connection with the Facility, the HMI Vendor will deliver to Project Co a duly executed HMI License Covenant in the form attached as Schedule 20 [HMI License Covenant] for the HMI Software Product.

For each HMI Software Product, Project Co will enter into a commercially reasonable Ancillary Software Service Agreement for the HMI Software Product. For greater certainty, Project Co will in its discretion determine whether to enter into an escrow agreement for Source Code Materials regarding an HMI Software Product.

Upon request by the Province, Project Co will promptly deliver a full and complete copy of each HMI License Agreement and each related Ancillary Software Service Agreement to the Province.

Project Co will use commercially reasonable efforts to enforce each HMI License Agreement and each related Ancillary Software Service Agreement for the benefit of the Province.

Upon request by the Province, Project Co will promptly deliver full and complete, fully functional copies of all HMI Software Product to the Province.

Unless the Province expressly agrees in writing otherwise, for each HMI Software Product provided or procured by Project Co, a Project Contractor or a Sub-Contractor for use in connection with the Facility, Project Co will obtain an HMI License Covenant duly executed by the HMI Vendor and will deliver the HMI License Covenant to the Province within thirty (30) days after the HMI Software Product is first used in connection with the Facility.

4.17 HMI Customizations

For each HMI Customization, Project Co will enter into a written software license agreement with the relevant HMI Vendor (an “**HMI Customization License Agreement**”) that includes provisions that are substantially the same as the following:

- (a) **Deliverables:** For each HMI Customization, the HMI Vendor will deliver to Project Co the following deliverables, to the extent applicable (each an “**HMI Customization Deliverable**”): (i) a full and complete electronic version of the HMI Customization in execution code (computer readable) format; (ii) copies of all related documentation in both electronic PDF and unlocked native electronic (MS Office) formats; and (iii) all Source Code Materials for the HMI Customization.
- (b) **HMI Customization License:** The HMI Vendor grants and agrees to grant to Project Co and its successors, assigns and licensees a non-exclusive, royalty-free and fully paid-up, irrevocable and perpetual license (the “**HMI Customization License**”) to Use and authorize other Persons to Use the HMI Customization and all related HMI Customization Deliverables on an enterprise basis (without any restriction or limitation as to the number or identity of locations, sites, systems, installations, copies, users, platforms, interfacing software, equipment, hardware or otherwise) solely in connection with the Facility.
- (c) **HMI Service Providers:** For greater certainty, pursuant to the HMI Customization License Project Co may in its discretion: (i) engage HMI Service Providers to assist Project Co to exercise its rights and perform its obligations under the HMI Customization License Agreement, including Using the HMI Customization and related HMI Customization Deliverables and providing services to Project Co and the Province regarding the HMI Customization; and (ii) disclose and provide the HMI Customization and HMI Customization Deliverables to HMI Service Providers and authorize HMI Service Providers to Use the HMI Customization and HMI Customization Deliverables for those purposes, provided that Project Co is fully responsible for HMI Service Providers’ Use of the HMI Customization and HMI Customization Deliverables.

- (d) **Enhancements:** For greater certainty, pursuant to the HMI Customization License Project Co and its successors, assigns and licensees may create, or engage Persons other than the HMI Vendor to create, customizations, enhancements (including new functionalities), modifications, additions and derivative works to or from an HMI Customization or HMI Customization Deliverable (each an “**HMI Customization Enhancement**”), provided that an HMI Customization Enhancement is Used solely in connection with the Facility.
- (e) **Perpetual:** The HMI Customization License is and will remain perpetual and irrevocable and will survive indefinitely after the expiration or termination of the HMI Customization License Agreement or any other agreement between Project Co and the HMI Vendor. The HMI Vendor will not terminate, revoke or rescind the HMI Customization License for any reason or cause whatsoever; and if Project Co or any other Person commits any breach (whether fundamental or not) of the HMI Customization License Agreement, and whether the breach is or is not capable of being cured, the HMI Vendor’s sole rights and remedies in respect of the breach are limited to the HMI Vendor’s rights and remedies other than termination, revocation or rescission of the HMI Customization License. For greater certainty, nothing in the HMI Customization License Agreement restricts or limits the HMI Vendor’s remedies of damages and injunctive relief to restrain any Use of an HMI Customization or HMI Customization Deliverable in breach of the HMI Customization License. No breach of the HMI Customization License Agreement by Project Co will constitute a repudiation of the HMI Customization License Agreement by Project Co.
- (f) **No Locks:** The HMI Vendor represents and warrants that an HMI Customization or an HMI Customization Deliverable does not and will not contain a Lock; and upon notice by Project Co that an HMI Customization or an HMI Customization Deliverable contains a Lock, the HMI Vendor will promptly remove the Lock or procure and provide a Lock-free HMI Customization or HMI Customization Deliverable to Project Co.
- (g) **Confidentiality:** Notwithstanding any other provision of the HMI Customization License Agreement or any other express or implied agreement between the HMI Vendor and Project Co, the provisions (if any) in the HMI Customization License Agreement or any other express or implied agreement between the HMI Vendor and Project Co relating to the HMI Vendor’s confidential information will not apply to an HMI Customization or an HMI Customization Deliverable or any related information and will not in any way restrict, impair or otherwise prejudice the right and ability of Project Co and its successors, assigns and licensees to retain, Use and authorize other Persons to Use an HMI Customization or an HMI Customization Deliverable in accordance with the HMI Customization License or impose on Project Co or its successors, assigns and licensees or any other Person any obligations, restrictions or requirements regarding the Use of an HMI Customization or an HMI Customization Deliverable which are in addition to those set out in the HMI Customization License.
- (h) **Assignability:** Project Co may in its discretion and without any notice to the HMI Vendor assign to the Province the HMI Customization License Agreement (including the HMI

Customization License) and all related agreements for the provision of services (including maintenance services, technical support services and professional services) relating to the HMI Customization and HMI Customization Deliverables, and after the assignment the Province may exercise any and all of Project Co's rights under the HMI Customization License Agreement and all related agreements for the provision of services (including maintenance services, technical support services and professional services) relating to the HMI Customization and HMI Customization Deliverable. Promptly after any such assignment, Project Co will provide notice of the assignment to the HMI Vendor.

- (i) **Representation/Warranty:** The HMI Vendor represents and warrants to Project Co that the HMI Vendor has all rights, title and interests required to enter into and perform HMI Vendor's obligations under the HMI Customization License Agreement and grant the HMI Customization License.
- (j) **HMI License Covenant:** For each HMI Customization, concurrently with the installation of the HMI Customization for use in connection with the Facility, the HMI Vendor will deliver to Project Co a duly executed HMI License Covenant in the form attached as Schedule 20 [HMI License Covenant] for the HMI Customization.

For each HMI Customization, Project Co will enter into a commercially reasonable Ancillary Software Service Agreement for the HMI Customization.

Upon request by the Province, Project Co will promptly deliver a full and complete copy of each HMI Customization License Agreement and each related Ancillary Software Service Agreement to the Province.

Project Co will use commercially reasonable efforts to enforce each HMI Customization License Agreement for the benefit of the Province.

Upon request by the Province, Project Co will promptly deliver full and complete, fully functional copies of all HMI Customization Deliverables to the Province.

For greater certainty, if HMI Software and related HMI Customizations are provided by the same HMI Vendor, then the HMI License Agreement and the HMI Customization License Agreement required to be signed by the HMI Vendor pursuant to Sections 4.16 [HMI Software Products] and this Section 4.17 may be the same document.

4.18 Compliance with Laws and Permits

Project Co shall, in the performance of the Design, Construction, Services and its other obligations under this Agreement, comply, and cause all Project Co Persons to comply, with all applicable Laws and Permits.

5. FINANCING OF THE PROJECT

5.1 Compliance with Senior Financing Agreements

Project Co will keep the Senior Financing Agreements in good standing and will ensure that none of the terms and conditions of the Senior Financing Agreements will prevent Project Co from performing its obligations under this Agreement. If at any time Project Co receives a notice that an "event of default", any event entitling the Senior Lenders to enforce any security or any other similar event has occurred under the Senior Financing Agreements, Project Co will forthwith deliver to the Province a copy of such notice.

5.2 Changes to Senior Financing Agreements

Project Co shall not terminate, amend, assign or otherwise modify the Senior Financing Agreements, or waive or exercise any of its rights under the Senior Financing Agreements or enter into any replacement Senior Financing Agreement or any agreement which affects the interpretation or application of any Senior Financing Agreements if such action would:

- (a) adversely affect Project Co's ability to perform its obligations under this Agreement; or
- (b) have the effect of increasing any liability or potential liability of the Province.

If at any time any amendment is made to any Senior Financing Agreement or Project Co enters into any replacement Senior Financing Agreement (or any agreement which affects the interpretation or application of any Senior Financing Agreement), Project Co will deliver to the Province a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

5.3 Consent Required for Refinancing

Except for:

- (a) an Exempt Refinancing; or
- (b) a Planned Refinancing that does not:
 - (i) adversely affect Project Co's ability to perform its obligations under this Agreement; or
 - (ii) have the effect of increasing any liability or potential liability of the Province (unless the Province is specifically compensated for such liability or potential liability to the reasonable satisfaction of the Province), except for an increase in the principal amount of all funding for the Project committed under the Senior Financing Agreements that results directly from the proposed Planned Refinancing that is within (i) the "Maximum Permitted Increase to Principal Amount of Senior Debt" for such Planned Refinancing set out in Schedule 19 [Planned Refinancing], and (ii) the limits for such increase expressly disclosed by

Project Co to the Province in the information referred to in Section 5.4(d)(i) [Refinancing Process],

Project Co will not enter into any Refinancing without the consent of the Province, not to be unreasonably withheld or delayed. Without limitation, it will be reasonable for the Province to withhold consent if such Refinancing occurs before Service Commencement, has a material adverse effect on Project Co's ability to perform its obligations under this Agreement or increases any liability or potential liability of the Province (unless the Province is specifically compensated for such liability or potential liability).

5.4 Refinancing Process

If Project Co intends to undertake a Qualifying Refinancing or a Planned Refinancing, Project Co will notify the Province of such intention at least 120 days (or such later date agreed by the Province, acting reasonably) before the anticipated completion date of such Refinancing and will include with such notice all applicable information then available to Project Co (including any of the information set out below in this Section 5.4 [Refinancing Process] if and to the extent available to Project Co at that time). Project Co will keep the Province informed of the progress of the proposed Refinancing, will provide the Province with additional information as it is available, and will consult with and reasonably take into account the views of the Province during the Refinancing process. Without limiting the foregoing, as soon as reasonably available, and in any event no later than 30 days (or such later date agreed by the Province, acting reasonably) before the anticipated completion date of such Refinancing, Project Co will provide to the Province (not necessarily all at the same time):

- (a) all proposed revisions to the Senior Financing Agreements;
- (b) a copy of the proposed updated Financial Model both before and after the Refinancing;
- (c) the basis for the assumptions and calculations used in the proposed updated Financial Model;
- (d) particulars of:
 - (i) any increase in the principal amount of all funding for the Project committed under the Senior Financing Agreements that will result from the proposed Refinancing;
 - (ii) the nature (and estimated amount if reasonably capable of being calculated or estimated) of any increase in any liability or potential liability of the Province, including on early termination of this Agreement, that would be reasonably likely to arise from the proposed Refinancing;
 - (iii) any effect on Project Co's ability to perform its obligations under this Agreement;
 - (iv) the terms of the proposed Refinancing;
 - (v) the lenders and other parties proposed to be involved in the proposed Refinancing; and

- (vi) the financing instruments to be used to carry out the proposed Refinancing and their key attributes (especially as to those attributes that would or could affect the liability of the Province on any early termination of this Agreement);
- (e) a statement setting out Project Co's estimate of the resulting Refinancing Gain (if any in the case of a Planned Refinancing), including the Province's share thereof expressed in terms of:
 - (i) the payment described in Section 5.6(a) [Payment to the Province] (including the estimated timing of receipt thereof by the Province); and
 - (ii) the reduction of Service Payments described in Section 5.6(b) [Payment to the Province]; and
- (f) a schedule for implementation of the proposed Refinancing including the principal milestones and proposed dates for the achievement of such milestones (including the estimated date for closing of the proposed Refinancing).

Project Co will promptly provide all other documents and information related to the proposed Refinancing as the Province may reasonably request. If any change is proposed to the information provided to the Province pursuant to the above, including information referred to in Sections 5.4(a) to 5.4(g) [Refinancing Process], Project Co will promptly (and in any event not less than 5 Business Days before the completion date of the proposed Refinancing) provide the Province with full details of the change. Project Co will only proceed with a Qualifying Refinancing or a Planned Refinancing in accordance with the information provided to the Province in accordance with this Section 5.4 [Refinancing Process] and in compliance with the other applicable provisions of this Section 5 [Financing of the Project].

5.5 The Province's Share of Refinancing Gain

The Province will be entitled to receive a 50% share of any Refinancing Gain arising from a Qualifying Refinancing. The Province's share will be calculated as at the time of each Qualifying Refinancing.

5.6 Payment to the Province

The Province may elect to receive its share of any Refinancing Gain as:

- (a) a single payment, in accordance with Section 10.1 [Payments], in an amount no greater than any Distribution made by Project Co arising as a result of the Refinancing;
- (b) a reduction, in accordance with Section 10.3 [Adjustments to Service Payments], in the Service Payments over the remainder of the Term; or
- (c) a combination of (a) and (b).

5.7 Calculation of Refinancing Gain

The Province and Project Co will negotiate in good faith the basis and method of calculation of the Refinancing Gain and payment of the Province's share of the Refinancing Gain, taking into account how

the Province has elected to receive its share of the Refinancing Gain pursuant to Section 5.6 [Payment to the Province] and the profile of the Refinancing Gain. The Refinancing Gain will be calculated after taking into account the reasonable and proper professional costs that Project Co directly incurs in relation to the Refinancing and, if applicable, the Province's costs that Project Co pays pursuant to Section 5.8 [The Province's Expenses]. If the Province and Project Co are unable to agree on the basis and method of calculation of the Refinancing Gain or the payment of the Province's share, the Dispute will be determined in accordance with the Dispute Resolution Procedure.

5.8 The Province's Expenses

Project Co will pay the Province's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with a consent under Section 5.2 [Changes to Senior Financing Agreements] or 5.3 [Consent Required for Refinancing]. At the time of the request for such consent, Project Co will make a payment to the Province in the amount of \$50,000 (Index Linked) against its obligations under this Section 5.8 [The Province's Expenses]. After the Province renders its decision, the Province will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 5.8 [The Province's Expenses] and Project Co will promptly pay such amount to the Province. The amounts payable under this Section 5 [Financing of the Project] are payable even if the Refinancing Gain is determined to be zero.

5.9 Audit Rights

The Province will have unrestricted rights of audit at any time (whether before or after the applicable event) over any proposed Financial Model, books, records and other documentation (including any aspect of the calculation of any Refinancing Gain) used in connection with any Refinancing or any other matter for which Project Co requires consent from the Province under this Section 5 [Financing of the Project].

5.10 Changes Not to Increase Province's Liability

Notwithstanding any other provision of this Agreement and without prejudice to the rights of the Province under the other provisions of this Section 5 [Financing of the Project]: (i) no action referred to in any of Section 5.2 [Changes to Senior Financing Agreements], whether or not consented to or permitted under any of Sections 5.2 [Changes to Senior Lending Agreements] and 5.3 [Consent Required for Refinancing]; and (ii) no amendment, waiver or exercise of a right under any Senior Financing Agreements, shall in any such case, have the effect of increasing any liability of the Province arising from early termination of this Agreement, unless Project Co has obtained, in addition to any other consent or approval and any other requirements under this Section 5 [Financing of the Project], the prior written consent of the Province expressly consenting, for the purposes of this Section 5.10 [Changes Not to Increase Province's Liability], to the increase in the liability of the Province that would arise from any early termination of this Agreement, which consent the Province may withhold or grant in its discretion.

5.11 Restricted Persons Prohibited

Notwithstanding any other provision of this Agreement Project Co shall not carry out or permit any action referred to in this Section 5 [Financing of the Project] and no such action shall be carried out or permitted, if it would, or might reasonably be expected to, be undertaken with a counterparty who is either:

- (a) a Person who is a Restricted Person; or
- (b) a Person any of whose Affiliates is a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person.

6. INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverage

Subject to Section 6.15(b) [Consequences of Risks Becoming Uninsurable], each of Project Co and the Province will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, insurance for the Project as set out in Schedule 5 [Insurance Requirements].

6.2 Agreement Not Affected by Damage or Destruction

Except as otherwise expressly provided, the partial destruction or damage or complete destruction by fire or other casualty of the Facility will not permit either party to terminate this Agreement or entitle Project Co to surrender possession of the Facility, except as provided in this Agreement in respect of the Province's obligation to fund Province Funded Rectification, or to demand any increase in any amounts payable to Project Co under this Agreement and all of the provisions of this Agreement, including Section 8 [Supervening Events] will continue to apply.

6.3 [Not Used]

6.4 Project Co's Obligations - Material Damage or Destruction

If during the Operating Period the Facility suffers damage or destruction that is likely to cost more than \$5,000,000 (Index Linked) to repair, replace and restore:

- (a) Project Co will, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Facility or to facilitate the continued provision of the Services to other parts of the Facility), provide the Province with a draft plan (the "**Draft Reinstatement Plan**") for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, replace and restore the damaged or destroyed portions of the Facility and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under (d) below;
- (b) as soon as reasonably practicable and in any event within 21 days after the delivery of the Draft Reinstatement Plan, the Province:
 - (i) will provide Project Co with any comments it may have on the Draft Reinstatement Plan; and
 - (ii) if it has decided that the Facility is not required to be reinstated in the same form as prior to the damage or destruction, will issue a Preliminary Change Instruction to that effect;

- (c) as soon as reasonably practicable and in any event within 14 days after receipt of the Province's comments pursuant to Section 6.4(b)(i) [Project Co's Obligations – Material Damage or Destruction], Project Co will deliver to the Province a revised plan (the "**Reinstatement Plan**") amending the Draft Reinstatement Plan to reasonably take into account the comments received from the Province and those changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalised) with the Person effecting the Reinstatement Works; and
- (d) the Reinstatement Plan will set out in as much detail as is reasonable in the circumstances:
 - (i) the identity of the Person, or (if Project Co is seeking competitive tenders) Persons intended, to effect the Reinstatement Works;
 - (ii) the terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Facility is reasonably expected to become fully operational again and the Services to be fully provided);
 - (iii) the impact that implementation of the Reinstatement Plan will have on the revenues of Project Co under this Agreement and on the payment obligations of Project Co under the Project Contracts, including in respect of Life Cycle Requirements;
 - (iv) the total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works; and
 - (v) the impact of any Change requested by the Province as part of the reinstatement.

Thereafter, unless a party elects to terminate this Agreement (in accordance with the provisions of Section 6.6 [Province Election Not to Reinstatement], 6.7 [Insufficient Insurance], 6.8 [Economic Reinstatement Test During Construction] or 6.9 [Uncollectible Insurance Receivables] or otherwise), Project Co will repair, replace or restore the Facility, subject to applicable Laws.

6.5 Financial Model Update

Upon delivery of the Reinstatement Plan, Project Co will amend the Financial Model based on the following assumptions:

- (a) that the Reinstatement Plan will be effected in accordance with its terms;
- (b) that the payments under the Senior Financing Agreements (including any amendments agreed between Project Co and the Senior Lenders in connection with the Reinstatement Plan in respect of which a consent request has been submitted to the Province) to be paid during the period of the Reinstatement Plan will be met without any rescheduling; and

- (c) that payments in respect of any Change comprised in the Reinstatement Plan will be determined in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals],

and will deliver the updated Financial Model to the Province for its approval, not to be unreasonably withheld or delayed.

6.6 Province Election Not to Reinstale

The Province may, by notice to Project Co within 30 days after receipt of the Reinstatement Plan, terminate this Agreement and pay compensation to Project Co in accordance with Section 1 [Termination for Province Event of Default or at Province's Option] of Schedule 9 [Compensation on Termination].

6.7 Insufficient Insurance

If during the Operating Period:

- (a) the Facility is completely or substantially destroyed;
- (b) the cost to repair, replace or restore the Facility exceeds the maximum amount of insurance coverage (which for greater certainty is the maximum amount of coverage prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements] required under this Agreement for the risk that caused the destruction;
- (c) neither the Province nor Project Co has agreed to pay the amount by which the cost to repair, replace or restore the Facility exceeds the Insurance Proceeds and Insurance Receivables with respect to such destruction, and
- (d) the destruction is not all or substantially all a Province Funded Rectification,

at any time on or after 30 days after delivery of the Reinstatement Plan to the Province, either party may, by notice to the other party, terminate this Agreement, in which case:

- (e) if:
 - (i) the Province has failed to obtain insurance coverage in accordance with Schedule 5 [Insurance Requirements] and Sections 6.14 [Risks Becoming Uninsurable] and 6.15 [Consequences of Risks Becoming Uninsurable] do not apply;
 - (ii) the Province has not deposited an amount equal to the insurance proceeds that would have been payable with the Insurance Trustee in accordance with Section 6.7(h)(ii) [Insufficient Insurance], and
 - (iii) the amount of such insurance proceeds would have been sufficient to repair, replace or restore the Facility,

the Province will pay compensation to Project Co in accordance with Section 1 [Termination for Province Event of Default or at Province's Option] of Schedule 9 [Compensation on Termination];

- (f) in any other case:
- (i) the Province will pay compensation to Project Co in accordance with Section 4 [No-Fault Termination] of Schedule 9 [Compensation on Termination]; and
 - (ii) if the Province is required to obtain insurance coverage in accordance with Schedule 5 [Insurance Requirements] and the Province has failed to obtain such insurance and Sections 6.14 [Risks Becoming Uninsurable] and 6.15 [Consequences of Risks Becoming Uninsurable] do not apply, the Province will also, but without duplicating payment of any item payable in accordance with Section 4 [No-Fault Termination] of Schedule 9 [Compensation on Termination], pay Project Co an amount equal to the insurance proceeds that would have been payable under the relevant policies in respect of such insurance had such insurance been obtained.

For the purpose of Section 6.7(b) [Insufficient Insurance], the reference to the maximum amount of insurance coverage is:

- (g) in respect of insurance required to be obtained by Project Co, the full amount of coverage prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements]; and
- (h) in respect of insurance required to be obtained by the Province,
 - (i) the full amount of applicable Insurance Proceeds and applicable Insurance Receivables plus any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements], plus
 - (ii) in the event and to the extent that the Province has failed to obtain such insurance in accordance with Schedule 5 [Insurance Requirements] and Sections 6.14 [Risks Becoming Uninsurable] and 6.15 [Consequences of Risks Becoming Uninsurable] do not apply, an amount equal to the insurance proceeds that would have been payable under the relevant policies in respect of such insurance had such insurance been obtained in accordance with Schedule 5 [Insurance Requirements], provided the Province deposits with the Insurance Trustee an amount equal to such insurance proceeds for application of such amount for the same purposes as the insurance.

6.8 Economic Reinstatement Test During Construction

If prior to the Service Commencement Date the Facility suffers damage or destruction that is likely to cost more than \$5,000,000, (Index Linked), to repair, replace and restore, and on the forecast Service Commencement Date following such reinstatement there would be a breach of the Senior Loan Life

Cover Ratio test contained in Section 12.1(t) of the Note Indenture, Project Co may, by notice to the Province, terminate this Agreement in which case the Province will pay compensation to Project Co in accordance with Section 4 [No-Fault Termination] of Schedule 9 [Compensation on Termination].

6.9 Uncollectible Insurance Receivables

If at any time while Project Co is relieved of its obligations under Section 6.4 [Project Co's Obligations – Material Damage or Destruction] by reason of the Relief Event described in Section (f) of the definition of Relief Event of Schedule 1 [Definitions and Interpretation]:

- (a) Project Co has complied with its obligations hereunder with respect to such Relief Event; and
- (b) notwithstanding such compliance by Project Co collection of the applicable Insurance Receivables is not possible using all reasonable efforts,

either party may, by notice to the other party, terminate this Agreement, in which case the Province will pay compensation to Project Co in accordance with Section 4 [No-Fault Termination] of Schedule 9 [Compensation on Termination].

6.10 Application of Insurance Proceeds If No Termination

Unless a party has terminated this Agreement (including pursuant to Section 6.6 [Province Election Not to Reinstated], 6.7 [Insufficient Insurance], 6.8 [Economic Reinstatement Test During Construction] or 6.9 [Uncollectible Insurance Receivables], the Province and Project Co will cause all:

- (a) applicable Insurance Proceeds which either has received;
- (b) applicable Insurance Proceeds which either is entitled to receive;
- (c) [Not Used]; and
- (d) amounts which the Province or Project Co has agreed to pay to cover the amount by which the cost to repair, replace or restore the Facility exceeds the Insurance Proceeds and Insurance Receivables with respect to complete or substantial destruction,

to be applied to the reinstatement of the Facility in accordance with the terms of this Agreement.

6.11 Application of Insurance Proceeds In Case of Termination

If a party has terminated this Agreement pursuant to Section 6.6 [Province Election Not to Reinstated], 6.7 [Insufficient Insurance], 6.8 [Economic Reinstatement Test During Construction] or 6.9 [Uncollectible Insurance Receivables]:

- (a) any Insurance Proceeds received prior to the Termination Payment Date by either Project Co or the Province in respect of damage to the Facility and not already applied to the repair of such damage will first be applied towards the Termination Payment and any Insurance Proceeds remaining after such application will be paid to the Province; and

- (b) on the Termination Payment Date, Project Co will assign to the Province the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

6.12 Standards of Replacement, Repair or Reconstruction

Any replacement, repair or reconstruction of the Facility or any part thereof pursuant to the provisions of this Agreement will be made or done in compliance with the Design and Construction Protocols and the Design and Construction Specifications, subject to any agreement made between the Province and Project Co to revise the Design and Construction Protocols or the Design and Construction Specifications as they pertain to any replacement, repaired or reconstructed Facility.

6.13 Mitigation

Project Co and the Province will take all reasonable steps to mitigate the effects of any risks or claims covered by this Section 6 [Insurance, Damage and Destruction] (including minimizing the amount of any costs and expenses which might result).

6.14 Risks Becoming Uninsurable

Each party will, forthwith upon Having Knowledge, notify the other if a Principal Insured Risk becomes or is expected to become Uninsurable. If both parties agree or it is determined in accordance with the Dispute Resolution Procedure that the relevant Principal Insured Risk is or is about to become Uninsurable and that the Principal Insured Risk being Uninsurable is not and will not be caused by the actions or omissions of Project Co or any Project Co Person or the Province or any Province Person contrary to Section 3.10 [Compliance] of Schedule 5 [Insurance Requirements], then the parties together with their respective insurance advisors will meet to discuss the means by which such Principal Insured Risk should be managed (including considering the feasibility of self-insurance by either or all parties).

6.15 Consequences of Risks Becoming Uninsurable

If the requirements of Section 6.14 [Risks Becoming Uninsurable] are satisfied but the parties cannot agree within 20 Business Days on how to manage a Principal Insured Risk that becomes Uninsurable (the "**Uninsurable Risk**"):

- (a) if the Uninsurable Risk is third party liability, if and for so long as the Uninsurable Risk is Uninsurable, the Province may by notice to Project Co terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 4 [No-Fault Termination] of Schedule 9 [Compensation on Termination];
- (b) if the Uninsurable Risk is not third party liability or if (and for as long as) the Province has not terminated this Agreement under Section 6.15(a) [Consequences of Risks Becoming Uninsurable], then this Agreement will continue, but neither Project Co nor the Province will be obligated by this Agreement to maintain insurance in respect of the Uninsurable Risk and references in this Agreement to the insurance required by this Section 6 [Insurance, Damage and Destruction] or Schedule 5 [Insurance Requirements] will be construed accordingly. In such event the Service Payments will thereafter be adjusted in

accordance with Section 10.3 [Adjustments to Service Payments] by agreement of the parties acting reasonably or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in Project Co's insurance cost as a result of Project Co not having to insure against the Uninsurable Risk; and

- (c) subject to Section 6.16 [Third Party Liability Insurance as on Uninsurable Risks], on the occurrence of loss or damage resulting from the Uninsurable Risk the Province will either:
- (i) pay to Project Co an amount equal to the insurance proceeds that would have been payable directly to Project Co under the relevant policies in respect of the Uninsurable Risk had the relevant insurance continued to be available and in effect, and this Agreement will continue; or
 - (ii) by notice to Project Co, terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 4 [No-Fault Termination] of Schedule 9 [Compensation on Termination],

except that the Province may not in any such case terminate this Agreement pursuant to Section 6.15(c)(ii) [Consequences of Risks Becoming Uninsurable] if Project Co releases the Province from all obligations under Section 6.15(c)(i) [Consequences of Risks Becoming Uninsurable] and deposits with the Insurance Trustee an amount equal, in the reasonable opinion of the Province, to the Insurance Proceeds, and all amounts in respect of deductibles and waiting periods that would have been the responsibility of Project Co under Section 3.7 [Project Co Deductibles] of Schedule 5 [Insurance Requirements], that would have been payable in respect of the Uninsurable Risk that occurred had the relevant insurance continued to be available and in effect.

6.16 Third Party Liability Insurance as an Uninsurable Risk

If this Agreement is terminated pursuant to Section 6.15(c)(ii) [Consequences of Risks Becoming Uninsurable] and at the date of such termination third party liability is an Uninsurable Risk, and if:

- (a) there is an outstanding third party claim against Project Co at the Termination Date; or
- (b) following the Termination Date a third party claim is subsequently made against Project Co in respect of an event or circumstance that occurred before the Termination Date,

which in either case would have been covered by the third party liability insurance that either the Province or Project Co would have been required to carry had that risk not been an Uninsurable Risk, then the Province will pay to Project Co the amount for which Project Co becomes liable in respect of such claim in addition to the compensation payable pursuant to Section 6.15(c)(ii) [Consequences of Risks Becoming Uninsurable].

6.17 Subrogation

If the Province makes any payment to Project Co pursuant to Section 6.15(c)(i) [Consequences of Risks Becoming Uninsurable] or Section 6.16 [Third Party Liability Insurance as an Uninsurable Risk], then the Province, to the extent of the amount paid, will be subrogated to Project Co's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

6.18 Continuing Attempts to Insure Uninsurable Risks

When there is an Uninsurable Risk for which Project Co or the Province, as applicable is responsible to obtain insurance under Schedule 5 [Insurance Requirements], Project Co or the Province, as applicable, will approach the insurance market on a regular basis and in any event at regular intervals of no longer than six months to establish whether the Uninsurable Risks remain Uninsurable.

6.19 Uninsurable Risks Becoming Insurable

Where a risk that was previously an Uninsurable Risk ceases to be so and either party becomes aware or is informed by the other party that this is the case, the party responsible for obtaining the insurance under Schedule 5 [Insurance Requirements], will forthwith take out, maintain and pay for or cause to be taken out, maintained and paid for insurance in accordance with the requirements of this Agreement in respect of the risk, and in any case:

- (a) Sections 6.14 [Risks Becoming Uninsurable], 6.15 [Consequences of Risks Becoming Uninsurable], 6.16 [Third Party Liability Insurance as Uninsurable Risk] and 6.18 [Continuing Attempts to Insure Uninsurable Risk] will no longer apply to the risk so long as it is not an Uninsurable Risk; and
- (b) the Service Payments will be adjusted pursuant to Section 10.3 [Adjustments to Service Payments] by agreement of the parties acting reasonably or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became insurable, to reflect any increase in Project Co's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk.

7. CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

7.1 Changes Required by the Province

The Province may require Changes in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

7.2 Innovation and Value Engineering

Project Co may submit an Innovation Proposal for consideration by the Province in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

7.3 Minor Works

The Province may require Minor Works in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

8. SUPERVENING EVENTS

8.1 Supervening Events

If:

- (a) a Compensation Event, Relief Event or Excusing Event occurs, Project Co may; or
- (b) a Force Majeure Event or Eligible Change in Law Event occurs, either party may,

apply for relief from its obligations, extensions of time, claim compensation or claim a termination right under this Agreement to the extent provided in this Section 8 [Supervening Events]. The "**Applicant**" means the party making such application.

8.2 Procedures Upon the Occurrence of a Supervening Event

The following procedure will apply if a Supervening Event occurs:

- (a) as soon as practicable, and in any event within five Business Days after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 [Supervening Events], the Applicant will give to the other party a notice ("**Supervening Event Notice**") identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant's claim;
- (b) within 10 Business Days after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, the Applicant will give to the other party:
 - (i) additional details, including available supporting documentation, in support of its claim; and
 - (ii) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by Project Co, if it is the Applicant, as a result of the Supervening Event;
- (c) from time to time thereafter the Applicant will notify the other party if at any time it receives or becomes aware of any further information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;

- (d) a party may make multiple but not duplicative claims in respect of a Supervening Event and both parties may make claims in respect of the same Supervening Event;
- (e) where the Province is claiming the benefit of an Eligible Change in Law Event, Project Co will provide the Province information reasonably requested in order to make its claim;
- (f) the Applicant must demonstrate:
 - (i) it could not have avoided such occurrence or the consequences of the Supervening Event by (a) complying with the requirements of this Agreement and (b) taking steps which it might reasonably be expected to have taken provided that, in the case of the Province, the Province is not required to take any steps that are referred to in Sections 2.6(a), 2.6(b) or 2.6(c) [General Duty of Province to Mitigate];
 - (ii) if applicable, the Supervening Event caused or will cause the Applicant to incur Direct Losses, a delay in the Project Schedule or the need for relief from other obligations under this Agreement; and
 - (iii) in the case of Project Co, it has complied with its mitigation obligations pursuant to Section 2.5 [General Duty of Project Co to Mitigate] and in the case of the Province, it has complied with its mitigation obligations pursuant to Section 2.6 [General Duty of Province to Mitigate];
- (g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to this Agreement, any Material Contract or any Senior Financing Agreement as a result of the Supervening Event; and
- (h) the parties will meet within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event and if the parties, within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, either party may refer the question of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) [Procedures Upon the Occurrence of a Supervening Event]) above have been satisfied or the extent of relief or compensation to which the affected party is entitled, for resolution in accordance with the Dispute Resolution Procedure.

8.3 Project Co's Entitlements Upon Occurrence of a Compensation Event

Subject to Section 8.12 [Delay in Notification], if at any time a Compensation Event has occurred and Project Co has given the Province a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by the Province or indemnification of the Province) under this Agreement arising from any delay or failure in performing any of its obligations under or in connection with this Agreement;

- (b) the Service Payments will be calculated as if the Compensation Event had not occurred based on the reasonably expected performance of Project Co, except that Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom;
- (c) the Province will pay to Project Co compensation in respect of a Compensation Event calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following (without duplication):
 - (i) any Direct Losses (including the amount of any applicable insurance deductibles and calculated without netting out Insurance Receivables) resulting from the Compensation Event;
 - (ii) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting from the Compensation Event; and
 - (iii) the Service Payments payable to Project Co,
 except that:
 - (iv) Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom; and
 - (v) no Indirect Losses will be taken into consideration.
- (d) concurrent with the first payment of any compensation by the Province under Section 8.3(c) [Project Co's Entitlements Upon Occurrence of a Compensation Event], Project Co will assign to the Province its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim); and
- (e) if the Compensation Event occurs prior to the Service Commencement Date, the Project Schedule will be amended and the Target Service Commencement Date, the Longstop Date and the dates for move-in as set out in the Facility Move-in Schedule will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Compensation Event, but the Expiry Date will not be extended.

8.4 Project Co's Entitlements Upon Occurrence of a Relief Event

Subject to Section 8.12 [Delay in Notification], if at any time a Relief Event has occurred and Project Co has given the Province a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by the Province or indemnification of the Province, except as provided for in this Section 8.4 [Project Co's Entitlements Upon Occurrence of a Relief Event]) under this Agreement arising from any delay or failure in performing any of its obligations under this Agreement, except that, with respect to a Relief Event occurring after Service Commencement, nothing will affect any entitlement of the Province to make Deductions and the Province will only be obligated to make Service Payments to the extent that the performance or other criteria for Service Payments are met in accordance with the applicable provisions of this Agreement notwithstanding the Relief Event;
- (b) if the Relief Event occurs prior to the Service Commencement Date:
- (i) the Project Schedule will be amended and the Target Service Commencement Date, the Longstop Date and the dates for move-in as set out in the Facility Move-in Schedule will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Relief Event, but the Expiry Date will not be extended;
 - (ii) for the period that Service Commencement is delayed to a date after the Target Service Commencement Date (as it was prior to having been postponed pursuant to Section 8.4(b)(i) [Project Co's Entitlements Upon Occurrence of a Relief Event], above) as a result of one or more of the Relief Events described in (b), (c) or (h) of the definition of Relief Event the Province will pay to Project Co an amount equal to the Senior Debt Service Amount for such period less applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Relief Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement; and
 - (iii) concurrent with the first payment of any amount by the Province pursuant to Section 8.4(b)(ii) [Project Co's Entitlements Upon Occurrence of a Relief Event], Project Co will assign to the Province its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim);
- (c) if the Relief Event, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice is delivered by the Applicant, either party may at any time so long as such Relief Event is, or such effect is, continuing and subject to Section 14.2 [Transfer to the Province of Assets, Contracts, etc.], terminate this Agreement by notice to the other party;
- (d) if the Province gives notice to Project Co under Section 8.4(c) [Project Co's Entitlements Upon Occurrence of a Relief Event] terminating this Agreement, Project Co will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue, in which case Project Co's rights to relief under this Section 8.4

[Project Co's Entitlements Upon Occurrence of a Relief Event] in respect of the Relief Event will cease and the Province's termination notice will be deemed null and void;

- (e) if Project Co gives notice to the Province under Section 8.4(c) [Project Co's Entitlements Upon Occurrence of a Relief Event] terminating this Agreement, the Province will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue. If the Province gives Project Co such response then:
 - (i) Project Co's termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
 - (ii) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;
 - (iii) at any time so long as the Supervening Event referred to in Section 8.4(e)(ii) [Project Co's Entitlements Upon Occurrence of a Relief Event] is continuing, the Province may terminate this Agreement by notice to Project Co; and
 - (iv) Project Co may at any time so long as the Supervening Event referred to in Section 8.4(e)(ii) [Project Co's Entitlements Upon Occurrence of a Relief Event] is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 8.4(c) [Project Co's Entitlements Upon Occurrence of a Relief Event] terminate this Agreement by notice to the Province;
- (f) if this Agreement is terminated pursuant to this Section 8.4 [Project Co's Entitlements Upon Occurrence of a Relief Event], Project Co will be entitled to compensation on such termination in accordance with Section 4 [No-Fault Termination] of Schedule 9 [Compensation on Termination]; and
- (g) Deductions made while Project Co is entitled to relief under this Section 8.4 [Project Co's Entitlement Upon Occurrence of a Relief Event] will not be counted for the purposes of Section 11.1(b) [Province's Step-in Rights] or 12.1(h) [Project Co Events of Default] or Section 9.7 [Limitation on Project Co's Remedies] or 9.8 [Limits on Monetary Compensation].

8.5 Project Co's Entitlements Upon Occurrence of an Excusing Event

Subject to Section 8.12 [Delay in Notification], if during the Operating Period an Excusing Event has occurred and Project Co has given the Province a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by the Province or indemnification of the Province) under this Agreement arising from any delay or failure in performing any of its obligations; and

- (b) the Service Payments will be calculated as if the Excusing Event had not occurred based on the reasonably expected performance of Project Co, except that Avoidable Costs and applicable Insurance Proceeds and Insurance Receivables and insurance proceeds which Project Co would have recovered if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom.

8.6 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Section 8.12 [Delay in Notification], if at any time a Force Majeure Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto:

- (a) the Applicant is relieved from any liability or consequence (including termination by the Province or indemnification of the Province except as provided for in this Section 8.6 [Parties' Entitlements Upon Occurrence of a Force Majeure Event]) under this Agreement arising from any delay or failure in performing any of its obligations under this Agreement, except that nothing will affect any entitlement of the Province to make Deductions and the Province will only be obligated to make Service Payments to the extent that the performance or other criteria for Service Payments are met notwithstanding the Force Majeure Event;
- (b) if the Applicant is Project Co and the Force Majeure Event occurs prior to the Service Commencement Date, the Project Schedule will be amended and the Target Service Commencement Date, the Longstop Date and the dates for move-in as set out in the Facility Move-in Schedule will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Force Majeure Event, but the Expiry Date will not be extended;
- (c) if a Force Majeure Event occurs and it, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice is delivered by the Applicant, either party may at any time so long as such Force Majeure Event is, or such effect is, continuing, terminate this Agreement by notice to the other party;
- (d) if Project Co gives notice to the Province under Section 8.6(c) [Parties' Entitlements Upon Occurrence of a Force Majeure Event] terminating this Agreement, the Province will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue. If the Province gives Project Co such response then:
 - (i) Project Co's termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
 - (ii) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date the Force Majeure Event first occurred;

- (iii) at any time so long as the Compensation Event referred to in Section 8.6(d)(ii) [Parties' Entitlements Upon Occurrence of a Force Majeure Event] is continuing, the Province may terminate this Agreement by notice to Project Co; and
- (iv) Project Co may at any time so long as the Compensation Event referred to in Section 8.6(d)(ii) [Parties' Entitlements Upon Occurrence of a Force Majeure Event] is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 8.6(c) [Parties' Entitlements Upon Occurrence of a Force Majeure Event], terminate this Agreement by notice to the Province;
- (e) if this Agreement is terminated pursuant to Section 8.6(c) or Sections 8.6(d)(iii) or 8.6(d)(iv) [Parties' Entitlements Upon Occurrence of a Force Majeure Event], Project Co will be entitled to compensation on such termination in accordance with Section 4 [No-Fault Termination] of Schedule 9 [Compensation on Termination]; and
- (f) Deductions made while Project Co is entitled to relief under this Section 8.6 [Parties' Entitlements Upon Occurrence of a Force Majeure Event] will not be counted for the purposes of Section 11.1(b) [Province Step-in Rights] or 12.1(h) [Project Co Events of Default] or Section 9.7 [Limitation on Project Co's Remedies] or 9.8 [Limits on Monetary Compensation].

8.7 Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event

Subject to Section 8.12 [Delay in Notification], if at any time an Eligible Change in Law Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto:

- (a) subject to Section 8.7(c) [Parties' Entitlements Upon Occurrence of an Eligible Change In Law Event], in the case of a Relevant Change in Law, Project Co will be entitled to compensation for Direct Losses and the Service Payments will be increased or decreased to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Services;
- (b) subject to Section 8.7(c) [Parties' Entitlements Upon Occurrence of an Eligible Change In Law Event], in the case of a Discriminatory Change in Tax Law Project Co or the Province will be entitled to compensation for any revenue loss or revenue gain for Project Co and any Partner (as the case may be) and the Service Payments will be increased or decreased to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Services;
- (c) subject to Section 8.7(d) [Parties' Entitlements Upon Occurrence of an Eligible Change In Law Event] with respect to Allowable Capital Expenditures and to Sections 8.7(e) [Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event], any compensation payable or increase or decrease in the Service Payments in respect of an Eligible Change in Law Event will be calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had such Eligible Change

in Law Event not occurred and taking into consideration the following (without duplication):

- (i) any Direct Losses (calculated without netting out Insurance Receivables) resulting from the Eligible Change in Law Event;
- (ii) any net increase or decrease in the costs of Project Co performing the Services resulting from the Eligible Change in Law Event; and
- (iii) the Service Payments payable to Project Co,

except that:

- (iv) Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom; and
- (v) no Indirect Losses will be taken into consideration other than as set out in Section 8.7(b) [Parties' Entitlements Upon Occurrence of an Eligible Change In Law Event] above,

and concurrent with the first payment of any compensation by the Province under this 8.7(c) [Parties' Entitlements Upon Occurrence of an Eligible Change In Law Event], Project Co will assign to the Province its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim);

- (d) in the case of a Relevant Works Change in Law:
 - (i) subject to Section 8.7(c) [Parties' Entitlements Upon Occurrence of an Eligible Change In Law Event], the Service Payments will be increased or decreased to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Services as a direct result of the Allowable Capital Expenditure in respect of such Relevant Works Change in Law; and
 - (ii) Project Co will be entitled to compensation from the Province in an amount calculated by reference to the table set forth below as the Province's share of the Allowable Capital Expenditure in respect of such Relevant Works Change in Law, taking into account the different applicable amounts of the Province's share when the aggregate amount of such Allowable Capital Expenditures causes the Cumulative Allowable Capital Expenditure to be in more than one of the applicable provisions of such table (for greater certainty, the amounts listed below represent cumulative totals for the entire Operating Period and are not annual amounts):

Column 1	Column 2	Column 3	Column 4
Cumulative Allowable Capital Expenditure	Project Co share of Allowable Capital Expenditure (as a % of the incremental Allowable Capital Expenditure)	Province's share of Allowable Capital Expenditure (as a % of the incremental Allowable Capital Expenditure)	Maximum cumulative Project Co share of the Cumulative Allowable Capital Expenditure
Applicable to the first			
Applicable to the next			
Applicable to the next			
Applicable to the next			
Applicable to amounts over			

- (e) in the case of an Input Tax Recoverability Change in Law:
- (i) the Province will pay Project Co, and Project Co will be entitled to, any Additional Irrecoverable Tax resulting from the Input Tax Recoverability Change in Law; and
 - (ii) Project Co will pay the Province, and the Province will be entitled to, any Additional Recoverable Tax resulting from the Input Tax Recoverability Change in Law,

but in each case only to the extent necessary to leave Project Co in no better or worse position than before the Input Tax Recoverability Change in Law, provided however that Section 8.7(c) will not apply to Input Tax Recoverability Change in Law; and

8.8 Parties' Entitlements Upon Occurrence of a Change in Law

Without limiting Section 8.5 [Project Co's Entitlements Upon Occurrence of an Excusing Event] or Section 8.7 [Parties' Entitlements Upon Occurrence of an Eligible Change In Law Event]:

- (a) if compliance by Project Co with a Change in Law is outside the scope of, or inconsistent with, Project Co's obligations under this Agreement, or would mean a change in Project Co's obligations under this Agreement or a change in the scope or manner of carrying out the Project, such Change in Law will be deemed to constitute a Change having effect

from the time of such event except that Project Co will not be entitled to any payment or other compensation other than as set out in Section 8.5 [Project Co's Entitlements Upon Occurrence of an Excusing Event] or 8.7 [Parties' Entitlements Upon Occurrence of an Eligible Change In Law Event];

- (b) except as otherwise provided in this Agreement, including in Section 8.5 [Project Co's Entitlements Upon Occurrence of an Excusing Event] and 8.7 [Parties' Entitlements Upon Occurrence of an Eligible Change In Law Event], Project Co will not be entitled to any other payment or compensation or relief in respect of any Change in Law or the consequences thereof; and
- (c) nothing in Section 8.7 [Parties' Entitlements Upon Occurrence of an Eligible Change In Law Event] will be interpreted as relieving Project Co of its obligation, following any and all Changes in Law, to perform its obligations under this Agreement in compliance with all Laws.

8.9 Labour Disputes

If Project Co Has Knowledge of an actual or potential labour dispute that may affect any of the Design, the Construction or the Services, Project Co will promptly:

- (a) give notice thereof to the Province, including all relevant information related to the dispute of which Project Co Has Knowledge;
- (b) take all reasonable steps to mitigate the effects of such labour dispute on the performance of any of the Design, the Construction or the Services including by applying for relief to appropriate tribunals or courts; and
- (c) if not already received, apply for an essential services designation pursuant to Part 6 of the *Labour Relations Code* (British Columbia) for the facilities, productions and services that will be affected by the labour dispute.

Project Co acknowledges that if the labour dispute involves workers of a Project Contractor or Sub-Contractor, or of anyone employed by or through them, the Province will not be required to provide any facilities, space or assistance in the Facility or on the Lands for the purposes of such workers or any applicable union.

8.10 Payments in Respect of Supervening Events

Payments between the parties and any adjustments to Service Payments in respect of Supervening Events will be made in accordance with Section 10 [Lump Sum Payments and Service Payment Adjustments].

8.11 Supervening Events Mitigated by Change

Nothing in this Agreement will limit the right of the Province to perform or mitigate its obligations in respect of Supervening Events by requiring a Change or Changes.

8.12 Delay in Notification

If the Supervening Event Notice or any required information is provided by an Applicant to the other party after the dates referred to in Section 8.2 [Procedures Upon the Occurrence of a Supervening Event], then without prejudice to any other rights or remedies of the other party under this Agreement:

- (a) the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Agreement to the extent that the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such notice or information; and
- (b) if the period of delay is 6 months or more, the rights of the Applicant with respect to the applicable Supervening Event will be of no further force or effect.

8.13 Equivalent Project Relief

The parties acknowledge that Project Co will share with the Project Contractors, who will in turn share with Sub-Contractors, in accordance with the Project Contracts, certain benefits to Project Co derived from the rights of Project Co under, and subject to the obligations and limitations under, this Agreement including rights of Project Co under Section 8 [Supervening Events] (such rights, as qualified by such obligations and limitations, are in this Section collectively "**Project Co's Rights**"). Accordingly:

- (a) any circumstance affecting a Project Contractor or a Sub-Contractor which, if such circumstance had affected Project Co directly would have given rise to a claim by Project Co pursuant to Project Co's Rights will, for the purpose of this Agreement, be deemed to be a circumstance affecting Project Co in respect of which Project Co may claim under and subject to Project Co's Rights; and
- (b) amounts claimed by the Project Contractor or Sub-Contractor against Project Co in respect of any circumstance referred to in Section 8.13(a) [Equivalent Project Relief] above may be claimed by Project Co against the Province under and subject to Project Co's Rights, but whether or not the Province is liable for such amounts will be determined under this Agreement as if the circumstance had affected Project Co directly,

provided that:

- (c) all such claims will be made and administered by Project Co and no Project Contractor or Sub-Contractor will have any rights against the Province, including under this Section 8.13 [Equivalent Project Relief];
- (d) in no event will the liability of the Province under this Section 8.13 [Equivalent Project Relief] be greater than it would have been if Project Co had been directly affected by the circumstance referred to in Section 8.13(a) [Equivalent Project Relief] above; and
- (e) in no event will the Province be liable under this Section 8.13 [Equivalent Project Relief] for any Direct Losses or other compensation that the Province would not have been liable

for if Project Co had been directly affected by the circumstance referred to in Section 8.13(a) [Equivalent Project Relief] above.

8.14 Responsibility for Participants and Trespassers

- (a) Except as otherwise expressly provided in this Agreement, the Province shall not be responsible for the presence on or around or entry onto or around the Site or the Facility, of, or any other interference with or affecting the Site or the Facility or the vicinity of the Site, the Facility or the Construction by or caused by, any participants (“**Participants**”) in a Protest Action, or any persons other than Participants not entitled to be on the Site or the Facility (“**Trespassers**”), nor for any act, omission or default of any Participant or Trespasser (in any such case whether before or during the Term). The presence on or around or entry onto or around the Site or the Facility of, or any other interference with or affecting the Site or the Facility or the vicinity of them or the Construction by or caused by, any Participant or Trespasser and any lawful or unlawful activities of any such Person shall not be a breach of the obligations of the Province hereunder to permit Project Co to have access to the Site, nor a breach of any other obligation or representation or warranty of the Province under this Agreement.
- (b) The management of Participants and Trespassers in respect of the Site shall be the responsibility of Project Co during the Construction Period. If at any time during such period, any part of the Site or the Facility is occupied by any Participants or Trespassers, then, as soon as reasonably practicable, Project Co shall notify the Province of such occurrence and of the action which Project Co proposes to take to deal with such Participants or Trespassers. Project Co may exercise any legal remedies available to it to remove Participants and Trespassers (including the obtaining of injunctions and enforcement orders in respect thereof), provided that Project Co shall give the Province’s Design and Construction Representative reasonable (and in any event not less than 24 hours’) notice prior to commencing any legal proceedings for that purpose and provided further that Project Co shall not give directly or indirectly to any Participant or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Participant or Trespasser or by other Participants or Trespassers, provided that Project Co shall not by virtue of this Section be prevented from entering into bona fide settlements of claims brought against it by such Participants or Trespassers which provide for reasonable payments in satisfaction of such claims or agreeing to any reasonable cost orders in any proceedings.
- (c) Project Co may request the assistance of the Province (at the cost of Project Co) to remove Participants or Trespassers where Project Co demonstrates, to the reasonable satisfaction of the Province, that it has exercised all legal remedies available to it to remove the Participants or Trespassers (provided that for this purpose Project Co may but shall not be obligated to prosecute injunctive or other judicial remedies beyond the Court of first instance) and that the continued presence of the Participants or Trespassers is having a material adverse effect on the conduct of the Construction that Project Co is unable to mitigate. Following such request, the Province shall notify Project Co as to

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

- (d) Where Project Co is given assistance by the Province in accordance with Section 8.14(c) [Responsibility for Participants and Trespassers] hereof, Project Co shall indemnify and hold harmless the Province and the Province Indemnified Persons, and each of them, in respect of all Direct Losses suffered or incurred by the Province and the Province Indemnified Persons, or any of them, as a result of or in connection with the provision of such assistance.

8.15 Allocation of Risks of Participants and Trespassers

- (a) In the event of any Protest Action during the Construction Period, Project Co shall be entitled to compensation, extensions of time or other relief in respect thereof as a Compensation Event in accordance with this Section, subject to the following additional parameters:
- (i) Project Co shall only be entitled to extensions of time in respect of Protest Actions during the Construction Period pursuant to Section 8.3(e) [Project Co's Entitlement Upon Occurrence of a Compensation Event] if and to the extent that Project Co establishes that the Participants in such Protest Action continue to occupy any part of the Site or the Facility during the Construction Period for a period of more than seven days after Project Co has exhausted all legal remedies available to it to seek injunctive relief or other judicial remedies from a Court of first instance and to enforce any injunction or other remedy granted by such Court to remove them (provided that for this purpose Project Co may but shall not be obligated, to prosecute injunctive or other judicial remedies beyond the Court of first instance); and
- (ii) Project Co shall only be entitled to compensation in respect of Protest Actions during the Construction Period pursuant to Section 8.3(c) [Project Co's Entitlements Upon Occurrence of a Compensation Event] if and, subject to Section 8.3(d) [Project Co's Entitlements Upon Occurrence of a Compensation Event], to the extent that Project Co establishes that it has incurred Direct Losses to mitigate the effects of Protest Actions, including:
- (A) the costs of exercising any legal remedy available to Project Co in respect of Protest Actions (including in accordance with its obligations under Section 8.14 [Responsibility for Participants and Trespassers]);
- (B) the increased costs, including financing costs, attributable to any extension of time to which Project Co is entitled;
- (C) the cost of remedying any damage caused by Protest Actions; and

(D) the taking of any mitigation action in relation to Protest Actions,

which aggregate (including amounts paid by way of indemnity under Section 8.14(d) [Responsibility for Participants and Trespassers], but excluding amounts referred to in 8.3(d) [Project Co's Entitlements Upon Occurrence of a Compensation Event] more than \$100,000 CAD.

(b) Except as expressly provided in Section 8.15 [Allocation of Risks of Participants and Trespassers], as between the Province and Project Co, during the Construction Period, Project Co shall bear, without recourse to the Province or any of the Province Indemnified Persons:

- (i) any losses suffered by Project Co, its agents, Sub-contractors or employees of any of them;
- (ii) any Direct Losses suffered by the Province or any of the Province Indemnified Persons arising:
 - (A) from any interference, obstruction or other hindrance to the Project or any interference with or obstruction or other hindrance to the conduct of the Construction, including the presence of any Participant or Trespasser on any part of the Site or Facility during the Construction Period
 - (B) damage to the Facility during the Construction Period
 - (C) as a result of any measures taken by or on behalf of or at the request or direction of Project Co; and/or
 - (D) as a result of the failure by Project Co to take or cause to be taken measures which should have been taken,

that are caused by any Participant or Trespasser, including any damage to property, any bodily injury or death, and any loss of income.

(c) Nothing in this Section shall affect:

- (i) any right of the Province to make or recover any claim against any Participant or Trespasser for public nuisance or for damage suffered by the Province or its respective agents, contractors or subcontractors or any tier or any employees of any of them; or
- (ii) any right of Project Co to make or recover any claim against any Participant or Trespasser for damage suffered by Project Co, its agents or Sub-contractors or any employees of any of them.

9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

9.1 Project Co's Obligation to Indemnify

Project Co will indemnify and keep the Province and each Province Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with:

- (a) any loss of or physical damage to property or assets of the Province or any Province Indemnified Person, or any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any Province Indemnified Person, arising by reason of any:
 - (i) negligent act or omission of Project Co;
 - (ii) wilful misconduct of Project Co; or
 - (iii) non-compliance by Project Co with any of the provisions of this Agreement or any document, instrument or agreement delivered to the Province as required under this Agreement;
- (b) breach of any representation or warranty by Project Co under this Agreement;
- (c) any Project Co Hazardous Substances;
- (d) breach by Project Co of, or non-compliance by Project Co with, Permits or Laws, or the failure of Project Co to obtain all necessary Permits for which it is responsible in accordance with this Agreement; or
- (e) any infringement or misappropriation of Intellectual Property rights of any Person by Project Co,

except to the extent caused, or contributed to, by:

- (f) non-compliance by the Province with any provision of this Agreement or any document, instrument or agreement delivered to Project Co as required under this Agreement; or
- (g) any negligent act or omission or any wilful misconduct of the Province or any Province Person,

other than non-compliances, negligent acts or omissions or wilful misconduct: (i) causing Malicious Damage that could have been anticipated and prevented, or substantially mitigated, through proper performance by Project Co of any, or all, of its obligations pursuant to this Agreement; and (ii) of Project Co or any Project Co Persons that are or could be attributed to the Province solely by virtue of the principle of non-delegable duty.

For greater certainty, Section 4.4 [Project Co Persons] applies to this Section 9.1 [Project Co's Obligation to Indemnify].

This Section 9.1 [Project Co's Obligation to Indemnify] may be relied upon by the Province Indemnified Persons and may be enforced directly by any of them against Project Co in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and Project Co.

9.2 Conduct of Third Person Claims

This Section 9.2 [Conduct of Third Person Claims] will apply to the conduct of claims made by a third Person against a party having or claiming to have with respect to such third Person claim, the benefit of an indemnity or a right to compensation under this Agreement. The party having, or claiming to have, the benefit of the indemnity or right to compensation is referred to as the "**Beneficiary**" and the party from whom the indemnity or compensation is sought is referred to as the "**Indemnifier**". Accordingly, subject to the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement:

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;
- (b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (c) in defending any claim described in Section 9.2(b) [Conduct of Third Person Claims] in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by or compensation from the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;
- (d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.2(b) [Conduct of Third Person Claims] the Indemnifier will:
 - (i) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and
 - (iii) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

- (e) the Beneficiary may take conduct of any defence, dispute, compromise or appeal of the claim and of any incidental negotiations if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.2(b) [Conduct of Third Person Claims] ; or
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 9.2(a) [Conduct of Third Person Claims] or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) the Indemnifier fails to comply in any material respect with Section 9.2(d) [Conduct of Third Person Claims] above.

In the case of (iii) above the Beneficiary may pay or settle any claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Agreement. Otherwise the Beneficiary will not pay or settle such claims without the consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;

- (f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 9.2(b) [Conduct of Third Person Claims] above applies. On receipt of such notice the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 9.2(f) [Conduct of Third Person Claims] (for the sake of clarity, for reasons other than as provided in Sections 9.2(e)(ii) or 9.2(e)(iii)) [Conduct of Third Person Claims], then the Indemnifier will be released from any liability under its indemnity under Section 9.1 [Project Co's Obligation to Indemnify] or its obligation to provide compensation, as the case may be; and
- (g) in response to any claim of infringement or misappropriation or alleged infringement or misappropriation of the Intellectual Property rights of any Person, Project Co may replace or modify the infringing or allegedly infringing item so that it is no longer infringing or subject to the infringement allegation provided that:
- (i) the modification or replacement is performed without additional cost to Province; and
 - (ii) the modification or replacement item, when used in conjunction with the Facility, provides at least the same functionalities, operation, performance, results and benefit as the original item; and

- (iii) the replacement of an infringing or alleged infringing item pursuant to this Section 9.2(g) will not be a breach of any provision of this Agreement that requires the license for the item to be perpetual and irrevocable, and to otherwise comply with the requirements of Section 4.16 [HMI Software Products] or 4.17 [HMI Customizations], as applicable.

9.3 General Obligation to Pursue Third Person Recovery

If a party (the "**Paying Party**") has paid to the other party (the "**Receiving Party**") an amount in respect of any indemnity, Supervening Event or other liability hereunder (a "**Liability Payment**"), and the Receiving Party has a *bona fide* claim for recovery of any such Liability Payment from a third Person or under any insurance required pursuant to this Agreement, the Receiving Party will:

- (a) as directed by the Paying Party either:
 - (i) promptly make all reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or
 - (ii) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party's cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and
- (b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:
 - (i) an amount equal to the sum recovered (or of the value of the recovery whether by discount, credit, saving, relief or otherwise) less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and
 - (ii) the Liability Payment,

provided that the Paying Party will be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the Receiving Party in respect of the fact, matter or circumstance giving rise to the Liability Payment.

For greater certainty, the above reference to a "third Person" will not include, in the case where the Province is the Paying Party, Project Co and Project Co Persons and their respective employees, directors, officers and agents and will not include, in the case where Project Co is the Paying Party, the Province and the Province Indemnified Persons.

9.4 Waiver of Remedies

No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this

Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

9.5 Remedies Cumulative

Subject to Sections 9.6 [Limitation on Province's Remedies], 9.7 [Limitations on Project Co's Remedies] and 9.8 [Limits on Monetary Compensation]:

- (a) the rights and remedies of the parties under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;
- (b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and
- (c) no single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.6 Limitation on Province's Remedies

The Province's remedies in respect of any failure by Project Co:

- (a) to achieve Service Commencement by the Target Service Commencement Date or the Longstop Date will be limited to the Province's rights pursuant to Section 12.4 [Province Termination Right] and Section 10.2 [Service Commencement Delay Costs] of Schedule 2 [Design and Construction Protocols]; and
- (b) to perform the Services in accordance with this Agreement will be limited to Deductions in accordance with Schedule 8 [Payments],

provided that nothing in this Section 9.6 [Limitations on Province's Remedies] will limit the Province's right to:

- (c) claim, on or after a termination of this Agreement, costs, losses, damages and expenses suffered or incurred by the Province as a result of rectifying or mitigating the effects of any breach of this Agreement by Project Co except to the extent recovered by the Province under this Agreement or taken into account to reduce any compensation payable by the Province pursuant to Schedule 9 [Compensation on Termination];
- (d) make a claim for indemnification pursuant to Section 9.1 [Project Co's Obligations to Indemnify];
- (e) deliver to Project Co a Dispute Notice or a notice of default or termination pursuant to Section 12 [Project Co Events of Default] and pursue all remedies in respect thereof; or
- (f) pursue any other express remedy available to the Province under this Agreement or any equitable remedy, including injunctive relief and specific performance.

9.7 Limitation on Project Co's Remedies

To the extent Project Co has claimed or is entitled to claim for relief or compensation for a Supervening Event, pursuant to Section 8 [Supervening Events], Project Co may not make any further claim against the Province for costs, losses, damages or expenses incurred by Project Co, or for any other relief, in respect of any such events provided that nothing in this Section 9.7 [Limitation on Project Co's Remedies] will limit Project Co's right to:

- (a) deliver to the Province a Dispute Notice or a notice of default or termination pursuant to Section 13 [Province Events of Default] and pursue all remedies in respect thereof; or
- (b) pursue any other express remedy available to Project Co under this Agreement or any equitable remedy, including injunctive relief and specific performance.

9.8 Limits on Monetary Compensation

Every right to claim compensation or indemnification or reimbursement under this Agreement will be construed so that recovery is without duplication to any other amount recoverable under this Agreement. Neither party will be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Agreement.

9.9 No Liability for Indirect Losses

Unless specifically allowed in this Agreement, neither party to this Agreement will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party.

9.10 Province's Right of Set Off

The Province may set off any amounts owing by Project Co to the Province under this Agreement against payments due by the Province to Project Co under this Agreement provided that in respect of Termination Payments payable under Sections 1 [Termination for Province Event of Default or at Province's Option] or Section 4 [No-Fault Termination] of Schedule 9 [Compensation on Termination] such set off will be only to the extent that after any such amount has been set off, such Termination Payment made would be an amount not less than the Senior Debt.

9.11 Project Co's Right of Set Off

Project Co may set off any amounts owing by the Province to Project Co under this Agreement against any payments due by Project Co to the Province under this Agreement.

9.12 Undisputed Amounts and Interest on Disputed Amounts

A party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Agreement but any disputed portion or amount will not be payable until the Dispute is resolved in accordance with the Dispute Resolution Procedure.

If payment of any amount payable under this Agreement is delayed while the matter is in Dispute, upon resolution of the Dispute, interest will be payable on any amount determined payable pursuant to the

Dispute Resolution Procedure and will be calculated at the Prime Rate compounded monthly from the time such amount became payable under this Agreement until paid.

9.13 Interest on Overdue Amounts

If payment of any amount payable under this Agreement is not made when due (including Termination Payments payable pursuant to Schedule 9 [Compensation on Termination]), interest will be payable on such amount at the Default Rate and will be calculated from the date due under this Agreement until paid, compounded monthly. The party to whom payment is owed and overdue will notify the other party at least monthly of the overdue amount and the accrued interest on that amount.

10. LUMP SUM PAYMENTS AND SERVICE PAYMENT ADJUSTMENTS

10.1 Payments

To the extent a party:

- (a) is entitled to payment from the other party under this Agreement, including in respect of a Change under Section 7 [Changes, Minor Works and Innovation Proposals], a Supervening Event under Section 8 [Supervening Events] or an indemnification claim under Section 9 [Indemnities and Limits on Liabilities and Remedies]; or
- (b) is entitled to share in a benefit and to receive payment from the other party under this Agreement, including in respect of a Refinancing Gain under Section 5 [Financing of the Project], Innovation Proposal under Section 7 [Changes, Minor Works and Innovation Proposals] or Eligible Change in Law Event under Section 8 [Supervening Events],

the affected or entitled party may make written demand for such payments from time to time after being entitled to payment and in respect of any Direct Losses, after such Direct Losses have been incurred and in respect of any shared benefit, after receipt by the other party of the shared benefit, and payment will be made in accordance with this Section 10 [Lump Sum Payments and Service Payment Adjustments].

If the Province is obligated to compensate, reimburse or otherwise pay Project Co, the Province may in its discretion make such payment by lump sum payment or by payments that reasonably match the cash outlays of Project Co.

If Project Co is obligated to compensate, reimburse or otherwise pay the Province, the Province may in its discretion, require Project Co to make such payment:

- (c) by a lump sum payment, up to a maximum lump sum payment of \$1,000,000 (Index Linked) without the consent of Project Co, and any greater amount with the consent of Project Co, acting reasonably; or
- (d) by payments that reasonably match the cash inflows to Project Co or the averted cash outlays.

Lump sum payments and payments that reasonably match cash inflows, cash outlays or averted cash outlays will be due and payable within 30 days of delivery of written demand supported by all relevant information.

The parties may agree to any other basis for payment.

10.2 Financing of Lump Sum Payment Amounts

If the Province is obligated to compensate, reimburse or otherwise pay Project Co and exercises its discretion to do so by a lump sum payment in accordance with Section 10.1 [Payments], at the Province's request Project Co will use all reasonable efforts to obtain the financing required to make such payment on the best terms reasonably available and, to the extent that Project Co is able to obtain such financing, there will be a corresponding increase made to the Service Payments in accordance with Section 10.3 [Adjustments to Service Payments]. The Province will

- (a) promptly pay to Project Co an amount equal to the reasonable out-of-pocket expenses incurred by Project Co in seeking such financing provided that the Province approved such expenses prior to Project Co incurring them; and
- (b) provide concurrent interim financing of any expenditures and costs to be incurred by Project Co until the earlier of the date on which such financing is obtained or payment is made pursuant to Section 10.1 [Payments].

The Province acknowledges that the Senior Lenders have no obligation to provide the financing referred to in this Section 10.2 [Financing of Lump Sum Payment Amounts] or to subordinate or share their security.

10.3 Adjustments to Service Payments

Subject to the Province's discretion for the basis of payment under Section 10.1 [Payments] or the parties' agreement to another basis for payment under Section 10.1 [Payments], if either party gives notice to the other party that it wishes the parties to consider whether an entitlement to payment under this Agreement is more efficiently effected by adjustments (both increases and decreases) to Service Payments, or if this Agreement requires that an entitlement be effected by such adjustments:

- (a) within 10 Business Days after such notice or after the determination that Service Payments are required to be adjusted, Project Co will give notice to the Province of the proposed adjustments to be made to the Service Payments to achieve the objectives and outputs set out in Section 10.3(b) [Adjustments to Service Payments]. Such proposed adjustments will be ascertained by entering the relevant cost adjustments and losses into the Financial Model with effect from the relevant date determined in accordance with Section 10.3(c) [Adjustments to Service Payments];
- (b) the adjustments to the calculation of the Service Payments will be determined so that upon comparing the output of the Financial Model as at the adjustment date (after updating the Financial Model to reflect actual performance to date) before and after the proposed adjustments to Service Payments, and taking into account the impact of such

adjustments on the economics of the Project as reflected in the Financial Model, the timing of liability for taxation and the time when the adjustments to the Service Payments will take effect, such comparison of the output from such Financial Model shows that:

- (i) the Equity IRR in respect of equity subscribed in and Junior Debt advanced to Project Co in accordance with the Financial Model prior to the Service Payment adjustment will be unchanged except to the extent required to reflect:
 - (A) any material change in the risk profile of the Project arising in connection with the circumstance giving rise to the adjustment; or
 - (B) any benefit to the parties including in connection with a Refinancing Gain or Innovation Proposal; and
 - (ii) Project Co would not, by reason of the effect of the occurrence of the adjustment or the consequential change in cash flow during the Term as shown in the Financial Model (as adjusted), be placed, in respect of any of the Senior Financing Agreements, in a position worse than it would have been in if the change had not occurred;
- (c) the relevant date for adjustments to the Service Payments is:
- (i) in the case of an adjustment occurring before the Service Commencement Date, the Service Commencement Date, unless otherwise agreed or specified in Schedule 6 [Changes, Minor Works and Innovation Proposals]; or
 - (ii) in the case of an adjustment occurring after the Service Commencement Date, the start of the next Payment Period in the Financial Model falling after the completion or implementation of the adjustments is achieved;
- (d) if within 10 Business Days after Project Co gives notice of the proposed adjustments the parties agree that the entitlement to payment should be effected by adjustments to the Service Payments, or if this Agreement requires that the entitlement be effected by such adjustments, the parties will implement such adjustments and update the Financial Model accordingly; and
- (e) if completion or implementation of the adjustments is delayed beyond the scheduled date for completion or implementation by reference to which the Financial Model has been re-run in accordance with this Section 10.3 [Adjustments to Service Payments] other than delay resulting from an audit under Section 10.4 [Audit of Financial Model], the date of adjustment to the Service Payments payable by the Province will be delayed by a period equal to the delay in the completion or implementation of the required adjustments.

10.4 Audit of Financial Model

Prior to implementing any adjustments to the Service Payments contemplated in Section 10.3 [Adjustments to Service Payments], the Province may, at its own expense, review and audit the revised

Financial Model prepared by Project Co and Project Co will provide such information as is reasonably required by the Province to conduct such audit.

11. PROVINCE'S STEP-IN RIGHTS

11.1 Province's Step-in Rights

If:

- (a) the Province reasonably considers that a breach by Project Co of any obligation under this Agreement or an Event:
 - (i) is likely to create an immediate and serious threat to the health or safety of any Inmate or Facility Administrator, any property, the environment or the reputation, integrity of, or public confidence in, the Facility or any operations related to the Facility; or
 - (ii) is prejudicial to the ability to carry on Province Activities and the Intended Uses to a material degree; or
- (b) Project Co accumulates Deductions of:
 - (i) \$20,000 (Index Linked) or more in any two consecutive month period; or
 - (ii) \$50,000 (Index Linked) or more in any six consecutive month period,

then the Province, acting reasonably may either:

- (c) if it considers that there is sufficient time and that it is likely that Project Co will be willing and able to provide assistance, require Project Co by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs including, if applicable due to breach of any Project Contract or Sub-Contract, suspension of the Project Contractor or Sub-Contractor, and Project Co will use all reasonable efforts to comply with the Province's requirements as soon as reasonably practicable; or
- (d) if it considers there is not sufficient time, or that Project Co is not likely to be willing and able to take the necessary steps, take such steps as it considers are appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs and to ensure performance of the relevant Services to the standards required by this Agreement (or as close as possible to those standards as the circumstances permit). The Province will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with Project Co's performance of its obligations under this Agreement.

Project Co will ensure that all Project Contracts and Sub-Contracts permit the Province to exercise its rights under this Section 11 [Province's Step-In Rights].

11.2 Province's Rectification Rights

If the Province gives notice to Project Co under Section 11.1(c) [Province's Step-In Rights] and Project Co either:

- (a) does not confirm, within five Business Days of such notice, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to the Province to mitigate, rectify and protect against such circumstances that the Province may, within a further five Business Days, accept or reject, acting reasonably; or
- (b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as the Province, acting reasonably, will stipulate,

then the Province may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of Project Co to provide the relevant Services, but only for so long as the circumstances referred to in Section 11.1(a) [Province's Step-In Rights] subsist. If the circumstances referred to in Section 11.1(a) [Province's Step-In Rights] no longer subsist or Project Co has proposed a plan acceptable to the Province, acting reasonably, for mitigating, rectifying and protecting against the circumstances that caused the Deductions thresholds set out in Section 11.1(b) [Province's Step-In Rights] to have been reached, any suspension of the right and obligation of Project Co to provide any Services will cease and such right and obligation will once again be in full force and effect.

11.3 Notice of Facility Change

The Province will notify Project Co of any Facility Change which the Province intends to make pursuant to the exercise of the Province's rights under Section 11.1(d) [Province's Step-In Rights] or Section 11.2 [Province's Rectification Rights] and provide Project Co a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Facility Change. In making such Facility Change, the Province will reasonably consider comments received in a timely manner from Project Co on the proposed Facility Change.

11.4 No Effect on Project Co's Design and Construction Responsibility

The exercise by the Province of any of its rights under this Section 11 [Province's Step-In Rights] will not reduce or affect in any way Project Co's responsibility under Section 4.1 [Additional Design Considerations] of Schedule 2 [Design and Construction Protocols].

11.5 Allocation of Costs for Province Actions

To the extent that any of the circumstances set out in Section 11.1 [Province's Step-In Rights] arise as a result of any breach by Project Co of its obligations under this Agreement, then Project Co will pay the Province the amount of all direct costs and expenses reasonably incurred by the Province in exercising its rights under Section 11.1 [Province's Step-In Rights] or Section 11.2 [Province's Rectification Rights] and

an additional mark-up of 20% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, any actions of the Province under Sections 11.1 [Province's Step-In Rights] and 11.2 [Province's Rectification Rights] will constitute a Compensation Event.

12. PROJECT CO EVENTS OF DEFAULT

12.1 Project Co Events of Default

For the purposes of this Agreement, "**Project Co Event of Default**" means any of the following events or circumstances:

- (a) the occurrence of a Project Co Material Breach that is not remedied in accordance with Section 12.3 [Project Co Material Breach Cure and Remedial Program], including in accordance with the program for remediation under that Section, or the occurrence of a Project Co Material Breach for which a program for remediation has not been produced by Project Co in accordance with Section 12.3 [Project Co Material Breach Cure and Remedial Program];
- (b) the occurrence of a Project Co Insolvency Event;
- (c) Project Co abandons the Project, other than pursuant to its right to suspend performance under Section 13.3 [Project Co's Options] or due to a Supervening Event;
- (d) Service Commencement does not occur on or before the Longstop Date;
- (e) at any time after 12 months prior to the Longstop Date it is finally determined pursuant to the Dispute Resolution Procedure that the Service Commencement Date is not reasonably expected to occur on or before the Longstop Date;
- (f) Project Co breaches Section 16.1 [Limitations on Assignment of Project by Project Co] or a Change in Control occurs which is prohibited by Section 16.2 [Limitations on Change in Control];
- (g) at any time after the Service Commencement Date Project Co breaches its obligations under this Agreement (other than as a consequence of a breach by the Province of its obligations under this Agreement) which results in the criminal conviction or a conviction under the *Workers Compensation Act* (British Columbia) against Project Co or any Project Co Person or the Province (an "**H&S Conviction**") except that:
 - (i) an H&S Conviction of Project Co, a Project Co Person or the Province will not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Project Co Person is terminated or Project Co takes such other action against each such Project Co Person as is acceptable to the Province acting reasonably; and

- (ii) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 12.1(g) [Project Co Events of Default] the Province will:
 - (A) act in a reasonable and proportionate manner having regard to such matters as the gravity of the offence and the identity of the Person committing the act leading to the H&S Conviction; and
 - (B) give all due consideration, where appropriate, to action other than termination of this Agreement;
- (h) Project Co accumulates Deductions of \$1,000,000 (Index Linked) or more in any 12 consecutive month period during the Operating Period;
- (i) if such consent is required under Section 5.3 [Consent Required for Refinancing], Project Co carries out a Refinancing without the Province's consent; or
- (j) Project Co breaches Section 17.3 [Security Sensitive Work],

unless caused by non-compliance by the Province with any provision of this Agreement or any document, instrument or agreement delivered to Project Co as required under this Agreement or any negligent act or omission, or any wilful misconduct, of the Province or any Province Person.

12.2 Notification

Project Co will notify the Province of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Co Event of Default, in either case promptly when Project Co Has Knowledge of its occurrence.

12.3 Project Co Material Breach Cure and Remedial Program

After the occurrence of a Project Co Material Breach and while it is subsisting, the Province may serve a notice on Project Co specifying in reasonable detail the type and nature of the Project Co Material Breach and:

- (a) Project Co will remedy such Project Co Material Breach referred to in such notice (if it is continuing) within 20 Business Days of such notice; or
- (b) if either the Province (as set out in its notice) or Project Co reasonably considers that a Project Co Material Breach cannot reasonably be remedied within 20 Business Days of such notice, Project Co will deliver to the Province within 10 Business Days of such notice a reasonable program (set out, if appropriate, in stages) for remedying the Project Co Material Breach. The program will specify in reasonable detail the manner in, and the latest date by, which the Project Co Material Breach is proposed to be remedied.

If Project Co puts forward a program in accordance with Section 12.3(b) [Project Co Material Breach Cure and Remedial Program], the Province will have 10 Business Days from receipt of the program within

which to notify Project Co that the Province, acting reasonably, does not accept the program, failing which the Province will be deemed to have accepted the program. If the Province notifies Project Co that it does not accept the program as being reasonable, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such five Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Project Co Material Breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with the Dispute Resolution Procedure.

12.4 Province Termination Right

If:

- (a) a Project Co Material Breach is not remedied before the expiry of the period referred to in Section 12.3(a) [Project Co Material Breach Cure and Remedial Program] and no program has been put forward by Project Co under Section 12.3(b) [Project Co Material Breach Cure and Remedial Program];
- (b) Project Co puts forward a program pursuant to Section 12.3(b) [Project Co Material Breach Cure and Remedial Program] which has been accepted by the Province (including after agreement under Section 12.3 [Project Co Material Breach Cure and Remedial Program] to amendments to the program) or has been determined to be reasonable pursuant to the Dispute Resolution Procedure and Project Co fails to achieve any material element of the program or the end date for the program, as the case may be;
- (c) any program put forward by Project Co pursuant to Section 12.3(b) [Project Co Material Breach Cure and Remedial Program] is rejected by the Province as not being reasonable, and, if such rejection is disputed by Project Co, the Dispute Resolution Procedure does not find against that rejection; or
- (d) any Project Co Event of Default other than a Project Co Material Breach occurs,

then the Province may (if the Project Co Event of Default continues unwaived and unremedied), subject to the terms of the Lenders' Remedies Agreement, terminate this Agreement by notice to Project Co. The right of the Province to terminate this Agreement under this Section 12.4 [Province Termination Right] is in addition, and without prejudice, to any other right which the Province may have in connection with Project Co's defaults hereunder.

For the purposes of Section 12.4(b) [Province Termination Right], if Project Co's performance of the program is adversely affected by the occurrence of a Supervening Event or a breach by the Province of its obligations under this Agreement, then, subject to Project Co complying with the mitigation and other requirements in this Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

12.5 The Province's Costs

Project Co will reimburse the Province for all reasonable costs incurred by the Province in exercising any of its rights (including any relevant increased administrative expenses, interest expenses during Construction and actual legal and other expenses) under this Section 12 [Project Co Events of Default].

13. PROVINCE EVENTS OF DEFAULT

13.1 Province Events of Default

For the purposes of this Agreement, "**Province Event of Default**" means any of the following events or circumstances:

- (a) a failure by the Province to pay any amount due and owing to Project Co under this Agreement on the due date (which amount is not being disputed in good faith) and the Province has not remedied such failure to pay within 10 Business Days' of notice from Project Co;
- (b) except as provided for in Section 13.1(a) [Province Events of Default], a breach, or series of breaches, by the Province of any term, covenant or undertaking to Project Co, or any representation or warranty made by the Province to Project Co in this Agreement is incorrect when made, the consequence of which:
 - (i) has an adverse effect on the performance of the Design, the Construction or the Services; or
 - (ii) results in any provision of this Agreement being unenforceable against the Province,
 and as a result thereof Project Co is reasonably likely to be materially deprived of the benefit of this Agreement;
- (c) if any material part of the Facility, the portion of the Lands on which the Facility is situated, or any interest of the Province is expropriated by any Governmental Authority and as result thereof Project Co is reasonably likely to be materially deprived of the benefit of this Agreement; or
- (d) the Province breaches Section 16.4 [Limitations on Assignment of Project by Province].

13.2 Notification

The Province will notify Project Co of the occurrence, and details, of any Province Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to an Province Event of Default, in either case promptly on the Province Having Knowledge of its occurrence.

13.3 Project Co's Options

After the occurrence of a Province Event of Default and while an Province Event of Default is continuing, Project Co may, at its option exercise one or more of the following, as applicable:

- (a) in respect of the Design and the Construction prior to the Service Commencement Date, suspend performance by it of its obligations under this Agreement until such time as the Province has demonstrated to the reasonable satisfaction of Project Co that it will perform and is capable of performing its obligations under this Agreement and the Target Service Commencement Date, the Longstop Date and the dates for move-in as set out in the Facility Move-in Schedule will be extended by the time such suspension is in effect;
- (b) in the case of a Province Event of Default under Section 13.1(a) [Province Events of Default], suspend performance by it of its obligations under this Agreement until the Province has remedied such Province Event of Default and the Target Service Commencement Date, the Longstop Date and the dates for move-in as set out in the Facility Move-in Schedule will be extended by the time such suspension is in effect and such additional time as may be reasonably required to return to normal operations following such suspension;
- (c) in the case of a Province Event of Default under Sections 13.1(a), 13.1(b) or 13.1(c) [Province Events of Default], serve notice on the Province of the occurrence specifying details of such Province Event of Default and if the relevant matter or circumstance has not been rectified or remedied by the Province or otherwise within 20 Business Days of such notice (or in the case of an Province Event of Default under Section 13.1(b) or 13.1(c) [Province Events of Default] such longer period as is reasonably required for the Province to rectify or remedy such Province Event of Default as long as the Province is diligently pursuing such rectification or remedy), Project Co may serve a further notice on the Province terminating this Agreement with immediate effect; or
- (d) in the case of a Province Event of Default under Section 13.1(d) [Province Events of Default], terminate this Agreement by notice to the Province.

13.4 Project Co's Costs

The Province will reimburse Project Co for all reasonable costs incurred by Project Co in exercising any of its rights (including any relevant increased administrative expenses, interest expenses during Construction and actual legal and other expenses) under this Section 13 [Province Events of Default].

14. PROCEDURE ON TERMINATION

14.1 Compensation on Termination

If this Agreement is terminated pursuant to its terms, the Province will pay compensation to Project Co in accordance with Schedule 9 [Compensation on Termination].

14.2 Transfer to the Province of Assets, Contracts, etc.

On or promptly after the Termination Date:

- (a) if prior to the Service Commencement Date:
 - (i) in so far as any transfer will be necessary to fully and effectively transfer property to the Province, Project Co will transfer to, and there will vest in, the Province (or any New Project Co as may be appointed by the Province) free from all financial encumbrances:
 - (A) such part of the Facility as has been constructed on or has become affixed to the Lands; and
 - (B) all construction materials on-hand to be affixed to the Lands or otherwise used in the Facility; and
 - (ii) if the Province so elects:
 - (A) the construction plant and equipment will remain available to the Province or the New Project Co for the purposes of completing the Design and Construction; and
 - (B) all other Project related plant and all materials on or near the Lands will remain available to the Province or the New Project Co for the purposes of completing the Design and Construction,

subject to payment by the Province of the Design-Builder's reasonable charges, and
- (b) if the Province so elects, Project Co will cause any or all of the Project Contracts to be novated or assigned to the Province, provided that:
 - (i) Project Co will not be obligated to assign to the Province any of Project Co's rights to claim against the applicable Project Contractor that arose under such Project Contract prior to the date of such novation or assignment; and
 - (ii) if termination occurs under Section 13.3 [Project Co's Options] the consent of the applicable Project Contractor will be required;
- (c) Project Co will, or will cause any Material Contract Party to, offer to sell to the Province at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Material Contract Party and reasonably required by the Province in connection with the operation of the Facility or the provision of the Services;
- (d) Project Co will deliver to the Province (to the extent not already delivered to the Province):

- (i) all existing designs, plans and other documents produced in connection with the Facility and in the control of Project Co;
- (ii) one complete set of existing "as built drawings" showing all alterations made to the Facility since the commencement of operation of the Facility; and
- (iii) one complete set of existing up to date maintenance, operation and training manuals for the Facility,

subject to reasonable generally applicable third party licensing terms;

- (e) Project Co will use all reasonable efforts to ensure that all rights and the benefit relating to the Project Intellectual Property and the benefit of all warranties in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Agreement and included in the Facility but not previously assigned or licensed to the Province are fully transferrable to the Province, and are assigned, licensed or otherwise transferred to the Province without transfer cost or any other cost or fees;
- (f) to the extent permitted by Law, Project Co will assign to the Province (or any New Project Co as may be appointed by the Province) all Permits;
- (g) Project Co will deliver to the Province all records required to be kept by Project Co hereunder (Project Co having the right to retain copies thereof) unless such documents are:
 - (i) required by Law to be retained by Project Co or a Project Contractor or Sub-Contractor, in which case complete copies will be delivered to the Province; or
 - (ii) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Design, the Construction or the Services will be delivered to the Province no later than the Termination Payment Date; and
- (h) Project Co will return to the Province all Confidential Information of the Province within the possession or control of Project Co or any Project Contractor or Sub-Contractor.

Project Co will ensure that provision is made in all applicable contracts to ensure that the Province will be in a position to exercise its rights, and Project Co will be in a position to comply with its obligations, under this Section 14.2 [Transfer to the Province of Assets, Contracts, etc.] without additional payment or compensation to any Person.

14.3 Transitional Arrangements

Project Co will:

- (a) on request by the Province, for a period not to exceed three months after the Termination Date:
 - (i) co-operate fully with the Province and any successor providing to the Province services in the nature of any of the Services or any part of the Services to achieve a smooth transfer of the manner in which the Province obtains services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the Province and members of the public and any inconvenience or risk to the Facility or its operation; and
 - (ii) continue to provide the Services or any part of the Services required by the Province and the Province will pay to Project Co a reasonable price for such services determined with reference to Project Co's price for such Services prior to the Termination Date;
- (b) subject to Section 14.3(a) [Transitional Arrangements], as soon as practicable following the Termination Date remove from the Lands all property of Project Co or any Project Co Person that is not acquired by the Province pursuant to Section 14.2 [Transfer to the Province of Assets, Contracts, etc.] (or not belonging to the Province) and if it has not done so within 60 days after any notice from the Province requiring it to do so the Province may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of Project Co;
- (c) subject to Section 14.3(a) [Transitional Arrangements], on the Termination Date, deliver to the Province:
 - (i) all keys, access codes or other devices required to operate the Facility in the control of Project Co; and
 - (ii) any Project Intellectual Property required to be delivered by Project Co pursuant to Section 14.2(e) [Transfer to Province of Assets, Contracts, etc.];
- (d) subject to Section 14.3(a) [Transitional Arrangements], as soon as practicable after the Termination Date, vacate, and cause the Project Co Persons to vacate, those parts of the Facility and such parts of the Lands over which Project Co has control and occupation and leave the Lands and the Facility in a safe, clean and orderly condition; and
- (e) comply with all requirements of Appendix 4C [Handback Requirements].

14.4 Project Co to Cooperate

If the Province wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiry of this Agreement, Project Co will prior to the Expiry Date co-operate with the Province fully in such competition process including by:

- (a) providing any information in Project Co's control or possession which the Province may reasonably require to conduct such competition except that information which is commercially sensitive to Project Co or a Project Co Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of Project Co or a Project Co Person give that competitor a competitive advantage over Project Co or the Project Co Person and thereby prejudice the business of Project Co or the Project Co Person); and
- (b) assisting the Province by providing any participants in such competition process with access to the Lands and the Facility provided such access does not affect the Services in a way that results in any reduction in Service Payments.

Project Co will be entitled to reimbursement for all reasonable out of pocket expenses and internal costs incurred in connection with the foregoing services.

14.5 Continued Performance

Subject to Project Co's rights of suspension under Section 13.3(a) and 13.3(b) [Project Co's Options] and subject to the provisions of this Section 14 [Procedure on Termination], the parties will continue to perform their obligations under this Agreement (including the Province continuing to make Service Payments) notwithstanding the giving of any notice of default or notice of termination

15. DISPUTE RESOLUTION

15.1 Procedure

Except as otherwise provided in this Agreement, any Dispute will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in Schedule 13 [Dispute Resolution Procedure].

15.2 Undisputed Amounts

A party will pay any undisputed portion of any disputed amount to the other party in accordance with this Agreement but any disputed portion or amount will not be payable until the Dispute is resolved as aforesaid.

16. ASSIGNMENT/CHANGE IN CONTROL

16.1 Limitations on Assignment of Project by Project Co

Project Co will not assign, transfer or otherwise dispose of any interest in this Agreement or a Project Contract except:

- (a) as security, substantially in a form approved by the Province, acting reasonably, prior to its grant for any loan made to Project Co under any Senior Financing Agreement and provided the Senior Lenders enter into the Lenders' Remedies Agreement;

- (b) in connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement;
- (c) not used; or
- (d) otherwise:
 - (i) prior to the day (the "**Transfer Restriction Date**") that is one year after the Service Commencement Date, with the written consent of the Province, which may be given or withheld in the Province's discretion, and
 - (ii) after the Transfer Restriction Date, with the written consent of the Province, which will not be unreasonably withheld or delayed,

provided that in the case of an assignment, transfer or disposal permitted by Sections 16.1(b), 16.1(c) or 16.1(d) above the assignee or transferee assumes all the obligations of Project Co under this Agreement. Notwithstanding any other provision of this Agreement, Project Co will not assign, transfer or otherwise dispose of any interest in this Agreement or a Material Contract to a Person who is a Restricted Person.

16.2 Limitations on Change in Control

No Change in Control of Project Co will be permitted (whether by Project Co or otherwise) to occur except:

- (a) in connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement;
- (b) arising from any bona fide open market transaction in any shares or other securities of Project Co or of any Partner or of any Holding Company of a Partner effected on a recognized public stock exchange;
- (c) not used; or
- (d) otherwise:
 - (i) prior to the Transfer Restriction Date, with the written consent of the Province, which may be given or withheld in the Province's discretion; and
 - (ii) after the Transfer Restriction Date, with the written consent of the Province, which will not be unreasonably withheld or delayed.

Notwithstanding any other provisions of this Agreement:

- (e) Project Co will not be, nor will it become at any time, a Restricted Person; and
- (f) except as a result of a transaction referred to in (b) above, a Person who is a Restricted Person will not acquire any ownership interest (whether directly or indirectly) in Project Co or in any Person that has control of Project Co.

16.3 Factors Province May Consider

In determining whether to provide its consent under Section 16.1(d) [Limitations on Assignment of Project by Project Co] or 16.2(d) [Limitations on Change in Control], and without limiting the Province's discretion thereunder, it will be reasonable for the Province to refuse its consent if:

- (a) the proposed assignee or the new party in control of Project Co, as the case may be, or any of their Affiliates, is a Restricted Person;
- (b) the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of the Province, not sufficiently creditworthy taking into account the nature of the obligations under this Agreement;
- (c) the assignment or Change in Control could, in the reasonable opinion of the Province, have a material adverse effect on the Province or the Project; or
- (d) the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of the Province, not reasonably capable of performing its obligations under the Agreement.

16.4 Limitations on Assignment of Project by Province

- (a) The Province may, without the consent of Project Co, assign or transfer any of its interests in and under this Agreement to a Qualified Governmental Entity that executes and delivers to Project Co an agreement in form and substance satisfactory to Project Co acting reasonably whereby such assignee or transferee assumes and agrees to observe, perform and be bound by, all the obligations of the Province under this Agreement.
- (b) Except as provided in Section 16.4(a) [Limitations on Assignment of Project by Province], the Province shall not, without the prior consent of Project Co, which may be withheld in Project Co's discretion, assign or otherwise transfer any of its interest in or under this Agreement.

16.5 Costs of Request for Consent

If Project Co requests consent to an assignment, transfer or disposition pursuant to Section 16.1 [Limitations on Assignment of Project by Project Co] or to a Change in Control pursuant to Section 16.2 [Limitations on Change in Control], Project Co will pay the Province's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Project Co will make a payment to the Province in the amount of \$35,000 (Index Linked) against its obligation under this Section 16.5 [Costs of Request for Consent] After the Province renders its decision, the Province will either refund any over payment or invoice Project Co for any additional amounts owing under this Section 16.5 [Costs of Request for Consent] and Project Co will promptly pay such amount to the Province.

17. GENERAL

17.1 Confidentiality

- (a) Subject to Section 17.1(b) [Confidentiality], each party will hold in confidence any Confidential Information received from the other party, except that this Section 17.1 [Confidentiality] will not restrict:
- (i) Project Co from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement and provided further that Project Co may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement:
 - (A) provide to the Senior Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and
 - (B) provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Project Co to perform (or to cause to be performed) its obligations under this Agreement,

and Project Co will remain fully liable for any breach of confidentiality by any Person to whom Project Co has disclosed or granted access to Confidential Information pursuant to this Section; and
 - (ii) the Province from disclosing or granting access to such information to any provincial ministry, Partnerships British Columbia Inc. and any other Governmental Authority which requires the information in relation to the Project;
- (b) Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
- (i) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
 - (ii) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
 - (iii) to the extent any Person is required to disclose such Confidential Information by Law, including without limitation, a disclosure required under the *Freedom of Information and Protection of Privacy Act* (British Columbia);
 - (iv) to the extent consistent with any Province's policy concerning the Province's Confidential Information, the details of which have been provided to Project Co in writing prior to the disclosure; or

- (v) that the Province may be entitled to receive from Project Co pursuant to this Agreement for the operation, maintenance or improvement of the Facility in the event of, or following, termination of this Agreement.
- (c) Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 17.1(a) [Confidentiality] and that the other party will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a) [Confidentiality], subject, in the case of a claim for any such remedy against the Province, to the provisions of the *Crown Proceeding Act* (British Columbia).

17.2 Personal Information

Project Co will, and will require Project Contractors and Sub-Contractors to, only collect, hold, process, use, store and disclose Personal Information:

- (a) with the prior consent of the Province;
- (b) to the extent necessary to perform Project Co's obligations under this Agreement and in circumstances where the Province itself could collect, hold, process, use, store and disclose Personal Information if the Province itself performed the Services;
- (c) in accordance with applicable Laws, including the *Freedom of Information and Protection of Privacy Act* (British Columbia) as if the provisions of such Laws applied directly to Project Co, the Project Contracts and Sub-Contractors; and
- (d) in compliance with provisions of Schedule 21 [Privacy Protection].

Project Co acknowledges that it is a "service provider" as defined in the *Freedom of Information and Protection of Privacy Act* (British Columbia).

Project Co will allow the Province on reasonable notice to inspect the measures of Project Co and its Project Contractors and Sub-Contractors to protect Personal Information.

The Province may from time to time provide guidance to Project Co on the requirements of this Section 17.2 [Personal Information], including the circumstances set out in Section 17.2(b). For greater certainty, the provisions of this Section 17.2 [Personal Information] that refer to the *Freedom of Information and Protection of Privacy Act* (British Columbia) will apply to the Design-Builder and its Sub-Contractors only to the extent necessary to fulfil the Province's obligations under the *Freedom of Information and Protection of Privacy Act* (British Columbia).

17.3 Security Sensitive Work

17.3.1 Subject to Section 17.3.4, Project Co will not permit any individual engaged by Project Co or a Project Co Person to:

- (a) perform any Level 1 Security Sensitive Work, unless such individual has successfully completed a Level 1 Background Check within the one calendar year period prior to the date on which he or she first performs any Level 1 Security Sensitive Work;
- (b) perform any Level 2 Security Sensitive Work, unless such individual:
 - (i) has successfully completed a Level 2 Background Check within the one calendar year period prior to the date on which he or she first performs any Level 2 Security Sensitive Work; or
 - (ii) has successfully completed a Level 1 Background Check within the one calendar year period prior to the date on which he or she first performs any Level 2 Security Sensitive Work and is accompanied by an SSW Escort whenever engaged in the performance of Level 2 Security Sensitive Work;
- (c) be designated as a Key Individual (other than Project Co's Lead, the Service Provider Lead or Project Co's Operating Period Representative), unless such individual has successfully completed a Level 1 Background Check within the one calendar year period prior to the earlier of: (i) the date of his or her appointment to such position; or (ii) the date on which he or she first performs any Level 1 Security Sensitive Work; or
- (d) be designated as Project Co's Lead, Project Co's Operating Period Representative, the Service Provider Lead or the Assistant Service Provider Lead, unless such individual has successfully completed a Level 2 Background Check within the one calendar year period prior to the earlier of: (i) the date of his or her appointment to such position; or (ii) the date on which he or she first performs any Level 2 Security Sensitive Work.

For the purpose of this Section 17.3 [Security Sensitive Work], successful completion of a Background Check means that, in respect of an individual, the relevant searches return no positive hits within any of the applicable databases or return one or more positive hits which the Province, in its discretion, determines do not pose a material risk to the Project, the Facility or to the safety and well-being of the Inmates or any other Province Person.

17.3.2 Throughout the Term, Project Co shall ensure that the applicable Background Check, or component thereof, is repeated for each individual engaged as a Key Individual and every other individual engaged by Project Co or a Project Co Person in the performance of Security Sensitive Work: (i) if any information is received by Project Co that suggests that the risk in respect of such individual has materially changed; and (ii) at the following intervals:

- (a) relevant databases maintained by the Province of British Columbia, including the CORNET and JUSTIN databases, once each year;
- (b) CPIC criminal record database search, once every 3 years; and
- (c) criminal record check in accordance with the *Criminal Records Review Act* (British Columbia), once every 5 years.

Project Co will remove any individual as a Key Individual and prevent any individual from performing any Security Sensitive Work who does not successfully complete the applicable periodic Background Checks within the intervals required pursuant to this Section 17.3.2. Project Co will not permit an individual who has previously failed a Background Check under this Agreement to be engaged as a Key Individual or to perform Security Sensitive Work, without the prior written consent of the Province.

17.3.3 Where Project Co is uncertain whether certain Project work constitutes Security Sensitive Work or the applicable level of the Security Sensitive Work, Project Co may submit a written request for a determination (an "**SSW Request**") to the Province's Design and Construction Representative, or the Province's Operating Period Representative, as applicable, at least 30 Business Days prior to the date on which such work is scheduled to commence. Each SSW Request shall include:

- (a) a detailed description of the nature of the work, including the primary location at which the work will be performed;
- (b) the date on which the work is scheduled to commence;
- (c) the potential for supervised or unsupervised contact or communication with Inmates;
- (d) the potential for the direct or indirect passing of contraband to Inmates; and
- (e) such other information as the Province may reasonably request.

The Province will review each SSW Request and shall provide a written response confirming whether the work described in the SSW Request is Security Sensitive Work (including the applicable level of Security Sensitive Work) within 3 Business Days after receipt of the complete SSW Request. The Province's determination with respect to an SSW Request shall be final and binding and shall not be subject to review pursuant to Schedule 13 [Dispute Resolution Procedure].

17.3.4 Notwithstanding Sections 17.3.1 to 17.3.3, where the occurrence of:

- (a) a Service Failure;
- (b) Malicious Damage or other damage to, or failure of, a Maintained Element, that poses a material risk to human safety or to Facility security; or
- (c) a Supervening Event,

requires performance of Security Sensitive Work and such work can only be undertaken by an individual(s) who has not been previously subjected to the required Background Check, or whose Background Check has expired, the Province may in its discretion:

- (d) expedite the performance of a Level 1 Background Check for such individual(s);
- (e) require that Project Co provide an SSW Escort(s) to accompany such individual(s) while engaged in the performance of Security Sensitive Work; and/or

- (f) provide an escort to accompany such individual(s) while engaged in the performance of Security Sensitive Work.

17.3.5 Where required pursuant to this Section 17.3 [Security Sensitive Work], the Province will administer and perform the following database searches at no cost to Project Co:

- (a) all Level 1 Background Checks; and
- (b) all searches of the relevant databases maintained by the Province of British Columbia which are required as part of a Level 2 Background Check.

In order to obtain a Level 1 Background Check or a search of the relevant databases maintained by the Province of British Columbia in connection with a Level 2 Background Check, Project Co shall:

- (c) provide the following information to the Contact Person at least 10 Business Days before the date on which the applicable Background Check is required:
 - (i) the name(s) of the individual(s) to be screened;
 - (ii) all consents required in relation to the performance of the applicable Background Checks, in accordance with the applicable Province Policies and Procedures and Section 17.2 [Personal Information];
 - (iii) all consents required for the disclosure of the results of such Background Checks to Project Co;
 - (iv) the Province's form of "Criminal History Consent Form for Security Clearance of Contractors and Volunteers at Provincial Correctional Centers", a copy of which is included in the Disclosed Data, completed and signed by each individual to be screened; and
 - (v) a legible colour copy of a piece of government issued photo identification for each individual to be screened; and
- (d) ensure an orderly flow of Background Check requests, taking into account both the resources available to the Province to conduct such checks and the requirements of the Project Schedule.

Project Co shall be solely responsible to administer, arrange and pay for all CPIC criminal record database searches and all criminal record checks in accordance with the *Criminal Records Review Act* (British Columbia), required to complete Level 2 Background Checks for individuals employed by Project Co and any Project Co Persons.

17.3.6 Within 3 Business Days after receipt of all information required pursuant to Section 17.3.5 in respect of an individual, the Province shall advise Project Co whether such individual has either successfully or unsuccessfully completed: (i) the Level 1 Background Check; or (ii) the applicable portion of the Level 2 Background Check, as applicable, and Project Co and the Project Co Persons are entitled to rely upon such advice from the Province.

17.3.7 Where an individual is required to successfully complete a Level 2 Background Check, Project Co shall provide the results of all CPIC criminal record database searches and all criminal record checks in

accordance with the *Criminal Records Review Act* (British Columbia), in respect of the applicable individual, to the Province promptly following receipt from the local police detachment or background check provider. The Province shall review such results and advise Project Co within 3 Business Days after receipt whether the applicable individual has either successfully or unsuccessfully completed the Level 2 Background Check and Project Co and the Project Co Persons are entitled to rely upon such advice from the Province.

17.3.8 Under no circumstances will the Province be obligated to escort individuals engaged by Project Co or a Project Co Person in the performance of any Design, Construction, Services or other activities at the Facility. Where the Province agrees, in its discretion, to escort an individual engaged by Project Co or a Project Co Person in the performance of any Design, Construction, Services or other activities at the Facility, the availability of qualified Province Persons to provide such escorts shall depend on the operational requirements of the Facility and any delay caused by, or unavailability of, a qualified Province Person to provide such escort shall not constitute a Supervening Event, or otherwise entitle Project Co to compensation or any other relief pursuant to this Agreement.

17.3.9 Project Co shall ensure that an SSW Escort:

- (a) does not escort more than one person (or such other number of persons as may designated in writing by the Province's Representative) at a time;
- (b) verifies that each Escorted Person(s) has successfully completed a Level 1 Background Check in accordance with the requirements of Section 17.3.1(b)(ii) and 17.3.2 [Security Sensitive Work]; and
- (c) maintains direct visual and auditory contact with the Escorted Person(s) for whom he or she is responsible at all times while such person is engaged in the performance of Level 2 Security Sensitive Work.

17.3.10 Project Co shall be responsible for the safety and conduct of all SSW Escorts and Escorted Persons. The Province will provide appropriate control over Inmate movements. Project Co shall not interfere with the Province's management of Inmates.

17.4 Public Communications

Unless expressly provided in this Agreement or otherwise required by any Laws (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the consent of the other party (which will not be unreasonably withheld or delayed). The parties will comply with Schedule 16 [Communication Roles].

17.5 Law of Agreement

This Agreement will be deemed to be made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.

17.6 Attornment

For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of British Columbia and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

17.7 Entire Agreement, Waivers and Consents in Writing

This Agreement and the instruments and documents to be executed and delivered pursuant to it constitute the entire agreement between the parties, expressly superseding all prior agreements and communications (both oral and written) between any of the parties hereto with respect to all matters contained herein or therein, and except as stated herein or the instruments and documents to be executed and delivered pursuant hereto, contains all the representations and warranties of the respective parties. In addition:

- (a) no waiver of any provision of this Agreement; and
- (b) no consent required pursuant to the terms of this Agreement,

is binding or effective unless it is in writing and signed by the party providing such waiver or consent.

17.8 Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

if to the Province:

Ministry of Technology Innovation and Citizens' Services
 c/o Workplace Development Services 3rd Floor
 W341 - 4000 Seymour Place
 Victoria, BC V8W 9V1
 Attention: Deputy Minister or Associate Deputy Minister,
 Citizens' Services

With an electronic copy for information purposes only to:

E-mail

E-mail

if to Project Co:

Plenary Justice Okanagan Limited Partnership
 400 Burrard Street, Suite 2000
 Commerce Place
 Vancouver, BC V6C 3A6

Attention:

Tel:

Fax:

E-mail:

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic transmission during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (i) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

17.9 Further Assurances

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Agreement.

17.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it will not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

17.11 No Partnership, etc.

Nothing contained in this Agreement nor any action taken pursuant hereto or thereto will be deemed to constitute the Province and Project Co a partnership, joint venture or any other similar such entity.

17.12 Survival

Notwithstanding any other provision of this Agreement, the provisions of Section 6.16 [Third Party Liability Insurance as an Uninsurable Risk], Section 8 [Supervening Events] (if and to the extent a Compensation Event relates to a claim made by a third party against Project Co after the Termination Date), Section 9 [Indemnities and Limits on Liabilities and Remedies], Section 14 [Procedure on Termination], Section 15 [Dispute Resolution], Section 17.1 [Confidentiality], Section 17.2 [Personal Information], Appendix 4C [Handback Requirements], Schedule 9 [Compensation on Termination] and Schedule 13 [Dispute Resolution Procedure] will survive the expiry or any earlier termination of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

SIGNED on behalf of **HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**
by a duly authorized representative of
the **MINISTER OF TECHNOLOGY INNOVATION
AND CITIZENS SERVICES** in the
presence of:

(Witness)

Associate Deputy Minister, Ministry of Technology,
Innovation and Citizens' Services

**PLENARY JUSTICE OKANAGAN LIMITED
PARTNERSHIP, by its general partner, PLENARY
JUSTICE OKANAGAN GP INC.**

Per: _____

Name: _____

Title: _____

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Agreement:

“Actual Coverage Amount” has the meaning set out in Section 3.12 [Increase in Amount of Coverage] of Schedule 5 [Insurance Requirements];

“Additional Irrecoverable Tax” means GST or PST incurred by Project Co in respect of the supply of any property or service to the Province which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Design or Construction or performing the Services to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST that Project Co would have recovered or been credited with prior to the applicable Change in Law;

“Additional Recoverable Tax” means GST or PST incurred by Project Co in respect of the supply of any property or service to the Province which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Design or Construction or performing the Services to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST that Project Co would not have recovered or been credited with prior to the applicable Change in Law;

“Adjusted Energy Targets” mean the Design and Construction Energy Targets, as adjusted pursuant to Section 2.3 [Adjustment to Energy Targets] or Section 2.7 [Retest Period Adjustment to Energy Targets] of Appendix 2D [Energy], as applicable;

“Adjusted Estimated Market Value” means the Estimated Market Value:

- (a) less an amount, without duplication, equal to the aggregate of:
 - (1) any Re-Bidding Costs; and
 - (2) any other amounts that the Province is entitled to set-off or deduct under this Agreement,
- (b) plus an amount, without duplication, equal to the aggregate of:
 - (1) any Insurance Proceeds and Insurance Receivables;
 - (2) any accrued but unpaid amounts owing and payable by the Province to Project Co under this Agreement;
 - (3) all credit balances on any bank account held by or on behalf of Project Co on the date the Estimated Market Value is calculated; and

- (4) any other amounts that are owing to Project Co (and that Project Co is entitled to retain),

to the extent that any of the above amounts have not been included in calculating the Estimated Market Value and, in the case of (b)(1) and (b)(3) above, the Province has received or been assigned such amounts and is entitled to retain them;

“Adjusted Highest Compliant Bid Price” means the Highest Compliant Bid Price:

- (a) less an amount, without duplication, equal to the aggregate of:
 - (1) any Re-Bidding Costs; and
 - (2) any other amounts that the Province is entitled to set-off or deduct under this Agreement; and
 - (3) an amount equal to all reasonable costs and expenses incurred by the Province, during the period commencing on the day following the Termination Date and ending on the Termination Payment Date (or, as the case may be, the date on which it is agreed or determined that no Termination Payment is payable by the Province under this Agreement), to carry out and perform (or to procure the carrying out and performance of), in the manner and to the standards contemplated by this Agreement, the obligations, responsibilities, activities and work that would, but for the termination of this Agreement, have been the responsibility and obligation of Project Co under this Agreement (including, without limitation, the rectification and mitigation of all defaults by Project Co occurring prior to such termination);
- (b) plus an amount, without duplication, equal to the aggregate of:
 - (1) any Insurance Proceeds and Insurance Receivables;
 - (2) any accrued but unpaid amounts owing and payable by the Province to Project Co under this Agreement;
 - (3) all credit balances on any bank account held by or on behalf of Project Co on the date that the highest priced Compliant Bid is received or, if no Compliant Bid is received on the final date for submission of bids pursuant to the Re-Bidding Process; and
 - (4) any other amounts that are owing to Project Co (and that Project Co is entitled to retain),

to the extent that any of the above amounts has not been taken into account in the relevant Compliant Bid and, in the case of (b)(1) and (b)(3) above, the Province has received or been assigned such amounts and is entitled to retain them;

"Adjusting Period" means the 12 month period commencing on the first day of the calendar month immediately following the month in which the 6 month anniversary of the Service Commencement Date occurs;

"Administration Consultation Group" has the meaning set out in Section 4.2(a) [Design Process] of Schedule 2 [Design and Construction Protocols];

"Administration Consultation Protocol" means the protocols set out in Appendix 2C [Administration Consultation Protocol];

"Admission & Discharge", **"Admitting and Discharge"** or **"A&D"** has the meaning set out in Section 4.7.2.3 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

"Affiliate" in respect of a Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person where "control" means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person;

"Agreed Proportions" means the following relative proportions of the different types of Regulated Energy included in Energy Consumption, as may be modified from time to time, by agreement between the Province and Project Co:

- (a) Gas ; and
- (b) Electricity

"Agreement" means this agreement including any recitals, schedules and appendices to this agreement, as amended, supplemented or restated from time to time;

"AIR" means an active infrared device commonly used in outdoor security applications that uses heat sensing as a means of detecting motion and activating an alarm;

"Allowable Capital Expenditure" means the Capital Expenditure incurred by Project Co as a direct consequence of a Relevant Works Change in Law;

"Ancillary Software Service Agreement" means: (a) an agreement for the provision of services (including maintenance services and technical support services) relating to a COTS Software Product, an HMI Software Product or an HMI Customization; and (b) an escrow agreement (if entered into by Project Co in its discretion) for Source Code Materials relating to a COTS Software Product or an HMI Software Product.

“Annual Energy Targets” for an Energy Year mean the amounts determined pursuant to Section 3.2 [Annual Energy Targets] of Appendix 2D [Energy], as adjusted pursuant to Section 3.3 [Adjustment to Annual Energy Targets] of Appendix 2D [Energy];

“Annual Service Plan” has the meaning set out in Section 3.9 [Annual Service Plans] of Schedule 4 [Services Protocols and Specifications];

“Applicant” has the meaning set out in Section 8.1 [Supervening Events];

“Archaeological Report” means the report entitled Archaeological Report prepared by Summit Environmental Consultants dated December 1999, and included in the Disclosed Data;

“Architect” means DGBK Architects, which has been engaged by the Design-Builder to undertake the Design;

“Area of Interest” or **“AOI”** means the area described in Section 3.4.5.2(3) [Safety and Security] of Schedule 3 [Design and Construction Specifications];

“Asset Register” has the meaning set out in Section 6.3 [Asset Register] of Schedule 2 [Design and Construction Protocols];

“Assistant Service Provider Lead” means the assistant to the Service Provider Lead;

“Availability Condition” means, with respect to a Functional Unit, Maintained Equipment within the Functional Unit and normal access routes are in a state or condition that:

- (a) allow safe and convenient access and egress to all persons who are entitled to enter, leave, occupy or use it, using normal access routes; and
- (b) is complete, operational, safe, functional and fit for its intended use (as contemplated in the Room Data Sheets), and meets all other requirements of this Agreement including the requirements of Schedules 3 [Design and Construction Specifications] and Schedule 4 [Services Protocols and Specifications] specifically applicable to the relevant Functional Unit;

“Average Unit Cost” for a type of Regulated Energy, during a period, means the average cost to the Province of each Gigajoule of the applicable type of Regulated Energy purchased by the Province for the Facility during the applicable period, calculated by dividing:

- (a) all amounts paid or payable by the Province in respect of the supply of the particular type of Regulated Energy, for the Facility, during the applicable period; by
- (b) the Energy Consumption, for the applicable type of Regulated Energy, during the applicable period.

“Avoidable Costs”, when used in relation to an event or circumstance, means all costs and expenditures which:

VAN01: 3149521: v7

- (a) are saved or avoided as a result of the event or circumstance or its effects; or
- (b) if Project Co acted reasonably and in accordance with this Agreement (including Section 2.5 [General Duty of Project Co to Mitigate]), would have been saved or avoided as a result of the event or circumstance or its effects;

“Background Check” means a Level 1 Background Check or a Level 2 Background Check, as applicable;

“Backup CCTV System” means the system set out in Section 9.8.5.1(2)(jj) [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

“Base Case Project IRR” means 5.92% being the Nominal internal rate of return for the Project calculated on an after tax basis at the level of Project Co in accordance with the Financial Model as shown in Cell S60 of the “Summary” Sheet;

“Base Date” means March 1, 2014

“Beneficiary” has the meaning set out in Section 9.2 [Conduct of Third Person Claims];

“BMS Reporting Requirements” as set forth in Part 7 [Building Management System (BMS) Reporting Requirements] of Appendix 4D [Plant Services];

“BNC” means a bayonet type of coaxial cable connector;

“Building Management System” or **“BMS”** means the computerized building management system for the Facility;

“Building Systems” means the interacting or interdependent mechanical, electrical and other system components that comprise a building such as structural, roofing, side wall, plumbing, HVAC, water, sanitary sewer and electrical systems;

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in British Columbia;

“CaGBC” means the Canada Green Building Council;

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP;

“Capital Payment” means the sum for each Payment Period set out in Table 1 [Capital Payments] of Appendix 8C [Service Payments];

“Card Access System” means the system set out in Section 9.8.2.1 [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

“Category 1 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture] of Schedule 2 [Design and Construction Protocols];

VAN01: 3149521: v7

“Category 2 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture] of Schedule 2 [Design and Construction Protocols];

“Category 3 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture] of Schedule 2 [Design and Construction Protocols];

“Category 4 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture] of Schedule 2 [Design and Construction Protocols];

“CEA Report” means the Canadian Environmental Assessment Screening Report and Project Registry (CEAR#12-01-67318) included in the Disclosed Data;

“Cell” means the Inmate cells meeting the requirements described in Schedule 3 [Design and Construction Specifications];

“Certificate of Service Commencement” has the meaning set out in Section 12.3 [Application for Certificate of Service Commencement] of Schedule 2 [Design and Construction Protocols];

“Certified Protection Professional” means a professional who has demonstrated his or her competency in the area of security solutions and best-business practices through an intensive qualification and testing program certified by ASIS International;

“Change” means a Facility Change or a Services Change as the context requires;

“Change Certificate” means a certificate issued by the Province describing and authorizing a Change, the value or method of valuation of the Change, and in the case of a Facility Change occurring prior to the Service Commencement Date the adjustment, if any, to the Project Schedule (including the Target Service Commencement Date);

“Change Directive” means a written instruction which is issued on a form designated as a “Change Directive Form” and signed by the Province’s Representative directing Project Co to immediately proceed with a Change, pending the finalization and issuance of a Change Certificate for that Change;

“Change in Control” means with respect to a Person any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the Person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger, consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in a Person or group of Persons, other than the equity holders of the entity immediately prior to the change, directly or indirectly:

- (a) controlling the composition of the majority of the board of directors of the entity or of a general partner or manager of the entity;

- (b) controlling the decisions made by or on behalf of the Person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the entity, a general partner of the entity or a manager of the entity or otherwise;
- (c) holding equity (either beneficially or otherwise) of that entity with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of that entity with more than one half of the voting rights; or
- (d) having the ability to direct or cause the direction of the management, actions or policies of the entity;

“Change in Law” means the coming into effect in Canada after the Financial Submission Date of:

- (a) any new Law; or
- (b) any modification (including repeal) of any Law existing on such date,

which is binding on Project Co or the Province, but excluding in each such case:

- (c) any lawful requirements of any Governmental Authority (unless resulting from a Change in Law);
- (d) any change in the interpretation of any legislation other than a judgment of a relevant Court which changes binding precedent in British Columbia;
- (e) any new Law or modification arising from or in any way connected to or having substantially the same effect as any Law which as of the Financial Submission Date:
 - (1) had been introduced as a Bill in the Legislative Assembly of British Columbia or the Parliament of Canada or in a draft statutory instrument published or issued by a Governmental Authority; or
 - (2) had been published in the Canada Gazette or in a draft bill as part of a Governmental Authority discussion or consultation paper;

“Change Mark-Up” has the meaning set out in Section 1.10 [Mark-Up on Changes] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Report” means a written report prepared by Project Co in response to a Preliminary Change Instruction, containing the information described in Section 1.6 [Change Report Contents] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Report Costs” has the meaning set out in Section 1.5(b)(3)(A) [Delivery of Change Report] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

VAN01: 3149521: v7

“Charge” means any charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim or encumbrance of any nature whatsoever, including any claims of the Worker's Compensation Board, Canada Revenue Agency, Employment Standards Branch or other Governmental Authority;

"Code" means the current version of British Columbia Building Code;

"Commissioning Plan" has the meaning set out in Section 11.3 [Commissioning Plan] of Schedule 2 [Design and Construction Protocols];

“Communications and ESCS” or **“ESCS and Communications”** means the systems as described in Section 9.7 [Communications] and Section 9.8.1 [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

“Communications Service Entrance Room” has the meaning set out in Section 9.7.2.2(3) [Communications] of Schedule 3 [Design and Construction Specifications];

“Compensation Event” means any of the following events or circumstances if and to the extent that it interferes adversely with, or causes a failure of, the carrying out of the Design, the Construction or the Services, causes an Unavailability Event or causes Direct Losses to Project Co:

- (a) breach by the Province of any of its obligations under this Agreement;
- (b) breach of any representation or warranty by the Province under this Agreement;
- (c) misconduct of the Province, a Province Person or other Facility Administrator;
- (d) a negligent act or omission of the Province, a Province Person or a Facility Administrator, except to the extent attributed to the Province solely by virtue of the principle of non-delegable duty;
- (e) the existence of Undisclosed Environmental Liabilities;
- (f) a Permit which is the obligation of the Province to obtain or maintain is declared invalid or defective by a court of competent jurisdiction;
- (g) the existence as at the Effective Date of any encumbrance enforceable against or affecting the Lands or the Facility other than the Encumbrances;
- (h) a material change to the terms of the Transfer of Administration and Control or the creation, after the Effective Date, by the Province or the Landlord of any Encumbrances affecting the Lands which have a material adverse effect on Project Co's ability to perform the Design, Construction or Services;
- (i) the discovery of any human remains, relics or other articles or structures of historical, antiquarian or archaeological interest on or adjacent to the Lands, except as may be disclosed in the Archaeological Report;

- (j) a claim asserting infringement of aboriginal rights or aboriginal treaty rights or aboriginal title by any first nation(s), but not including any Protest Action resulting from or in connection with any such claim (provided that, for certainty, the exclusion of any such Protest Action from this paragraph (j) shall not prejudice any otherwise valid claim that Project Co may have as a result of the occurrence of a Compensation Event referred to in paragraph (k) or (l) of this definition
- (k) subject to Section 8.15 [Allocation of Risks of Participants and Trespassers], a Protest Action during the Construction Period;
- (l) a Protest Action during the Operating Period;
- (m) lawful or unlawful strike, lockout, work-to-rule or other dispute by Public Sector Employees or by the employees of any contractor (other than Project Co) engaged by the Province to provide services in the Facility;
- (n) the actions referred to in Section 11.5 [Allocation of Costs for Province Actions] as constituting a Compensation Event;
- (o) the event referred to in Section 8.6(d)(2) [Parties' Entitlements Upon Occurrence of a Force Majeure Event];
- (p) the event referred to in Section 5.13 [Inspection] of Schedule 2 [Design and Construction Protocols];
- (q) the event referred to in Section 8.4(e)(ii) [Project Co's Entitlement Upon Occurrence of a Relief Event];
- (r) Project Co's compliance with a direction of the Province under Section 2.3 [Interim Decision] of Schedule 13 [Dispute Resolution Procedure] or Project Co's implementation of a Change Certificate under Section 1.14(b) [Disagreement on Change Report] of Schedule 6 [Changes, Minor Works and Innovation Proposals] when the matter in dispute is subsequently resolved, or settled, in Project Co's favour;
- (s) the execution of works, other than usual or reasonably expected works, on the Site or in respect of the Facility not forming part of this Agreement by the Province or any person permitted to execute such works by the Province or any Province Person;
- (t) a failure by the Province to implement Good Industry Practice for the Province FM Services in accordance with measures identified by Project Co pursuant to Part 7 [Province FM Services] of Schedule 4 [Services Protocols and Specifications];
- (u) if part of the Facility or part of the portion of the Lands on which the Facility is situated or any interest of the Province is expropriated by any Governmental Authority and such expropriation is not a Province Event of Default as set out in Section 13.1(c) [Province Events of Default];

- (v) without limiting paragraph (t) of this definition, a failure by the Province or any Province Person (having regard to the interactive nature of the activities of the Province and Project Co) to take commercially reasonable steps to perform, or cause to be performed, the Province FM Services in a manner which minimizes undue interference with Project Co's performance of the Service;
- (w) a material failure of the Minister of Aboriginal Affairs and Northern Development Canada to comply with its obligations, as outlined in the document entitled "*Procedure for Obtaining a Minister's Consent to Construction*", a copy of which is included in the Disclosed Data; and
- (x) any other event which is expressly stated in this Agreement to constitute a Compensation Event,

except to the extent that any of such events or circumstances arise (directly or indirectly) as a result of: (i) any wrongful act or omission, negligent act or omission or wilful misconduct; (ii) any breach in the performance or observance of any of Project Co's obligations under this Agreement; or (iii) an act or omission, of or by Project Co or any Project Co Person;

"Compliant Bid" means a bid, proposal or other submission pursuant to a competitive process which meets the reasonable criteria that the Province requires the party making the submission to meet as part of the Re-Bidding Process, which unless otherwise agreed by Project Co and the Province will include:

- (a) compliance with the New Project Agreement terms;
- (b) the financial ability to pay the proposed capital sum as a single, lump sum payment to be made as of the date of the New Project Agreement and the financial ability to comply with the New Project Agreement terms for the price proposed;
- (c) such party is experienced in maintaining and operating a facility similar to the Facility or providing services similar to the Design and Construction or Services, as applicable;
- (d) the technical solution proposed by such party is capable of delivery and such party is technically capable of delivering and maintaining the Project or the remainder thereof, as the case may be;
- (e) such party is not a Restricted Person; and
- (f) such party is not Project Co or any of its Affiliates;

"Computerized Maintenance Management System" or "CMMS" has the meaning set out in Section 9.7.9 [Communications] of Schedule 3 [Design and Construction Specifications];

"Confidential Information" means Personal Information, and information of a party that the party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any

other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information;

“Confidential Speech Privacy” as defined by ASTM E1130 means that speech cannot be understood;

“Construction” means everything (other than Design) required to achieve Service Commencement, including the construction of the Facility, temporary works and the supply of all labour and materials, construction equipment, management, supervision and support of any kind or nature whatsoever required for the construction of the Facility and the supply, installation, testing and commissioning of all Equipment;

“Construction CGL Policy” has the meaning set out in Section 1.1 [Wrap-Up Liability Insurance] of Schedule 5 [Insurance Requirements];

“Construction Period” means the period commencing on the Effective Date and ending on the Service Commencement Date;

“Construction Period Joint Committee” has the meaning set out in Section 1.7(a) [Construction Period Joint Committee] of Schedule 2 [Design and Construction Protocols];

“Construction Period Payment” has the meaning set out in Section 1 [Construction Period Payment Amounts] of Appendix 8B [Construction Period Payments];

“Construction Property Policy” has the meaning set out in Section 1.2 [Course of Construction Coverage] of Schedule 5 [Insurance Requirements];

“Contact Person” means the person designated by the Province from time to time as the “Contact Person”;

“Contingency/Crisis Management Plan” has the meaning given in Section 3.14.1 [Contingency Planning and Crisis Management] of Schedule 4 [Services Protocols and Specifications];

“Contingent Funding Liabilities” means direct or indirect liabilities or contingent liabilities, if any, of the Partners in respect of financial obligations owed to Project Co, to the General Partner, to any party under the Junior Debt or the Senior Lenders under the Senior Financing Agreements, such as, for example, the amount a Partner has agreed to contribute to Project Co, promissory notes, obligations to fund reserve accounts, guarantees, letters of credit in respect of deferred equity, subordinated debt or equity bridge loans;

“Contraband Control Policy and Procedures” refers to the ‘Security and Control’ chapter of the Adult Custody Policy, included in the Province Policies and Procedures, as supplemented or amended from time to time and provided to Project Co in writing;

“Contract Year” means each of:

- (a) the period from the Effective Date to the next March 31st;
- (b) each subsequent period of 12 calendar months commencing on April 1st; and
- (c) the period from the April 1st immediately prior to the Termination Date to and including the Termination Date;

“**Coordinating Registered Professional**” has the meaning ascribed to it in the British Columbia Building Code;

“**CORNET**” means the corrections network maintained by the BC Corrections Branch;

“**Cost to Date**” as at a date means in respect of the Eligible Costs, the total amounts incurred by Project Co to construct the Project (including the amount of any holdback required under the *Builders Lien Act* (British Columbia), excluding GST);

“**COTS Software Product**” means a generally commercially available, off-the-shelf software product that is not owned by Project Co or a Project Contractor, but does not include HMI Software Products or HMI Customizations;

“**COTS Software License Agreement**” has the meaning set forth in Section 4.13(b) [Intellectual Property];

“**CPIC**” means Canadian Police Information Centre;

“**Critical**” has the meaning given in Appendix 8D [Response Time and Rectification Period Requirements];

“**Critical Event**” means an Event which, if not corrected, is likely to deteriorate into an Emergency Event, or which is causing or is likely to cause, significant operational problems;

“**Cumulative Allowable Capital Expenditure**” means the cumulative amount of the Allowable Capital Expenditure from time to time during the Term;

“**Dayroom**” has the meaning given in Section 4.7.2.8(2) [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“**Debt**” of any Person at any date means, without duplication:

- (a) all obligations of such Person for borrowed money;
- (b) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments;
- (c) all obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business;

- (d) all obligations of such person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such person is liable, except leases arising in the ordinary course of business;
- (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property);
- (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other similar instrument;
- (g) all Debt (as otherwise defined in this definition) of others secured by a Charge on any asset of such Person, provided such Debt (as otherwise defined in this definition) is assumed by such Person; and
- (h) all Debt (as otherwise defined in this definition) of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee;

"**DEC**" has the meaning given in Section 8.1.8.2 [Interior Construction] of Schedule 3 [Design and Construction Specifications];

"**Deduction**" means a deduction from a Service Payment, calculated in accordance with Schedule 8 [Payments], or under Schedule 2 [Design and Construction Protocols] or Schedule 4 [Services Protocols and Specifications] for Deductions specified in those Schedules;

"**Deduction Period**" means the calendar month that is two months prior to the relevant Payment Period;

"**Default Rate**" on any day means per annum over the Prime Rate;

"**Defect**" means any defect or fault, including omission, in the Facility which occurs due to a failure by Project Co to comply with the Design and Construction obligations under this Agreement;

"**Deficiency**" has the meaning set out in Section 9.4(b) [Retention of Security for Deficiency] of Schedule 10 [Lenders' Remedies Agreement];

"**Deficiency Deadline**" has the meaning set out in Section 12.4 [Correction of Deficiencies] of Schedule 2 [Design and Construction Protocols];

"**Demand Charge**" means an amount charged by a provider of electricity to the Facility for the highest rate of electricity consumption in connection with the Facility within the billing period used by the provider of electricity;

"**Demand Maintenance**" means ad hoc and responsive unscheduled Maintenance;

"**Demand Requisition**" means any request for service, report of a Service Failure, report of an Unavailability Event or any other report or inquiry made to the Help Desk;

"Demarcation Boundary" means the boundary described in Section 3.4.5.6. [Safety and Security] of Schedule 3 [Design and Construction Specifications];

"Design" means everything required for the design of the Facility except for any design that is expressly excluded from Project Co's responsibility under this Agreement;

"Design and Construction Energy Targets" mean _____ of gas per year and _____ of electricity per year;

"Design and Construction Protocols" means the provisions of Schedule 2 [Design and Construction Protocols];

"Design and Construction Representative" means the Province's Design and Construction Representative or Project Co's Design and Construction Representative, as applicable;

"Design and Construction Specifications" mean the provisions of Schedule 3 [Design and Construction Specifications];

"Design Capacity" has the meaning given in Section 3.3.1 [Design Capacity] of Schedule 3 [Design and Construction Specifications];

"Design Professionals" means the Architect, the Architect's subconsultants and the design consultants engaged directly by the Design-Builder or Project Co, including engineers and technical experts, who provide services with respect to the Design;

"Design Service Life" or **"DSL"** means the period of time for which a component, device or system is expected to function at its designated capacity without major repairs;

"Design Temperature" means the temperature described in 9.4.1.1(1) [Heating, Ventilation and Air Conditioning] of Schedule 3 [Design and Construction Specifications];

"Design-Build Agreement" means the design and construction agreement between Project Co and the Design-Builder, a certified copy of which has been delivered by Project Co to the Province, as amended, supplemented or replaced from time to time in accordance with this Agreement;

"Design-Builder" means PCL Constructors Westcoast Inc. or any assignee or replacement permitted under this Agreement;

"Design-Builder's Commissioning Lead" means the individual set out in that capacity in Schedule 17 [Key Individuals];

"Design-Builder's Construction Lead" means the individual set out in that capacity in Schedule 17 [Key Individuals];

"Design-Builder's Design Lead" means the individual set out in that capacity in Schedule 17 [Key Individuals];

VAN01: 3149521: v7

“Design-Builder’s Project Lead” means the individual set out in that capacity in Schedule 17 [Key Individuals];

“Design-Builder’s Technology Lead” means the individual set out in that capacity in Schedule 17 [Key Individuals];

“Development Changes” has the meaning given in Section 5.1 [Development Changes] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Record” has the meaning given in Section 5.2 [Alternate Process] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Record Confirmation” has the meaning given in Section 5.3 [Opportunity to Object] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Register” has the meaning given in Section 5.6 [Reconciliation] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Diesel Fuel Services Payment” means the amount applicable to a Payment Period as set out in Schedule 4 [Services Protocols and Specifications], to be paid by the Province to Project Co in respect of the costs incurred by Project Co in carrying out the Services described therein in a preceding Payment Period;

“Direct Losses” means in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs (including increased Capital Expenditures), expenses (including the reasonable cost of legal or professional services), proceedings, demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event or omission:

- (a) net of related Insurance Proceeds and Insurance Receivables and any amount which the relevant party would have recovered (in respect of such condition, event or omission) if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement;
- (b) excluding any Indirect Losses, except to the extent included in a third party claim; and
- (c) in the case of Project Co, without limiting the foregoing:
 - (1) including the full amount of the related loss or reduction of any Service Payments; and
 - (2) net of Avoidable Costs related to such condition, event or omission,

and in calculating any amount of any additional Capital Expenditure, labour or similar cost claimed by Project Co under this definition of “Direct Losses”, Project Co will be entitled to add to such amounts the

mark-ups referred to in Section 1.8 [Valuation of and Payment for Changes] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Disclosed Data” means any information, data and documents made available or issued to Project Co or any Project Contractor or Sub-Contractor in connection with the Project by or on behalf of the Province, including the Geotechnical Report any information relating to the Lands or the requirements of any Governmental Authority, whether before or after the execution of this Agreement;

“Discriminatory Change in Tax Law” means a Change in Law which results in the imposition of Taxes or a change in Taxes which specifically apply to discriminate against:

- (a) the Project or other similar corrections-related projects procured and contracted on a public-private partnership basis similar to the Project;
- (b) Project Co and its Partners or Persons that have contracted on similar corrections-related projects procured and contracted with the Province or other statutory or public body on a public-private partnership basis similar to the Project;
- (c) the design, provision, operation or maintenance of corrections facilities and not to other types of facilities; or
- (d) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar corrections-related projects procured and contracted on a public-private partnership basis similar to the Project and not other Persons;

“Dispute” means any disagreement, failure to agree or other dispute between the Province and Project Co arising out of or in connection with this Agreement, including in respect of the interpretation, breach, performance, validity or termination of this Agreement, whether in the law of contract or any other area of law;

“Dispute Notice” has the meaning set out in Section 1.2 [Dispute Notice] of Schedule 13 [Dispute Resolution Procedure];

“Dispute Resolution Procedure” has the meaning set out in Section 1.1 [Procedure] of Schedule 13 [Dispute Resolution Procedure];

“Distribution” means without duplication or double counting:

- (a) whether in cash or in kind, any:
 - (1) distribution to Partners or other distribution in respect of equity interests in Project Co;
 - (2) redemption or purchase of any equity interest in Project Co or reduction of partnership capital or the amount of a Partner’s contribution stated in the limited

partnership certificate or any other reorganization or variation to partnership capital;

- (3) payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);
 - (4) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof, or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business or not on commercially reasonable terms including to any current or former Partner, or any current or former Affiliate of any current or former Partner;
 - (5) conferral of any other benefit which is not conferred and received in the ordinary course of business or is not conferred or received on commercially reasonable terms, including to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co; and
 - (6) other payment to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect of any equity interest in Project Co or other securities of or interests in Project Co if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; or
- (b) the early release of any reserves or any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated. A Distribution will be calculated in a manner that is consistent with the calculation of the Threshold Equity IRR in the Financial Model;

“District Energy System” means the geothermal energy system provided by Senkulmen Utilities Limited;

“Door Control System” or **“DCS”** has the meaning set out in Section 9.8.2.2 [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

“Draft Reinstatement Plan” has the meaning set out in Section 6.4 [Project Co's Obligations – Material Damage or Destruction];

“Effective Date” means the date of this Agreement;

“Elevator Availability” means, in respect of each elevator in the Facility, the amount of time that such elevator was available during a measured period expressed as a percentage and calculated as follows:

$$(Total\ Time - Down\ Time) \times 100 / Total\ Time$$

Where:

Down Time is the number of hours that such elevator was unavailable for normal use other than times during which Scheduled Maintenance was performed on such elevator in accordance with the Annual Service Plan in effect; and

Total Time is the total number of hours during the measured period;

“Eligible Change in Law Event” means the occurrence of a:

- (a) Relevant Change in Law;
- (b) Relevant Works Change in Law;
- (c) Discriminatory Change in Tax Law; or
- (d) Input Tax Recoverability Change in Law.

“Eligible Costs” means all hard and soft Construction costs in the Design-Build Agreement (including furnishings, furniture and equipment and any PST on these costs), bid development costs and Project Co setup costs during construction. Eligible Costs do not include financing fees, interest during construction and GST;

“Emergency Evacuation Plan” has the meaning set out in Section 3.9.6 [Design Redundancy] of Schedule 3 [Design and Construction Specifications];

“Emergency Event” means an Event which presents a clear and present threat to human life safety, Facility security; and/or irreparable damage or destruction of equipment systems, buildings or any other asset and/or a material breach of binding regulatory requirements and/or standards;

“Emergency Generator” means the emergency generator described in Section 9.6.3.1 [Electrical]] of Schedule 3 [Design and Construction Specifications];

“Emergency Operations Centre” or **“EOC”** has the meaning set out in Section 3.6.1.1 [Operations & Control Posts] of Schedule 3 [Design and Construction Specifications];

“Employee Information” means written details related to employees employed by Project Co or any of the Project Contractors or Sub-Contractors whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (a) the staffing plan and total number of such employees;

- (b) the employment costs for such employees;
- (c) the amount or severance payable to such employees used in the calculation of any Employee Payment and all relevant information used in determining such amounts; and
- (d) any other information that the Province may reasonably require in relation to the calculation of Employee Payments;

"Employee Payments" means any liability that has been reasonably incurred by Project Co arising as a result of termination of this Agreement under collective agreements, employment agreements or under any other agreements with employees of Project Co, including severance (whether accrued or not), vacation pay and sick pay accrued but excluding any Distribution;

"Encumbrances" means those Charges against the Lands permitted under Schedule 7 [Lands];

"Energy" means electricity, geothermal, steam, gas, oil, coal and any other fossil-based fuel;

"Energy Consumption" for a specified period means the total number of Gigajoules of a type of Regulated Energy actually consumed in connection with the Facility during that period, excluding only:

- (a) the Regulated Energy consumed in connection with "process loads", as defined by ANSI/ASHRAE 90.1 (Energy Standard for New Buildings), associated with the large workshop (6.103) and the two small workshops (6.104); and
- (b) the Regulated Energy consumed by the Greenhouse,

each of which are to be separately metered.

"Energy Gainshare" means the amounts calculated in accordance with Section 4.1 [Energy Gainshare] of Appendix 2D [Energy];

"Energy Management Plan" has the meaning set out in Section 3.13 [Energy Management Plan] of Schedule 4 [Services Protocols and Specifications];

"Energy Modeling" means use of a software based computer model that analyzes a building's energy related features in order to project the energy consumption of a given design;

"Energy Painshare" means the amounts calculated in accordance with Section 4.2 [Energy Painshare] of Appendix 2D [Energy];

"Energy Year" means:

- (a) the 12 month period beginning on the day after the Test Period (or the Retest Period, where Section 2.6 [Retest Period] of Appendix 2D [Energy] applies);
- (b) each subsequent period of 12 months during the Term; and

- (c) the period of less than 12 months from the end of the previous Energy Year to the Termination Date;

“Entrance Room” means a room where both public and private network service cables enter the building;

“Environmental and Sustainability Services” means the environmental and sustainability services described in Appendix 4H [Environmental Sustainability Services];

“Environmental Credit” means any income, credit, right, benefit or advantage relating to environmental matters including type and level of emissions, means of production of Energy, input sources and compliance with any Environmental Laws, provided, however, that in respect of Section 3.6 [LEED Gold Certification] of Schedule 2 [Design and Construction Protocols] the credits or points required to achieve LEED Gold Certification are excluded from this definition;

“Environmental Laws” means all Laws relating to the protection of human health and all plant, animal, land, water and air resources that may be affected by the Project;

“Environmental Leave Area” has the meaning set out in Section 4.1.3.2(1)(d) [Location and Siting] of Schedule 3 [Design and Construction Specifications];

“Environmental Management Plan” has the meaning set out in Section 3.12 [Environmental Management Plan and System] of Schedule 4 [Services Protocols and Specifications];

“Environmental Management System” or **“EMS”** has the meaning set out in Section 3.12.2 [Environmental Management Plan and System] of Schedule 4 [Services Protocols and Specifications];

“Equipment” means collectively the Category 1 Equipment, the Category 2 Equipment, the Category 3 Equipment and the Category 4 Equipment;

“Equipment Committee” means the committee established pursuant to Section 3.5 [Equipment Committee] of Appendix 2E [Equipment and Furniture];

“Equipment List” means the list of Equipment set out in Appendix 3G [Furniture Fixtures & Equipment List];

“Equity IRR” means Project Co's Nominal blended equity internal rate of return calculated on an after tax basis at the level of Project Co in accordance with the Financial Model as shown in Cell S51 of the “Summary” tab, having regard to Distributions made and projected to be made;

“ESCS” means Electronic Security Communications System as further described in Section 3.5 [Electronic Security Communication System (ESCS)] of Schedule 3 [Design and Construction Specifications];

“ESCS Central Time Server” means a computer server that reads time from a reference master clock source and distributes this information to all other computer clients on the ESC network to ensure that time is synchronized and consistent on all systems;

"ESCS Data Network" means the network specified in Section 9.8.9 [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

"ESCS Network Equipment" means equipment that is utilized by the ESCS that is connected to the telecom cable plant;

"ESCS Software" has the meaning set out in Section 9.8.1.9(1) [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

"Escalation Factor" for the purpose of Section 2.8 [Failure to Achieve Energy Targets after Retest Period] of Appendix 2D [Energy], means 2.5% in respect of electricity and 2.5% in respect of gas;

"Escorted Person" means a Person engaged in the performance of Level 2 Security Sensitive Work who:

- (a) has not been previously subjected to a Level 2 Background Check, or whose Level 2 Background Check has expired; and
- (b) is accompanied by an SSW Escort while engaged in in the performance of Level 2 Security Sensitive Work;

"Estimated Market Value" means the amount (calculated as at the day following the Termination Date) determined to be the Fair Market Value of a New Project Agreement pursuant to Section 3.2 [Determination of Adjusted Estimated Market Value] or 3.3 [Determination by Valuator] of Schedule 9 [Compensation on Termination];

"Event" means an incident or state of affairs affecting the Availability Condition of a Functional Unit or requiring Services to be performed or both;

"Excess Energy Consumption" for a specified period means the amount by which the actual Energy Consumption for that period exceeds the applicable Adjusted Energy Target, if any, provided that under no circumstances will Excess Energy Consumption be a negative number;

"Excusing Event" means any of the following events or circumstances if it occurs on or after the Service Commencement Date and interferes adversely with, or causes a failure of, the performance of the Services or causes an Unavailability Event:

- (a) Scheduled Maintenance (including Life Cycle Requirements) performed in accordance with the Annual Service Plan, except that:
 - (1) improperly performed Scheduled Maintenance and the effects thereof will not constitute an Excusing Event; and
 - (2) if the Scheduled Maintenance continues beyond the period or duration set out in the Annual Service Plan, the Excusing Event will terminate at the end of the period or duration set out in the Annual Service Plan;

- (b) the carrying out by Project Co of Minor Works required by the Province in accordance with this Agreement;
- (c) failure by any Utility Company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner or any unreasonable interference with the Services by any such body as a result of maintenance or other work;
- (d) failure of Utilities which the Province is responsible for providing to the Facility under this Agreement, except to the extent that Project Co is required, pursuant to the terms of this Agreement, to have provided redundant or backup capacity for such Utility supply;
- (e) compliance by Project Co with an order or direction by police, fire officials or any comparable public authority having the legal authority to make such order or give such direction;
- (f) a Change in Law;
- (g) the outbreak or effects of any Medical Contamination, Lockdown or riot, to the extent it does not constitute a Compensation Event;
- (h) without prejudice to any obligation of Project Co to provide stand-by power facilities and a fuel reserve in accordance with the Design and Construction Specifications or the Service Protocols and Specifications, failure or shortage of power or fuel to supply power;
- (i) any other event which is expressly stated in this Agreement to constitute an Excusing Event, and
- (j) the event referred to in Section 1.11 [Effect on the Project Schedule or Delays to Services] of Schedule 6 [Changes, Minor Works and Innovation Proposals],

except to the extent that any of such events or circumstances arise (directly or indirectly) as a result of: (i) any wrongful act or omission, negligent act or omission or wilful misconduct; (ii) any breach in the performance or observance of any of Project Co's obligations under this Agreement; or (iii) an act or omission, of or by Project Co or any Project Co Person;

"Exempt Refinancing" means:

- (a) a change in taxation or change in accounting treatment pursuant to changes in Laws or GAAP or International Financial Reporting Standards;
- (b) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are solely in respect of:
 - (1) breach of representations, warranties, covenants or undertakings;

- (2) movement of monies between the Project Accounts (as defined in the Senior Financing Agreements) in accordance with the terms of the Senior Financing Agreements;
 - (3) late or non-provision of information or consents;
 - (4) amendments to Project Contracts;
 - (5) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);
 - (6) restrictions imposed by the Senior Lenders on the dates at which the financing provided by the Senior Lenders under the Senior Financing Agreements can be advanced to Project Co under the Senior Financing Agreements, and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Lenders to the Province prior to being given;
 - (7) changes to milestones for drawdown set out in the Senior Financing Agreements and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Lenders to the Province prior to being given;
 - (8) failure by Project Co to obtain any consents from Governmental Authorities required by the Senior Financing Agreements; or
 - (9) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;
- (c) an amendment, variation or supplement of an agreement approved by the Province as part of any Change;
 - (d) a sale of Junior Debt or Units in Project Co by Partners or, in the case of Junior Debt, Affiliates of Partners or securitization of the existing rights or interests attaching to Junior Debt or Units in Project Co;
 - (e) a Qualifying Bank Transaction;
 - (f) a conversion of Units into Junior Debt or of Junior Debt into Units, provided that the total principal amount of all Junior Debt outstanding immediately following the conversion plus amounts paid to Project Co by way of subscription for Units outstanding immediately following the conversion does not exceed the total amounts paid to Project Co by way of

subscription for Units outstanding immediately prior to the conversion plus the total principal amount of all Junior Debt outstanding immediately prior to the conversion; or

(g) a secondary transaction in the bond market;

“Expiry Date” means September 30, 2046;

“Facility” means the buildings, related structures, utility connections, landscaping and other improvements to be constructed by Project Co pursuant to this Agreement, and for greater certainty includes all Life Cycle Components;

“Facility Administrator” means the Province, Province Persons (excluding Inmates), visitors and volunteers using or present at the Facility;

“Facility Administration” means the area described in Section 4.7.2.4 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Facility Change” means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Design or Construction obligations under this Agreement, or a Renovation;

“Facility Condition Report” has the meaning set out in Section 2.3.2 [Joint Technical Review] of Schedule 4 [Services Protocols and Specifications];

“Facility Maintenance Payment” means the sum for each Payment Period set out in Table 3 [Facility Maintenance Payments] of Appendix 8C [Service Payments];

“Facility On-Call Procedures” means the Province’s On-Call Procedures, as supplemented or amended from time to time and provided to Project Co in writing;

“Facility Operation Variances” means any material variances between the actual use and operation of the Facility by the Province and the Province’s Baseline Assumptions regarding the use and operation of the Facility, provided, that under no circumstances, will any variance caused by, or resulting from, an act or omission of any Project Co Person constitute a Facility Operation Variance;

“Facility Threat and Risk Assessment” has the meaning set out in Section 3.8 [Threat and Risk Assessments] of Schedule 2 [Design and Construction Protocols];

“Fair Market Value” means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale;

“Finance Parties” has the meaning set out in the Note Indenture;

“Financial Close” means March 18, 2014;

“Financial Model” means Project Co’s financial model for the Project attached as Schedule 15 [Financial Model], a copy of which is attached to this Agreement in electronic format, as updated or amended from time to time in accordance with the terms of this Agreement;

VAN01: 3149521: v7

“Financial Submission Date” means December 3, 2013;

“Fire Alarm System” has the meaning set out in Section 9.6.10 [Electrical] of Schedule 3 [Design and Construction Specifications];

“Fire, Life and Safety Emergency Plan” means the plan set out in Section 3.9.1.11 [Annual Service Plans] of Schedule 4 [Services Protocols and Specifications];

“Five Year Maintenance Plan” has the meaning set out in Section 3.10 [Five Year Maintenance Plan] of Schedule 4 [Services Protocols and Specifications];

“Food Services” or **“Food Services Area”** means the area set out in Section 4.7.2.11 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Food Services Consultant” means a consultant specializing in the design of commercial kitchens;

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

- (a) war, civil war, armed conflict, or terrorism;
- (b) nuclear, radioactive, chemical or biological contamination, except to the extent that such contamination arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person;
- (c) earthquake or tidal wave;
- (d) flood, except to the extent that such flood arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person; or
- (e) pressure waves caused by devices traveling at supersonic speeds;

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

“Functional Programme” means the written document to inform the development of a building as found in Appendix 3A [Functional Programme] of Schedule 3 [Design and Construction Specifications];

“Functional Unit” means a room, space or system which is specified as such in Appendix 8A [Functional Units, Priority Levels and Unit Deduction Amounts] to Schedule 8 [Payments];

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

“General Partner” means Plenary Justice Okanagan GP Inc., in its capacity as general partner of Project Co (unless the context otherwise requires), or any successor or assignee permitted under this agreement;

VAN01: 3149521: v7

“Geotechnical Report” means the report entitled Geotechnical Report, prepared by Golders Associates, dated June 8, 2012 and included in the Disclosed Data;

“GHG Emission Design Target” means the project quantity of Greenhouse Gas emissions as determined by the projected energy consumption for the Facility expressed as a quantity of Greenhouse Gas Equivalent of carbon dioxide per annum. The GHG Emission Design Target for the Facility shall be 12.5 kg CO₂e/m²/year.

“GHG Emissions” means the aggregate of all Greenhouse Gas emissions from the Facility, including all direct emissions from stationary combustion sources (such as boilers) and indirect emissions from consumption of Regulated Energy, on an annualized basis, but excluding Greenhouse Gas emissions produced by Emergency Generator and the Greenhouse;

“Gigajoule” or **“GJ”** means the international unit of energy being 1,000,000,000 joules;

“Good Industry Practice” means using standards, practices, methods and procedures to a good commercial standard, conforming to Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

“Governmental Authority” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, Court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project;

“Graphic Command Centre” or **“GCC”** means the graphic displays and control devices of systems described in Schedule 3 [Design and Construction Specifications] including a fire alarm control panel, a fire alarm graphic annunciator, a fire alarm colour graphic computer and an elevator status/control panel;

“Graphic User Interface” or **“GUI”** means a software program that uses computer graphic capabilities to facilitate user friendly control of a system;

“Greenhouse” means the greenhouse described in Section 7.2.3 [Exterior Horizontal Enclosures] of Schedule 3 [Design and Construction Specifications];

“Greenhouse Gas” has the meaning given in the *Greenhouse Gas Reduction Targets Act* (British Columbia);

“Greenhouse Gas Equivalent” means the measure used to compare the emissions from various greenhouse gases based on their global warming potential expressed as a carbon dioxide equivalent for a gas derived by multiplying the tons of the gas by the associated global warming potential relative to carbon dioxide;

“Grounds Maintenance and Landscaping Services” means the Services and requirements described in Appendix 4B [Roads, Grounds Maintenance and Landscaping Services];

“GST” means the goods and services tax imposed pursuant to Section IX of the Excise Tax Act (Canada);

“H&S Conviction” has the meaning set out in Section 12.1(g) [Project Co Events of Default];

“Handback Amount” means Project Co’s estimate of the cost of carrying out the Handback Works Plan;

“Handback Certificate” has the meaning given in Section 3.2.1.1 [Notice from the Province] of Appendix 4C [Handback Requirements];

“Handback Holdback” has the meaning given in Section 2.1.1.1(4) [Performance of Handback Work] of Appendix 4C [Handback Requirements];

“Handback Requirements” means the requirements for the condition of the Facility on the Expiry Date, as described in Appendix 4C [Handback Requirements];

“Handback Survey” has the meaning given in Section 1.3 [Handback Survey] of Appendix 4C [Handback Requirements];

“Handback Works” has the meaning given in Section 1.4.1.1 [Results of Survey] of Appendix 4C [Handback Requirements];

“Handback Works Plan” has the meaning given in Section 1.4.1.2 [Results of Survey] of Appendix 4C [Handback Requirements];

“Has Knowledge” or **“Have Knowledge”** or **“Having Knowledge”** means, under circumstances in which a reasonable person would take cognizance of it:

- (a) for an individual, when information is acquired by the individual;
- (b) for a corporation, when information has come to the attention of:
 - (1) a director or officer of the corporation; or
 - (2) a senior employee of the corporation with responsibility for matters to which the information relates,
- (c) for a partnership other than a limited partnership, when any partner Has Knowledge under the other Sections of this definition or under this Section (c) or Section (d) below for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates; or
- (d) for a limited partnership, when any general partner Has Knowledge under the other Sections of this definition or under this Section (d) or Section (c) above for any partner

that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates;

- (e) for the Province, when information has come to the attention of:
- (1) a director or officer of the Province;
 - (2) a senior employee of the Province with responsibility for matters to which the information relates; or
 - (3) the Province's Design and Construction Representative or Operating Period Representative;

"Hazardous Substance" means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws;

"Health Services" or **"Healthcare Services"** means the area described in Section 4.7.2.5 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

"Health Services Inpatient Cells" means the area described in Section 4.7.2.5(13) [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

"Help Desk" means the contact point to be established by Project Co in respect of the Help Desk Services for the notification of Demand Requisitions, the occurrence of Events and other matters arising in relation to the provision of Services;

"Help Desk Report" means any Demand Requisition, request for Services, report of a Service Failure or Unavailability Event or any other enquiry or report made to the Help Desk by a Facility Administrator or automatically generated by the BMS or the CMMS;

"Help Desk Services" means the services and requirements described in Appendix 4F [Help Desk Services];

"High Service Failure" means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in Schedule 8 [Payments] as a High Service Failure;

"Highest Compliant Bid Price" means the price offered by the Person making the Compliant Bid (if any) with the highest bid price;

"HMI Customization" means a configuration, customization, enhancement (including new functionalities), modification, addition or derivative work to or from an HMI Software Product or HMI Documentation (including a configuration, customization or enhancement of the graphical user interface or PLC

programming, of the HMI Software Product) for use of the HMI Software Product or HMI Documentation at or in connection with the Facility and that is provided or procured by Project Co, a Project Contractor or a Sub-Contractor for use in connection with the Facility;

“HMI Customization Deliverable” has the meaning set forth in Section 4.17 [HMI Software Products];

“HMI Customization Enhancement” has the meaning set forth in Section 4.17 [HMI Customizations];

“HMI Customization License” has the meaning set forth in Section 4.17 [HMI Customizations];

“HMI Customization License Agreement” has the meaning set forth in Section 4.17 [HMI Software Products];

“HMI Customization License Covenant” means the standard form written covenant attached as Schedule 20 [HMI License Covenant];

“HMI Documentation” means the generally commercially available documentation (including user manuals and training materials) relating to an HMI Software Product, including required documentation specified in the Project Contracts and all updates to the documentation, provided or procured by Project Co, a Project Contractor or a Sub-Contractor for use in connection with the Facility;

“HMI Software Enhancement” has the meaning set forth in Section 4.16 [HMI Software Products];

“HMI License Agreement” has the meaning set forth in Section 4.16 [HMI Software Products];

“HMI License Covenant” means the standard form written covenant attached as Schedule 20 [HMI License Covenant];

“HMI Service Provider” means an independent contractor or subcontractor engaged by or on behalf of Project Co or the Province to assist Project Co or the Province to exercise its rights and perform its obligations in connection with HMI Software or HMI Customizations;

“HMI Software License” has the meaning set forth in Section 4.16 [HMI Software Products];

“HMI Software Product” means a generally commercially available, off-the-shelf human-machine interface (HMI), man-machine interface (MMI) or graphical user interface (GUI) software solution that provides a means for people to operate, control, provide input to, and receive information from the Communications and ESCS and the associated equipment, as described in Section 9.7 [Communication] and Section 9.8.1 [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications], including all generally commercially available fixes, corrections, patches, modifications, additions, improvements, upgrades, updates, new versions and new releases to or of the software product, provided or procured by Project Co, a Project Contractor or a Sub-Contractor for use in connection with the Facility;

“HMI Vendor” means a Project Contractor, Sub-Contractor or other Person from whom Project Co, a Project Contractor or a Sub-Contractor procures an HMI Software Product or an HMI Customization for use in connection with the Facility;

“Holding Cells” means a Cell, meeting the applicable requirements of Schedule 3 [Design and Construction Specifications], used for temporary confinement of Inmates in order to assist with orderly movement control and to allow for separation of incompatible Inmates within the Facility;

“Holding Company” means, with respect to a corporation, another corporation of which the first corporation is a “subsidiary” as defined in the Business Corporations Act (British Columbia), as at the date of this Agreement;

“Housekeeping Functions” means the ongoing performance and management of routine cleaning and custodial maintenance as described in Schedule 4 [Services Protocols and Specifications].

“Incident Command/Board Room” means the room described in Section 9.8.1.19(2) [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

“Incident Control Centre” or **“ICC”** has the meaning set out in Section 3.6.1.3 [Operations & Control Posts] of Schedule 3 [Design and Construction Specifications];

“Incident Control Post” or **“ICP”** has the meaning set out in Section 3.6.1.4 [Operations & Control Posts] of Schedule 3 [Design and Construction Specifications];

“Income Tax” means any tax imposed on the income of a Person by any Canadian (whether federal, provincial or otherwise) Governmental Authority;

“Indemnifier” has the meaning set out in Section 9.2 [Conduct of Third Person Claims];

“Indenture Trustee” means BNY Trust Company of Canada, as indenture trustee for and on behalf of the Senior Lenders under the Senior Financing Agreements, or any successor, assignee or replacement permitted under this Agreement;

“Independent Certifier” has the meaning set out in Section 2.1 [Appointment] of Schedule 2 [Design and Construction Protocols];

“Independent Energy Consultant” means the independent energy consultant engaged by Project Co, in accordance with Section 2.3 [Adjustment to Energy Targets] of Appendix 2D [Energy], or his or her replacement;

“Index Linked”, with respect to an amount at any time, means that the amount is adjusted as at each April 1st commencing April 1, 2014 by:

- (a) multiplying it by the Inflation Index as at the immediately preceding January; and
- (b) dividing it by the Inflation Index as at the Base Date;

“Indicative Design” has the meaning given in Section 2.3.1 [Indicative Design] of Schedule 3 [Design and Construction Specifications];

"Indirect Losses" means any loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity or any exemplary, punitive or special damages or any consequential or indirect loss or damages of any nature claimed, suffered or allegedly suffered by:

- (a) Project Co or any Project Co Person (other than a Person who is a Project Co Person solely by virtue of being an invitee of Project Co or any Project Co Person); or
- (b) the Province or any Province Person (other than a Person who is a Province Person solely by virtue of being an invitee of the Province or any Province Persons) or a Province Indemnified Person,

and shall be deemed not to include any loss of Service Payments or other amounts expressly payable by the Province to Project Co under this Agreement;

"Inflation Index" means the Consumer Price Index, for All-items in British Columbia as published by Statistics Canada, or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably or failing agreement as determined by the Dispute Resolution Procedure;

"Infringement Allegation" means a proven or unproven allegation or claim that the creation, possession, provision or Use of Project Intellectual Property misappropriates, infringes or violates the Intellectual Property or other rights of any person.

"Informational Questions" has the meaning given in Section 5.11.1.2 [Province Satisfaction System] of Schedule 4 [Services Protocols and Specifications];

"Initiating Party" has the meaning set out in Section 1.6(b)(2) [Arbitration] of Schedule 13 [Dispute Resolution Procedure];

"Inmate" means an individual incarcerated at the Facility;

"Inmate Access Mode" has the meaning set out in Section 9.8.1.17(1)(f) [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

"Inmate Housing" means the area described in Section 4.7.2.8 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

"Innovation Proposal" has the meaning set out in Section 3.1 [Innovation and Value Engineering] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

"Input Tax Recoverability Change in Law" means a Change in Law, other than a Discriminatory Change in Tax Law, which results in Additional Irrecoverable Tax or Additional Recoverable Tax;

"Insurance Proceeds" means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained under this Agreement, other than any policy of insurance maintained by the Province solely for the benefit of the Province;

"Insurance Receivables" means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained under this Agreement, other than any policy of insurance maintained by the Province solely for the benefit of the Province, but which have not been received;

"Insurance Trust Agreement" means the agreement to be entered into between the Province, the Indenture Trustee, Project Co and the Insurance Trustee in the form set out in Appendix 5B [Insurance Trust Agreement], as amended, supplemented or replaced from time to time in accordance with this Agreement;

"Insurance Trustee" means BNY Trust Company of Canada, as insurance trustee under the Insurance Trust Agreement, or any successor, assignee or replacement permitted thereunder;

"Insuring Party" has the meaning set out in Section 3.11 [Failure to Insure] of Schedule 5 [Insurance Requirements];

"Intellectual Property" means any or all of the following and all rights, arising out of or associated therewith:

- (a) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, confidential information, trade or business names, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) industrial designs, integrated circuit topography rights and any registrations and applications therefor throughout the world;
- (e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
- (f) data bases and data collections and all rights therein throughout the world;

- (g) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world;

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

"Intercom System" or **"INT"** or has the meaning set out in Section 9.8.3 [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

"Invoicing Date" means

- (a) in respect of the Payment Period in which the Service Commencement Date occurs; the Service Commencement Date;
- (b) in respect of the Payment Period that falls after the month in which the Service Commencement Date occurs, if the Service Commencement Date falls after the date that is 10 Business Days prior to such Payment Period; the Service Commencement Date;
- (c) in respect of the Payment Period that falls after the month in which the Service Commencement Date occurs, if the Service Commencement Date falls on or before the date that is 10 Business Days prior to such Payment Period; a minimum of 10 Business Days prior to such Payment Period;
- (d) in respect of all other Payment Periods; a minimum of 10 Business Days prior to such Payment Period;

"ISO 14001 Certification" means certification for an environmental management system according to the guidelines established by the International Organization for Standardization;

"Joint Technical Review" has the meaning set out in Section 2.3.1 [Joint Technical Review] of Schedule 4 [Services Protocols and Specifications];

"Junior Debt" means indebtedness owing by Project Co to any of its Partners or Affiliates of Partners which ranks subordinate in all respects to the Senior Debt, excluding:

- (a) all amounts not actually paid to Project Co by cash advance, rights entitling Project Co to a cash advance, or other consideration;
- (b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Project Co, other than to any Partner or any Affiliate of a Partner; and
- (c) capitalized interest, and interest on overdue interest;

"JUSTIN" means the justice information system maintained by the Province of British Columbia;

“Key Individuals” has the meaning set out in Section 2.8 [Key Individuals];

“Landlord” means the Her Majesty the Queen in Right of Canada;

“Lands” means collectively:

- (a) Lot 236-1, CLSR Plan No. 100816; and
- (b) Lot 236-2, CLSR Plan No. 100816.

“Laundry Services” means the area described in Section 4.7.2.12 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Laws” means all laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time, including, for greater certainty, those related to the issuance of Permits, and any building codes;

“LEED” means CaGBC’s Leadership in Energy & Environmental Design;

“LEED Canada” means CaGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System for New Construction & Major Renovations LEED Canada – NC2009;

“LEED Gold Certification” means the award of a LEED Gold certification from the CaGBC under LEED Canada;

“LEED Project Checklist” means the LEED project checklist generally in accordance with the CaGBC requirements;

“LEED Rating System” means LEED Canada;

“Lender Endorsements” means the endorsements set out in Appendix 5A [Lenders Endorsements] of Schedule 5 [Insurance Requirements];

“Lenders’ Remedies Agreement” means the agreement between the Province, the Senior Lenders and Project Co in the form set out in Schedule 10 [Lenders’ Remedies Agreement], as amended, supplemented or replaced from time to time in accordance with this Agreement;

“Lenders’ Technical Advisor” means the Person appointed by the Senior Lenders from time to time to advise the Senior Lenders on technical matters, including with respect to certain conditions precedent to advances under the Senior Financing Agreements;

“Level 1 Background Check” means a search of all relevant databases maintained by the Province of British Columbia, including the CORNET and JUSTIN databases;

“Level 1 Security Sensitive Work” means all or any part of the Design, Construction, Services or any other obligations of Project Co pursuant to the Project Agreement which: (i) the Province designates as

VAN01: 3149521: v7

“Level 1 Security Sensitive Work” by giving not less than 15 Business Days advance notice or in response to an SSW Request; or (ii) requires or permits any individual engaged by Project Co or a Project Co Person to:

- (a) access all, or a material part, of the design of the Facility;
- (b) access all, or a material part, of the design of the ESCS or the ESCS Data Network;
- (c) access, control or modify any part of the ESCS or the ESCS Data Network;
- (d) access an area of the Facility which is located inside the SLC Secure Zone or in any other non-public space;
- (e) access an area of the Facility which will be located inside the SLC Secure Zone or in any other non-public space, once the Facility is completed; or
- (f) have contact, or communicate directly or indirectly, with an Inmate under the direct supervision of a Province Person employed as a corrections officer at the Facility,

but excluding the design, manufacture or transportation of any Equipment or components to be incorporated into the Facility where such work: (i) does not require or permit access to shop drawings or other design information which is sufficient to expose the overall security scheme of the Facility or of a major component, system or structure of the Facility; and (ii) does not provide opportunity to conceal contraband for later retrieval;

“**Level 2 Background Check**” means:

- (a) a search of all relevant databases maintained by the Province of British Columbia, including the CORNET and JUSTIN databases;
- (b) a CPIC criminal record database search, including the central repository for criminal records in Canada, the vulnerable sector database and the local indices, such as the police reporting and occurrence system (PROS), the police records information management environment (PRIME), the police information retrieval system (PIRS) and the law enforcement information portal (LEIP), of the police agency co-ordinating the check; and
- (c) a criminal record check in accordance with the *Criminal Records Review Act* (British Columbia);

“**Level 2 Security Sensitive Work**” means:

- (a) all or any part of the Design, Construction, Services or any other obligations of Project Co pursuant to the Project Agreement which the Province designates as “Level 2 Security Sensitive Work” by giving not less than 90 days advance notice or in response to an SSW Request; and

- (b) all or any part of the Services or any other obligations of Project Co pursuant to the Project Agreement which permits any individual engaged by Project Co or a Project Co Person the opportunity to:
 - (i) enter the SLC Secure Zone, during the Operating Period, without the direct supervision of a Province Person employed as a corrections officer at the Facility; or
 - (ii) have contact with, communicate directly or indirectly with or pass contraband directly or indirectly to, an Inmate without the direct supervision of a Province Person employed as a corrections officer at the Facility.

Without limiting the foregoing, any individual: (i) engaged in the performance of the Services at the Facility on more than 12 days in any calendar month; or (ii) acting as an SSW Escort for an Escorted Person, shall be deemed to be performing Level 2 Security Sensitive Work;

“Liability Payment” has the meaning set out in Section 9.3 [General Obligation to Pursue Third Person Recovery];

“Licence” has the meaning set out in Section 1.1 [Grant of Licence over Site] of Schedule 7 [Lands];

“Life Cycle Component” means each component of plant, equipment or other items to be supplied, installed, constructed and commissioned as part of the Facility as described in the Life Cycle Report and, for greater certainty, does not include improvements, furniture and equipment installed by a tenant of the Facility;

“Life Cycle Costs” means all costs incurred to satisfy the Life Cycle Requirements;

“Life Cycle Payment” means the sum for each Payment Period set out in Appendix 8C [Service Payments], Table 2 [Life Cycle Payments] of Schedule 8 [Payments];

“Life Cycle Plan” has the meaning set out in Section 3.11.1 [Life Cycle Plan] of Schedule 4 [Services Protocols and Specifications];

“Life Cycle Report” has the meaning set out in Section 4.6 [Life Cycle Report] of Schedule 2 [Design and Construction Protocols];

“Life Cycle Requirements” means the replacement and refurbishment of all Life Cycle Components by Project Co as contemplated in this Agreement;

“Life Cycle Schedule” has the meaning set out in Section 3.7 [Life Cycle Schedule] of Schedule 4 [Services Protocols and Specifications];

“Limited Partner” means Plenary Justice Okanagan LP Inc. and each other Person that is admitted as a limited partner of Project Co pursuant to its partnership agreement, in each case in its capacity as a limited partner of Project Co and including its successors and assignees permitted under this Agreement;

“Liquid Market” means that there are sufficient willing parties (being at least two parties each of whom is capable of submitting a Compliant Bid in a Re-Bidding Process and each of whom deals with the Province at arm’s length) in the market for agreements in Canada for the provision of services under public private partnerships or other basis similar to this Agreement for the price that is likely to be achieved through a competitive process to be a reliable indicator of the Fair Market Value of a New Project Agreement, provided that any entity controlled and established by the Senior Lenders specifically for the purposes of this Project will not be counted for the purpose of determining whether there are sufficient willing bidders in the market;

“Living Units” has the meaning set out in Section 4.7.2.8(3) [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Lock” means a “time bomb”, “logic bomb”, “back door”, “drop-dead device” or any other disabling or limiting code, design or routine that may be used to interrupt, lock, disable, erase, limit the functionality of, limit or prevent access to or Use of, or otherwise adversely affect, or facilitate unauthorized access to, a software product or related documentation or any computer system, hardware, software, or equipment on which the software product or documentation is installed or operated or any related data;

“Lockdown” means a circumstance whereby:

- (a) the Inmates at the Facility, or within one or more Living Units, are confined to their Cells; and
- (b) the Province directs Project Co to temporarily suspend the performance of all, or a material part, of the Design, Construction or Services,

in response to a declared emergency, riot, outbreak, pandemic, labour disruption or other major disaster;

“Longstop Date” means September 30, 2017, as adjusted in accordance with this Agreement;

“Long Stop Return Date” has the meaning set out in Section 3.10 [Long Stop Return Date] of Schedule 8 [Payments];

“Low Service Failure” means

- (a) a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in Schedule 8 [Payments] as a Low Service Failure; and
- (b) a Service Failure which has not been designated as a Medium Service Failure or High Service Failure;

“Main CER” has the meaning set out in Section 9.7.2.2(5) [Communications] of Schedule 3 [Design and Construction Specifications];

“Main ESCS Room” has the meaning set out in Section 9.7.2.2(4) [Communications] of Schedule 3 [Design and Construction Specifications];

VAN01: 3149521: v7

“Main Telecom/ESC Room” means a main distribution room in a building that is used to terminate structured cabling and house telecom equipment;

“Maintained Elements” means, for purposes of Schedule 4 [Services Protocols and Specifications], (including all appendices thereto), all elements of the Facility and Site constructed or installed pursuant to this Agreement including:

- (a) the Building Systems;
- (b) the Site Improvements; and
- (c) the Maintained Equipment,

but does not include Equipment other than Maintained Equipment;

“Maintained Equipment” means Category 1 Equipment and Category 4 Equipment and any other equipment incorporated into the Facility and Site as building fabric, fixtures and fittings;

“Maintenance” means commissioning, testing, servicing, maintenance, repair, renewal or replacement of the Maintained Elements;

“Maintenance Access Times” means the times set out in the Annual Service Plan during which Project Co may perform Maintenance Services;

“Maintenance and Stores” means the area described in Section 4.7.2.13 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Maintenance Services” means Demand Maintenance and Scheduled Maintenance;

“Malicious Damage” means any damage to, or destruction of, the Facility or any part thereof, which requires Repair and which is caused by the malicious, intentional, wilful, negligent or careless conduct of one or more Facility Administrators or Inmates;

“Material Contract Party” means a party to a Material Contract, other than Project Co;

“Material Contracts” means:

- (a) the Project Contracts; and
- (b) any agreement for products, services or management to Project Co between Project Co and a current or former Affiliate of Project Co or a current or former Partner of Project Co;

“Material Project Contractor Collateral Agreement” means the agreement to be entered into between the Province, a Material Contract Party and Project Co in the form set out in Schedule 11 [Material Project Contractor Collateral Agreement], as amended, supplemented or replaced from time to time in accordance with this Agreement;

“Medical Contamination” means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and this Agreement cannot substantially prevent or cannot substantially remove with the result that:

- (a) it is unsafe to admit Inmates or staff to the relevant area or to use the area for the purpose for which it is intended; and
- (b) the area cannot be made safe for the admission of Inmates or staff;

“Medium Service Failure” means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in Schedule 8 [Payments] as a Medium Service Failure;

“Minister’s Consent to Construct” means the written authorization from the Minister of Aboriginal Affairs and Northern Development Canada required prior to commencement of construction;

“Minor Works” means a Change that is requested by the Province at any time after the Service Commencement Date with a value that does not exceed \$50,000, Index Linked, unless otherwise agreed by the Province;

“Minor Works Rates” has the meaning set out in Section 2.1 [Minor Works Rates] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Mock-Ups” has the meaning given in Section 4.4(b) [Mock Ups and Prototype Rooms] of Schedule 2 [Design and Construction Protocols];

“Move-in Schedule” has the meaning given in Section 9.6 [Move-In Schedule] of Schedule 2 [Design and Construction Protocols];

“Neighbourhoods” means the neighbourhoods described in Section 4.7.2.8(3)(n) [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Net Change Value” has the meaning set out in Section 1.9(a) [Net Change Value] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Net Present Value” means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

“Network Threat and Risk Assessment” has the meaning set out in Section 3.8 [Threat and Risk Assessment] of Schedule 2 [Design and Construction Protocols];

“New Project Agreement” means an agreement on substantially the same terms and conditions as this Agreement (including any agreements entered into pursuant to this Agreement as at the Termination Date) but with the following amendments:

- (a) if this Agreement is terminated prior to the Service Commencement Date, the extension of the Target Service Commencement Date and the Longstop Date by such reasonable

period as is agreed by the Province and the New Project Co to meet such extended Target Service Commencement Date and Longstop Date;

- (b) any accrued Deductions pursuant to Schedule 8 [Payments] will be cancelled;
- (c) the term of such agreement will be equal in length to the term from the Termination Date until the date on which the Operating Period would otherwise have expired;
- (d) the Province may not terminate such agreement for reasons which arose prior to the Termination Date so long as the New Project Co is using all reasonable efforts to remedy any breach of this Agreement that arose prior to the Termination Date and which is capable of being remedied; and
- (e) any other amendments as may be specified by the Province that do not adversely affect any compensation which would otherwise be payable to Project Co pursuant to Schedule 9 [Compensation on Termination];

"New Project Co" means the Person who has entered into or who will enter into the New Project Agreement with the Province;

"New Service Provider Start Date" means

- (a) the Service Commencement Date; or
- (b) if any Service Provider is replaced by a new Service Provider after the Service Commencement Date, the date on which the Services begin to be provided by the replacement Service Provider or, if earlier, the date on which they were first due to be provided;

"New Service Provider Transition Period" has the meaning set out in Section 2.15 [Transition Periods – Service Failures] of Schedule 8 [Payments];

"NIC" means Noise Isolation Class which is a single-number rating derived from measured values of noise reduction between two enclosed spaces that are connected by one or more paths;

"Noise Criteria" or **"NC"** means a single numerical index used to define the maximum allowable noise in a given space;

"Nominal" means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecast inflation;

"Non-Insuring Party" has the meaning set out in Section 3.11 [Failure to Insure] of Schedule 5 [Insurance Requirements];

"Normal Speech Privacy" as defined by ASTM E1130 means that a concentrated effort is required to understand intruding speech.

“Note Indenture” means the note indenture dated as of the Effective Date between Project Co, the General Partner and the Indenture Trustee, and any indentures supplemental thereto;

“Notice of Intention to Arbitrate” has the meaning set out in Section 1.6(a) [Arbitration] of Schedule 13 [Dispute Resolution Procedure];

“Notice of Objection to Arbitration” has the meaning set out in Section 1.6(b) [Arbitration] of Schedule 13 [Dispute Resolution Procedure];

“Notice of Province Funded Rectification” has the meaning set out in Section 2.2 [Classification of an Event] of Schedule 8 [Payments];

“Notifying Party” has the meaning set out in Section 3.12 [Increase in Amount of Coverage] of Schedule 5 [Insurance Requirements];

“Occupying Period” means the period commencing on the Service Commencement Date and ending on the last day of the calendar month in which the 6 month anniversary of the Service Commencement Date occurs;

“Open Systems Interconnection” or **“OSI”** means a standard for computer networks and communication protocols;

“Operating Period” means the period between the Service Commencement Date and the Termination Date;

“Operating Period Joint Committee” means the committee established pursuant to Section 2.2 [Operating Period Committee] of Schedule 4 [Services Protocols and Specifications];

“Operating Period Representative” has the meaning set out in Section 2.1 [Operating Period Representatives] of Schedule 4 [Services Protocols and Specifications];

“Operating Period Review Procedure” has the meaning set out in Appendix 4I [Operating Period Review Procedure] of Schedule 4 [Services Protocols and Specifications];

“Operating Period Submittal” has the meaning set out in Section 2.1 [General Requirements for Operating Period Submittals] of Appendix 4I [Operating Period Review Procedure];

“Operating Period Submittal Schedule” has the meaning set out in Section 1.3 [Operating Period Submittal Schedule] of Appendix 4I [Operating Period Review Procedure];

“Operation Control Post” or **“OCP”** has the meaning set out in Section 3.6.1.6 [Operations & Control Posts] of Schedule 3 [Design and Construction Specifications];

“Operational Policies and Procedures” means Project Co's operating policies and procedures as described in Schedule 4 [Services Protocols and Specifications];

“Outdoor Recreation Courtyard” means the area described in Section 4.7.2.8(2)(f) [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Outputs Summary Sheet” means the sheet labelled “Summary” in the Financial Model;

“Outside Plant” or **“OSP”** means cabling outside of buildings;

“Paging System” or **“PA System”** or **“PA”** has the meaning set out in Section 9.8.7.1 [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

“Participant” has the meaning set out in Section 8.14(a) [Responsibility for Participants and Trespassers];

“Partner” means each of the General Partner and each Limited Partner;

“Paying Party” has the meaning set out in Section 9.3 [General Obligation to Pursue Third Person Recovery];

“Payment Adjustment Report” has the meaning set out in Section 6.1(g) [Invoicing and Payment Arrangements] of Schedule 8 [Payments];

“Payment Period” means a calendar month;

“Penticton Airport Rainfall Intensity-Duration-Frequency Curve” means the rainfall intensity-duration curve included in Penticton Bylaw No. 2004-81 detail drawing No. S-S31;

“Performance Indicators” means the performance indicators identified as such in Schedule 4 [Services Protocols and Specifications];

“Performance Monitoring Program” means the performance monitoring system, equipment and procedures in place for monitoring performance of the Services as more particularly described in Section 5.1 [Project Co Performance Monitoring] of Schedule 4 [Services Protocols and Specifications];

“Performance Monitoring Report” has the meaning set out in Section 5.2.1 [Periodic Reporting] of Schedule 4 [Services Protocols and Specifications];

“Perimeter Intrusion Detection Systems” or **“PIDS”** has the meaning set out in Section 9.8.6.1 [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

“Permanent Repair” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 2.11 [Temporary Repairs] of Schedule 8 [Payments];

“Permanent Repair Proposal” has the meaning set out in Section 2.11(a)(2) [Temporary Repairs] of Schedule 8 [Payments];

“Permits” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements, zoning and by-law amendments and variances, and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Project in accordance with this Agreement, including the Minister’s Consent to Construct, the CEA Report, the SARA Permit and the Wildlife Act Permit;

“Permitted Debt” means:

- (a) trade or other similar indebtedness incurred in the ordinary course of business (unless being contested in good faith and with appropriate proceedings with an adequate reserve therefor in accordance with GAAP having been placed on the Project Co’s books and records);
- (b) Taxes and governmental charges, salaries, related employee payments and trade payables;
- (c) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Permit, Project Contract or this Agreement; and
- (d) Debt incurred by way of Partner Loans,

but does not include any Senior Debt;

“Persistent Breach” means a breach or series of breaches by Project Co of any term, covenant or undertaking to the Province (other than a breach for which Deduction could be made) which, due to the fact that such breach has:

- (a) continued for 60 days or more after notice thereof from the Province to Project Co; or
- (b) occurred 3 or more times in the previous 12 months,

demonstrates either a persistent inability, or a persistent unwillingness, to comply with its obligations under this Agreement;

“Person” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Governmental Authority;

“Personal Alarm Transmission System” or **“PATS”** has the meaning set out in 9.8.6.2 [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications];

“Personal Information” means ‘personal information’ as defined in the *Freedom of Information and Protection of Privacy Act (British Columbia)*, which is collected, acquired, obtained by Project Co or the Province in relation to or in the course of providing the Design, the Construction or the Services under this Agreement, and includes any information about an identifiable individual other than contact information,

which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual, or as otherwise defined in the *Freedom of Information and Protection of Privacy Act (British Columbia)*;

"Pest Control Services" means the Services and requirements described in Part 14 [Pest Control] of Appendix 4D [Plant Services];

"PIR" means passive infrared device commonly used in the security industry that uses heat sensing as a means of detecting motion and activating an alarm;

"Planned Refinancing" means a Refinancing that is identified as a Planned Refinancing in Schedule 19 [Planned Refinancing] but only to the extent and amount of a Planned Refinancing Gain for that Refinancing;

"Planned Refinancing Gain" means the extent and amount that a Refinancing Gain arising from a Planned Refinancing was fully taken into account and set out in the calculation of the Service Payments or other payments hereunder and expressly set out in Schedule 19 [Planned Refinancing] as of the Effective Date;

"Plans" means the Start-up Plan, the Annual Service Plan, the Five Year Maintenance Plans, the Lifecycle Plan and the Environmental Management Plan;

"Plant Services" means all of the services and requirements described in Appendix 4D [Plant Services], including Demand Maintenance and Scheduled Maintenance;

"Plant Services Information Management" means the plant service information management described in Part 9 [Plant Services Information Management System] of Appendix 4D [Plant Services];

"Pod" has the meaning given in Section 4.7.2.8(2)(a) [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

"Pod Lobby" has the meaning given in Section 4.7.2.8(5)(e) [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

"Pod Support" has the meaning given in Section 4.7.2.5(14)(a) [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

"Power Factor" means a ratio of the real power to the apparent power;

"Power Factor Surcharge" means an amount charged by a provider of electricity to the Facility when the ratio of usable power consumption to reactive power consumption in connection with the Facility is below a set amount;

"Preliminary Change Instruction" has the meaning set out in Section 1.3 [Preliminary Change Instruction] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Preliminary Estimate” has the meaning set out in Section 1.5(b)(1) [Delivery of Change Report] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Pre-Refinancing Equity IRR” means the Equity IRR calculated immediately prior to the Refinancing but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing;

“Prime Rate” means the annual rate of interest announced by Canadian Imperial Bank of Commerce (or its successor), or any other Canadian chartered bank agreed to by the parties, from time to time as its “prime” rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

“Principal Insured Risk” means a risk that would be insured against by policies for the insurance referred to in any of Sections 1 [Construction-Related Insurance Requirements] and 2 [Operation and Maintenance-Related Insurance Requirements] of Schedule 5 [Insurance Requirements];

“Priority Level” for a Functional Unit means the priority assigned to that Functional Unit in Appendix 8A [Functional Units, Priority Levels and Unit Deduction Amounts];

“Private Branch Exchange” or **“PBX”** means a telephone exchange that serves a particular institution or business, as opposed to one that a common carrier or telephone company operates for many businesses or for the general public;

“Programme Services” has the meaning given in Section 4.7.2.7 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Project” means the design, construction, financing, testing, commissioning, maintenance and life cycle rehabilitation of the Facility and all other works and ancillary services in accordance with this Agreement;

“Project Agreement” means that certain agreement entitled “Project Agreement” and made between the Province and Project Co as of the 18th day of March, 2014, with respect to the design, construction, financing, maintenance and life cycle rehabilitation for the Facility, as the same may be amended, supplemented or replaced from time to time;

“Project Co” means Plenary Justice Okanagan Limited Partnership, by its general partner, Plenary Justice Okanagan GP Inc. (unless the context otherwise requires);

“Project Co Commissioning” means Project Co’s commissioning activities to be carried out at the Facility prior to the issuance of the Certificate of Service Commencement;

“Project Co Commissioning Tests” means all commissioning tests required by the Commissioning Plan;

“Project Co Event of Default” has the meaning set out in Section 12.1 [Project Co Events of Default];

“Project Co Hazardous Substances” means those Hazardous Substances for which Project Co is responsible pursuant to Schedule 7 [Lands];

“Project Co Insolvency Event” means any of the following events:

- (a) a receiver, receiver manager or encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of Project Co; or
- (b) any proceedings with respect to Project Co being commenced under the Companies’ Creditors Arrangement Act (Canada), and if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days of such proceedings being instituted; or
- (c) Project Co making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada), or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against Project Co under the Bankruptcy and Insolvency Act (Canada), or similar legislation in any jurisdiction and, if proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days of such proceedings being instituted; or
- (d) Project Co ceasing to carry on business;

“Project Co Material Breach” means:

- (a) a failure by Project Co to pay any amount due and owing to the Province under this Agreement on the due date (which amount is not being disputed in good faith) and Project Co has not remedied such failure to pay within 10 Business Days following notice from the Province;
- (b) a failure by Project Co to:
 - (1) maintain the policies of insurance required to be maintained by Project Co under this Agreement;
 - (2) maintain such policies on the terms required under this Agreement (including a failure to comply with its obligation under Schedule 5 [Insurance Requirements] to name the Province as an insured party); or
 - (3) provide evidence to the Province as required by the terms of this Agreement that such policies have been taken out, maintained, paid for and renewed in accordance with the terms of this Agreement;
- (c) a Persistent Breach;

- (d) except as provided for in (a) through (c) above, a breach, or series of breaches, by Project Co of any agreement, covenant or undertaking made to the Province (other than a breach for which a Deduction could be made) or any representation or warranty made by Project Co to the Province in this Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made, the consequence of which is:
- (1) a risk to the safety of the public;
 - (2) a risk of material liability of the Province to third Persons;
 - (3) an adverse effect on the performance of the Design, the Construction or the Services and as a result thereof that the Province is reasonably likely to be materially deprived of the benefit of this Agreement; or
 - (4) any material provision of this Agreement being unenforceable against Project Co;
- (e) a breach by Project Co of Section 5 [Financing of the Project], other than a breach by Project Co of Section 5.3 [Consent Required for Refinancing] or Section 5.4 [Refinancing Process]; or
- (f) any other fact or circumstance designated as a “Project Co Material Breach” under this Agreement, including those specified in Sections 8.4 [Failure to Comply with Work Safe BC Requirements] and 9.3 [Failure to Update Project Schedule] of Schedule 2 [Design and Construction Protocols];

“Project Co Operating CGL Policy” has the meaning set out in Section 2 [Operation and Maintenance Related Insurance Requirements] of Schedule 5 [Insurance Requirements];

“Project Co Person” means:

- (a) any director, officer, employee or agent of Project Co in each case acting as such;
- (b) any Project Contractor, any Sub-Contractor and any representative, advisor (including any legal and financial advisor) or contractor of Project Co, in any such Person’s capacity as a provider of services, work or materials directly or indirectly to Project Co in connection with the Project; or
- (c) any invitee of Project Co or any of the Project Co Persons referred to in (a) or (b) above who enters upon the Lands;

“Project Co’s Additional Observer” has the meaning set out in Section 1.6 [Project Co’s Additional Observer] of Schedule 2 [Design and Construction Protocols];

“Project Co’s Communications Lead” means the individual listed in that capacity in Schedule 17 [Key Individuals];

“Project Co’s Corrections Advisor” means the individual listed in that capacity in Schedule 17 [Key Individuals];

“Project Co’s Design and Construction Representative” has the meaning set out in Section 1.1 [Appointment of Representatives] of Schedule 2 [Design and Construction Protocols];

“Project Co’s Lead” means the individual listed in that capacity in Schedule 17 [Key Individuals];

“Project Co’s Operating Period Representative” means the Operating Period Representative designated by Project Co in accordance with Section 2.1.1 [Operating Period Representative] of Schedule 4 [Services Protocols and Specifications];

“Project Co’s Quality Consultant” has the meaning set out in Section 7.3 [Project Co’s Quality Consultant] of Schedule 2 [Design and Construction Protocols];

“Project Co’s Rights” has the meaning set out in Section 8.13 [Equivalent Project Relief];

“Project Contractor” means the Design-Builder or any Service Provider and **“Project Contractors”** means any 2 or more of them;

“Project Contractor Breakage Costs” means the amount payable by Project Co to a Project Contractor under the terms of a Project Contract as a direct result of the termination of such Project Contract as a consequence of the termination of this Agreement but reduced (without duplication) to the extent that:

- (a) Project Co, the Project Contractors and any Sub-Contractors fail to take all reasonable steps to mitigate such amount;
- (b) such amount relates to any agreements or arrangements entered into by Project Co, the Project Contractors or the Sub-Contractors other than in the ordinary course of business and on commercial arm’s length terms
- (c) such amount is a Distribution; and
- (d) such amount includes any loss of overhead or profit of the Service Providers or their Sub-Contractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set out in the applicable Project Contract or Sub-Contract);

“Project Contracts” means the Design-Build Agreement and the Services Contract;

“Project Intellectual Property” means the Intellectual Property which is created, brought into existence, acquired, licensed or used by Project Co, any Project Contractor, any Sub-Contractor or any other third party, directly or indirectly, for the purposes of the Design or Construction of the Facility, the maintenance, improvement or testing of the Facility, or otherwise for the purposes of this Agreement but does not include the Financial Model. For greater certainty, Project Intellectual Property includes the design of the Facility as described in Schedule 2 [Design and Construction Protocols], all of the documents and

information listed in Section 5.22 [Project Records] of Schedule 2 [Design and Construction Protocols], and the ESCS Software;

“Project Risk Premium” means (being the difference between being the linear interpolation of the yields as determined by the parties at financial close on the Government of Canada 5.75% Bond maturing 2033 and the Government of Canada 5.00% Bond maturing 2037;

“Project Schedule” has the meaning set out in Section 9.1 [Initial Project Schedule] of Schedule 2 [Design and Construction Protocols];

“Property Loss” means any and all direct physical loss or damage to the Facility resulting from any one cause, howsoever caused;

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

“Proposal Extract (Services)” means the provisions of Appendix 4A [Proposal Extracts (Services)] of Schedule 4 [Services Protocols and Specifications];

“Protest Action” means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, if and to the extent that it interferes adversely with Project Co’s or a Project Co Person’s access to the Site or the Facility, including any action taken or threatened to be taken, by any Person or Persons protesting or demonstrating against:

- (a) the carrying out of any part of the Project (including the construction of the Facility); or
 - (b) the construction or operation of corrections facilities in general,
- occurring after the Effective Date,

but excluding: (i) any lawful or unlawful strike (including a general strike in British Columbia), lockout, go-slow or other labour dispute occurring after the Effective Date affecting generally the whole or a significant section of the construction, building maintenance or facilities management industry; or (ii) any other strike, lockout or industrial relations dispute or job action by, of or against workers carrying out any part of the Design, Construction or Services.

“Province” means Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Technology, Innovation and Citizens’ Services;

“Province Activities” means any activities carried on or to be carried on by the Province, or other Persons permitted by the Province, in the Facility, related to the provision of corrections services;

“Province Crisis Management Plan Policy” refers to the ‘Emergency Situations’ chapter of the Adult Custody Policy, included in the Province Policies and Procedures, as supplemented or amended from time to time and provided to Project Co in writing;

“Province Event of Default” has the meaning set out in Section 13 [Province Events of Default];

“Province Facility Orientation Course” means the Special Custodial Training in Adult Institutions Policy and Procedures Manual, as supplemented or amended from time to time and provided to Project Co in writing;

“Province FM Services” means all services and activities, provided or performed at the Facility by or on behalf of the Province from time to time, including food services, and laundry/linen services;

“Province Funded Rectification” means

- (a) each Property Loss of more than \$10,000; or
- (b) each Malicious Damage of more than \$1000.00,

that occurs during the Operating Period and that is not ordinary maintenance, planned capital replacement or normal wear and tear, and does not include the cost of making good faulty or improper material, faulty or improper workmanship, or faulty or improper design provided, however, that included in such cost are:

(1) the cost of making good resultant damage to the Facility; and the cost, without duplication, of

- 1. debris removal
- 2. prevention of ingress/egress
- 3. civil authority access interruption
- 4. off premises service interruption
- 5. contamination clean-up or removal
- 6. joint loss agreement
- 7. no co-insurance
- 8. firefighting expenses
- 9. valuable papers
- 10. professional fees
- 11. by-laws including increased costs of construction and demolition.

“Province Indemnified Person” means:

- (a) the Province’s Representatives in their capacity as such under this Agreement;
- (b) any agent or professional advisor (including legal and financial advisors) of the Province (excluding Project Co, Project Co Person, and any person for whom Project Co is in law responsible); and
- (c) any minister, elected representative, official, director, officer or employee of the Province, or of any person falling within subsection (b) of this definition.

“Province Person” means:

- (a) any director, officer, employee or agent of the Province;

VAN01: 3149521: v7

- (b) any representative, advisor (including any legal and financial advisor) of the Province or any contractor or subcontractor (of any tier) of the Province, in any such Person's capacity as a provider of services directly or indirectly to the Province in connection with the Project or the Facility, other than Project Co, Project Contractors or Sub-Contractors; or
- (c) any invitee of the Province or any of the Province Persons referred to in (a) or (b) above who enters upon the Lands;

"Province Policies and Procedures" means the following policies and procedures, or portions of policies or procedures where only a portion is indicated, of the Province as at the Effective Date, copies of which have been provided to Project Co:

- (a) BC Climate Action Plan;
- (b) BC Energy Plan;
- (c) Energy Efficient Buildings Strategy;
- (d) Energy Efficient Buildings: A Plan for BC;
- (e) Contractor Environmental Responsibilities Package;
- (f) Adult Custody Policy; and
- (g) Province Crisis Management Plan Policy;

including, as applicable from time to time, any amendments of those policies and any additional policies;

"Province Property" means

- (a) the Facility;
- (b) all boilers, pressure vessels, electrical and mechanical machines installed in the Facility; and
- (c) all materials, equipment, supplies or other property, whether owned or leased by the Province, and which are located at, attached to, or form part of the Facility,

but does not include any property, materials, equipment, supplies or other property owned or leased by Project Co. no matter where located;

"Province Satisfaction Report" has the meaning given in Section 5.11.2.2 [Province Satisfaction System] of Schedule 4 [Services Protocols and Specifications];

"Province Satisfaction System" has the meaning given in Section 5.11 [Province Satisfaction System] of Schedule 4 [Services Protocols and Specifications];

VAN01: 3149521: v7

"Province's Baseline Assumptions" means the permitted assumptions, as set out in the Disclosed Data, upon which the Design and Construction Energy Targets were based;

"Province's Design and Construction Representative" has the meaning set out in Section 1.1 [Appointment of Representatives] of Schedule 2 [Design and Construction Protocols];

"Province's Environmental Policy" means the Province's environmental policy;

"Province's Operating Period Representative" means the Operating Period Representative designated by the Province in accordance with Section 2.1.1 [Operating Period Representative] of Schedule 4 [Services Protocols and Specifications];

"Provincial Taxes" means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, excluding Provincial sales tax, imposed, assessed, levied or collected by the Province of British Columbia, together with interest thereon and penalties with respect thereto;

"Prudent Coverage Amount" has the meaning set out in Section 3.12 [Increase in Amount of Coverage] of Schedule 5 [Insurance Requirements];

"PST" means the Tax imposed pursuant to the Provincial Sales Tax Act (British Columbia);

"Public Sector Employees" means those unionized Persons employed by the Province and engaged at the Facility;

"Qualified Governmental Entity" means any of the following:

- (a) the Province of British Columbia, or any ministry or department of the Province of British Columbia; and
- (b) any person having the legal capacity, power and authority to become a party to and to perform the Province's obligations under this Agreement, the duties, obligations and liabilities of which are guaranteed by the Province of British Columbia or any ministry or department of the Province of British Columbia.

"Qualified Insurers" means reputable insurers of good standing in Canada, the United States, the United Kingdom, Europe or Australia having a credit rating of (1) A- or better with AM BEST or (2) the equivalent thereof by any other recognized insurance rating agency;

"Qualifying Bank Transaction" means:

- (a) the disposition by a Senior Lender to a Qualifying Institution of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender to a Qualifying Institution of any rights of participation in respect of the Senior Financing Agreements; or

- (c) the disposition or grant by a Senior Lender to a Qualifying Institution of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of Project Co, whether by way of security or otherwise;

“Qualifying Institution” means any of the following, provided it is not a Restricted Person, and provided none of its Affiliates is a Restricted Person for any reason other than by reason of section (d) of the definition of Restricted Person:

- (a) a bank listed in Schedule I, II or III of the *Bank Act (Canada)*;
- (b) a Canadian trust company, insurance company, investment company, pension fund or other institution which manages at least \$500 million in securities, including entities wholly owned by any of the foregoing;
- (c) a bank regulated by the Board of Governors of the Federal Reserve System of the United States, a U.S. bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that has or manages at least \$500 million in assets and would be a “qualified institutional buyer” under U.S. securities legislation, including entities wholly owned by any of the foregoing;
- (d) an institution which is recognised or permitted under the law of any member state of the European Economic Area (“EEA”) to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
- (e) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, the “OECD”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company or pension fund and which has or manages at least \$500 million in assets, including entities wholly owned by any such institution; or
- (f) any other institution consented to in writing by the Province as a “Qualifying Institution”.

“Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing or a Planned Refinancing, except to the extent that any Planned Refinancing gives rise to a Refinancing Gain over and above the Planned Refinancing Gain, and in such case only to the extent of such additional Refinancing Gain;

“Quality Assurance Plan” has the meaning set out in Section 7.5 [Quality Assurance Plan] of Schedule 2 [Design and Construction Protocols];

“Quality Assurance Program” has the meaning set out in Section 7.4 [Quality Assurance Program] of Schedule 2 [Design and Construction Protocols];

“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;

“Rated Questions” has the meaning given in Section 5.11.1.2 [Province Satisfaction System] of Schedule 4 [Services Protocols and Specifications];

“Re-Bidding Costs” means the reasonable costs incurred by the Province in connection with the Re-Bidding Process or the calculation of the Estimated Market Value;

“Re-Bidding Process” means the process by which the Province requests bids from parties interested in entering into a New Project Agreement, evaluates the responses from such of those parties that submit Compliant Bids and enters into a New Project Agreement with a New Project Co in accordance with Section 3 [Termination for Project Co Event of Default: Re-Bidding Process] of Schedule 9 [Compensation on Termination];

“Re-Bidding Process Monitor” means a third party appointed by Project Co pursuant to Section 2.10 [Appointment of Re-Bidding Process Monitor] of Schedule 9 [Compensation on Termination];

“Receiving Party” has the meaning set out in Section 9.3 [General Obligation to Pursue Third Person Recovery];

“Reception” means the area described in Section 4.7.2.1 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Rectification” means, following the occurrence of an Event, making good the Event so that the subject matter of the Event complies with the levels of performance required pursuant to this Agreement, including (a) restoring all functional capability and (b) ensuring that all affected Functional Units comply with the Availability Condition; **“Rectify”** and **“Rectified”** will be construed accordingly;

“Rectification Period” for an Event means the amount of time specified as such for that Event in Appendix 8D [Response Time and Rectification Period Requirements] of Schedule 8 [Payments] and in each case measured:

- (a) in the case of an Event that is classified as a Routine Event in accordance with Schedule 1 [Definitions and Interpretation], from 8 am on the Business Day immediately following the day on which the Event is reported to the Help Desk or is otherwise reported to or discovered by Project Co;
- (b) in the case of an Event that is not classified as a Routine Event in accordance with Schedule 1 [Definitions and Interpretation], from the time that the Event is reported to the Help Desk or is otherwise reported to or discovered by Project Co;

- (c) in the case of an Event that has not been Rectified within one or more earlier Rectification Periods, from the end of the immediately preceding Rectification Period;

"Referee" has the meaning set out in Section 1.4 [Fast Track Referee Process] of Schedule 13 [Dispute Resolution Procedure];

"Referee Agreement" has the meaning set out in Section 1.4 [Fast Track Referee Process] of Schedule 13 [Dispute Resolution Procedure];

"Referee Notice" has the meaning set out in Section 1.4 [Fast Track Referee Process] of Schedule 13 [Dispute Resolution Procedure];

"Refinancing" means:

- (a) Project Co incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;
- (b) any transaction in which the Province, with the consent or at the request of agreement of Project Co, grants rights to any Person under an agreement similar to the Lenders' Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such Person, other than the Lenders' Remedies Agreement entered into on the Effective Date any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement or any refinancing of Senior Debt;
- (c) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;
- (d) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt or the contracts, revenues or assets of Project Co whether by way of security or otherwise;
- (e) the execution and delivery by Project Co or any of its Partners of any agreement or instrument relating in any way to the financing of the Project or the Design, Construction and Services, other than the Senior Financing Agreements, instruments relating to the Junior Debt and the partnership agreement governing Project Co; or
- (f) any other arrangement put in place by Project Co or another Person which has an effect which is similar to any of (a) through (f) above or which has the effect of limiting Project Co's ability to carry out any of the actions referred to in (a) through (d) above,

but excluding any financing pursuant to Section 10.2 [Financing of Lump Sum Payment Amounts];

"Refinancing Gain" means an amount equal to the greater of zero and $[(A - B) - C]$, where:

A = the Net Present Value of Distributions (calculated on an after tax basis at the level of Project Co in a manner consistent with the Financial Model) immediately prior to the Refinancing (taking into account all effects (including the costs and expenses of the Province pursuant to Section [●]) of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing;

B = the Net Present Value of Distributions (calculated on an after tax basis at the level of Project Co in a manner consistent with the Financial Model) projected immediately prior to the Refinancing (but taking into account only those effects of the Refinancing that were fully reflected in the Financial Model as of the Effective Date and no other effects (including the costs and expenses of the Province pursuant to Section [●]) of the Refinancing, and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR calculated as a single payment to be paid as a Distribution on the date of the Refinancing;

“Registered Professional of Record” has the meaning ascribed to it in the British Columbia Building Code;

“Regulated Energy” means electricity and gas;

“Reinstatement Plan” has the meaning set out in Section 6.4(c) [Project Co's Obligations –Material Damage or Destruction];

“Reinstatement Works” has the meaning set out in Section 6.4(a) [Project Co's Obligations –Material Damage or Destruction];

“Relevant Change in Law” means a Change in Law (other than a Discriminatory Change in Tax Law):

- (a) which affects the Correction Act (British Columbia); or
- (b) which specifically applies to
 - (1) the Project or corrections related projects whose design, construction, financing, maintenance and service provision are procured on a public-private partnership basis similar to that of the Project;
 - (2) Project Co, its Partners or Project Contractors or Persons that have contracted on similar corrections related projects procured and contracted with the Province or other statutory or public body on a public-private partnership basis similar to the Project; or

- (3) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar corrections-related projects procured and contracted on a public-private partnership basis similar to the Project and not other Persons; or
- (c) which principally affects or principally relates to the provision or operation of corrections facilities or premises,

and compliance with which would require a variation (as applicable) in the design, quality, scope, methodology or cost of the Design, the Construction or the Services;

“Relevant Works Change in Law” means a Change in Law during the Operation Period (other than a Relevant Change in Law or a Discriminatory Change in Tax Law) which causes Project Co to incur Capital Expenditures to perform works affecting the Facility (being any work of alteration, addition, demolition or extension or variation in the quality or function of the Facility) which is not work which Project Co would otherwise be required to perform under this Agreement;

“Relief Event” means any of the following events or circumstances if and to the extent it interferes adversely with, or causes a failure of, the carrying out of the Design, the Construction or the Services or causes an Unavailability Event:

- (a) fire, explosion, lightning, storm (including snow storm), flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquake or any act of God similar to the foregoing, in each case to the extent it does not constitute a Force Majeure Event;
- (b) during the Construction Period, failure by any Utility Company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner or any unreasonable interference with the Construction by any such body as a result of maintenance and other work;
- (c) lawful or unlawful strike, lockout, work-to-rule, job action or other labour dispute generally affecting the construction, building maintenance or facilities management industry or a significant sector thereof;
- (d) any delay of more than 3 days in respect of any critical path matter in the Project Schedule caused by compliance by Project Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (e) a Change in Law during the Construction Period;
- (f) unreasonable delay in the payment of any Insurance Receivables;
- (g) accidental loss or damage to the Facility or any roads servicing the Site;
- (h) blockade or embargo falling short of a Protest Action or Force Majeure Event;

- (i) failure or shortage of fuel or transport; and
- (j) any other event which is stated in this Agreement to constitute a Relief Event,

except to the extent that any of such events or circumstances arise (directly or indirectly) as a result of: (i) any wrongful act or omission, negligent act or omission or wilful misconduct; (ii) any breach in the performance or observance of any of Project Co's obligations under this Agreement; or (iii) an act or omission, of or by Project Co or any Project Co Person;

"Remaining Useful Life" means the remaining period of time which a component, device or system is expected to function at its designated capacity without major repairs;

"Remediation Plan" has the meaning set out in Section 2.3.3 [Joint Technical Review] of Schedule 4 [Services Protocols and Specifications];

"Renovation" means an alteration of the Facility, or an addition, re-construction or demolition of a portion of the Facility, undertaken at any time after the Service Commencement Date other than pursuant to the Life Cycle Requirements;

"Repair" means a repair to the Facility undertaken at any time after the Service Commencement Date, except for the completion of Deficiencies and other than pursuant to the Life Cycle Requirements;

"Reporting Error" has the meaning set out in Section 5.6.1 [Reporting Errors] of Schedule 4 [Services Protocols and Specifications];

"Representative" means, as the case may be, a Design and Construction Representative or Operating Period Representative;

"Respond" and **"Response"** means:

- (a) with respect to all Services, the appropriate Project Co Person attending the location of the Event, making the location, and all affected locations safe, in accordance with Good Industry Practice, and providing a plan acceptable to the Province, acting reasonably, for the Rectification of the Event; and
- (b) with respect to routine matters for all Services, means either the foregoing or a verbal or electronic response from the Help Desk confirming the details of the Event and providing a plan acceptable to the Province, acting reasonably, for the Rectification of the Event.

"Responding Party" has the meaning set out in Section 1.6(b)(2) [Arbitration] of Schedule 13 [Dispute Resolution Procedure];

"Response Time" for an Event means the amount of time specified as such for that Event in Appendix 8D [Response Time and Rectification Period Requirements], during which Project Co must Respond, and in each case calculated from the time that the Event is reported to the Help Desk or is otherwise reported to or discovered by Project Co;

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) has as any part of its business illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in the promotion, support or carrying out of terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanours) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to any material claim of the Province in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made and which (in respect of any such pending claim, if it were to be successful) would, in the Province's view, in either case, be reasonably likely to materially affect the ability of Project Co to perform its obligations under this Agreement; or
- (f) has been convicted of an offence under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence under the *Criminal Code* (Canada).

“Retest Period” has the meaning set out in Section 2.6 [Retest Period] of Appendix 2D [Energy];

“Reverberation time, RT_{60} ” means the length of time required for sound to decay 60 decibels from its initial level:

“Return Date” has the meaning set out in Section 3.3(d) [Notice Requirements] of Schedule 8 [Payments];

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

“Roads, Grounds or Landscape Maintained Elements” means all roads, grounds and landscaping at the Facility and Site;

“Roads, Grounds or Landscape Maintained Services” means the Services described in Part 2 [Roads, Grounds and Landscape Maintenance Services] of Appendix 4B [Roads, Grounds and Landscape Maintenance Services];

“Room Data Sheets” means the room data sheets prepared by Project Co pursuant to Section 4.2 [Design Process] of Schedule 2 [Design and Construction Protocols] and in accordance with Appendix 2B [Review Procedure];

“Room Information Sheets” means the room information sheets included in the Disclosed Data;

“Routine Event” means an Event which is not an Emergency Event or a Critical Event, and is not likely, even if not corrected, to deteriorate into an Emergency Event or a Critical Event;

“Sally Port” means the spaces described in Section 3.7.1.1(1) [Facility Access Control] of Schedule 3 [Design and Construction Specifications];

“SARA Permit” means Permit SARA PYR-2014-0255 issued pursuant to the *Species At Risk Act*, S.C. 2002, c.29, with respect to the Lands;

“Scheduled Maintenance” means planned and preventive Maintenance;

“Secure Emergency Perimeter” has the meaning given in Section 3.4.5.4 [Safety and Security] of Schedule 3 [Design and Construction Specifications];

“Secure Perimeter” has the meaning given in Section 3.4.5.4 [Safety and Security] of Schedule 3 [Design and Construction Specifications];

“Secure Vehicle Yard” means the area described in Section 4.2.3.3(9) [Building Configuration and Circulation] of Schedule 3 [Design and Construction Specifications];

“Secure Vestibule” has the meaning given in Section 3.7 [Facility Access Control] of Schedule 3 [Design and Construction Specifications];

“Security and Central Control” means the area described in Section 4.7.2.2 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Security and Surveillance Post” or **“SSP”** has the meaning set out in Section 3.6.1.5 [Operations and Control Posts] of Schedule 3 [Design and Construction Specifications];

“Security Level Classification” means the level of security to which the Facility or portion of the Facility shall be designed to;

“Security Sensitive Work” means Level 1 Security Sensitive Work or Level 2 Security Sensitive Work, as applicable;

VAN01: 3149521: v7

"Segregation and Observation Unit" or **"S&OU"** has the meaning given in Section 4.7.2.9 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

"Self-Insure" or **"Self-Insurance"** means the management and funding by the Province of Property Losses using its own personnel and financial resources, including where applicable managing financial recovery from responsible third parties who may have caused such losses, with or without the use of, or reliance on, third party claims adjusters, contingency accounts, financial assistance from its shareholder, government disaster financial assistance, and all without reliance on any policy of commercial insurance or reinsurance;

"Senior Debt" means:

- (a) all amounts outstanding, including interest and default interest accrued, from Project Co to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by Project Co for any reason other than a failure by Project Co to pay any amount when due;
- (b) cost of early termination of interest rate or currency hedging arrangements and other breakage costs or make whole amounts payable by Project Co to the Senior Lenders as a result of a prepayment under the Senior Financing Agreements; and
- (c) all other fees, costs and expenses for which Project Co is responsible under the Senior Financing Agreements;

"Senior Debt Service Amount" means, for any period, the principal and interest payable by Project Co to the Senior Lenders in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements;

"Senior Financing Agreements" means:

- (a) the Note Indenture;
- (b) the security agreements entered into pursuant to the Note Indenture;
- (c) each Note Purchase Agreement (as defined in the Note Indenture) dated as of the Effective Date, certified copies of each of which have been delivered by Project Co to the Province, and as amended from time to time in accordance with the terms of this Agreement.

"Senior Lenders" means lenders to whom Senior Debt is owed;

"Senior Loan Life Cover Ratio" has the meaning given in the Note Indenture;

"Services Change" means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co's Services obligations under this Agreement;

“Service Commencement” means that all of the following have been achieved in relation to the Facility:

- (a) the Architect has certified that "substantial performance" of the Facility, as defined in the *Builders' Lien Act* (British Columbia), has been achieved;
- (b) Project Co has delivered professional letters of assurance, a covering letter and a Code report from an architect or professional engineer licensed to practice in the Province of British Columbia, in substantially the same manner and form as would be required to obtain an occupancy permit under the Code, as required by the applicable Minister's Consent(s) to Construct and in accordance with Good Industry Practice. The letters of assurance, covering letter and Code report shall:
 - (1) describe Code compliances and any associated equivalencies;
 - (2) include signed and sealed assurances from the Coordinating Registered Professional and from each Registered Professional of Record as required by the *“Procedure for Obtaining a Minister's Consent to Construct”* document included in the Disclosed Data; and
 - (3) certify that the Facility is safe and ready to be occupied by Province Persons and Inmates.
- (c) Project Co has delivered to the Province a Life Cycle Report as required by Section 4.6 [Life Cycle Report] of Schedule 2 [Design and Construction Protocols];
- (d) Project Co has delivered to the Province a report from the commissioning agent retained by Project Co under Section 11 [Commissioning] of Schedule 2 [Design and Construction Protocols] confirming completion of all commissioning activities scheduled in the Commissioning Plan to be completed before Service Commencement;
- (e) Project Co has delivered to the Province a Start-up Plan as required by Part 3 [Operating Period Plans] of Schedule 4 [Services Protocols and Specifications];
- (f) Project Co has completed the training of Province staff as required by Section 11.2 [Equipment and Systems Operation and Training] of Schedule 2 [Design and Construction Protocols];
- (g) Project Co has delivered to the Province written confirmation as required by Section 3.7 [LEED Project Checklist] of Schedule 2 [Design and Construction Protocols]; and
- (h) Project Co has delivered to the Province a report, in a form and with a content acceptable to the Province acting reasonably, from the qualified environmental professional(s) retained by Project Co, certifying that Project Co has: (i) complied with the requirements of Section 3.5 [Permits for the Design and Construction] of Schedule 2 [Design and Construction Protocols] in respect of all environmental Permits applicable to the Design

and Construction; and (ii) fulfilled all applicable mitigation obligations required by such environmental Permits to be completed prior to Service Commencement,

and there are no unresolved written objections issued by the Fire Commissioner of Canada with respect to occupancy of the Facility by Province Persons or Inmates;

“Service Commencement Date” means the later of:

- (a) the date when all criteria for Service Commencement that have not been waived have been satisfied as certified by the Independent Certifier in accordance with Schedule 2 [Design and Construction Protocols];
- (b) September 30, 2016; and
- (c) the last Target Service Commencement Date;

“Service Commencement Deficiencies” has the meaning set out in Section 12.1 [Deficiency List] of Schedule 2 [Design and Construction Protocols];

“Service Failure” means any failure by Project Co, other than an Unavailability Event, to provide the Services in accordance with this Agreement and in particular in accordance with Schedule 4 [Services Protocols and Specifications], and includes a failure to satisfy any Performance Indicator;

“Service Failure Deduction” means a Deduction which may be made in respect of a Service Failure;

“Service Payment” means the sum calculated in accordance with Section 1.1 [Service Payment] of Schedule 8 [Payments];

“Service Provider” means Honeywell Limited or any assignee or replacement permitted under this Agreement;

“Service Provider Lead” means the individual set out in that capacity in Schedule 17 [Key Individuals];

“Services” means everything other than Design and Construction that Project Co is required to do to satisfy its obligations under this Agreement, including the Plant Services, the Help Desk Services, the Utility Management Services, the Roads, Grounds and Landscape Maintenance Services, the Life Cycle Requirements and any Reinstatement Works;

“Services Change” means a change, including an addition, deletion, alteration, substitution or otherwise, to Project Co’s Services obligations under this Agreement;

“Services Contract” means the agreement between Project Co and the Service Provider, a certified copy of which has been delivered by Project Co to the Province, as amended, supplemented or replaced from time to time in accordance with this Agreement;

“Services Protocols and Specifications” means the provisions of Schedule 4 [Services Protocols and Specifications];

VAN01: 3149521: v7

“Setup, Testing and Commissioning Computer” or **“STCPC”** means a computer used to perform setup and programming functions of ESC systems;

“Short Term Holding Unit” means the Living Unit described in Section 1.5.3.3(4) [Programme Components] of Appendix 3A [Functional Programme];

“Signage Plan” means a plan outlining the location, size, content and method of fixing all signs, advertisements, banners or posters in and around the Site;

“Site” means the Lands;

“Site Improvements” means all on-Site works and infrastructure, such as a stormwater detention pond, sanitary sewer, water line, street and related works and highway improvements;

“SLC Nonsecure” has the meaning set out in Section 3.4.2 [Safety and Security] of Schedule 3 [Design and Construction Specifications];

“SLC Secure” has the meaning set out in Section 3.4.2 [Safety and Security] of Schedule 3 [Design and Construction Specifications];

“SLC Secure Zone” means the area described in Section 3.4.5.2(1) [Safety and Security] of Schedule 3 [Design and Construction Specifications];

“Snow Ploughing and Removal Services Payment” means the amount applicable to a Payment Period as set out in Schedule 4 [Services Protocols and Specifications], to be paid by the Province to Project Co in respect of the costs incurred by Project Co in carrying out the Services described therein in a preceding Payment Period;

“Source Code Materials” means in relation to an item of computer software (including an HMI Customization): (a) a complete copy of the source code (human readable code) for the software item stored on CD ROM or other commercially available permanent media; and (b) all developer documentation (including instructions, programmer specifications, notes, explanations, general flow-charts, input and output layouts, field descriptions, volumes and sort sequences, data dictionaries, file layouts, calculation formulae, details of algorithms and software or developer’s tools) as may be reasonably necessary to permit a reasonably skilled programmer having a reasonable level of experience with the relevant computer environment and software applications to understand and Use the Source Code Materials to maintain, modify and enhance the software item and compile and generate a machine-executable (object code) and acceptable form of the software item from the source code;

“Special Management Unit” or **“SMU”** means the area described in Section 4.7.2.6 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“SSW Escort” means a Project Co Person who has: (i) successfully completed a Level 2 Background Check; and (ii) been authorized by the Province to act as an escort for Escorted Persons;

“SSW Request” has the meaning set out in Section 17.3.3 [Security Sensitive Work];

“Staff Services” means the area described in Section 4.7.2.10 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“Staffing Plan” means the plan described in Section 3.9.1.2 [Annual Service Plans] of Schedule 4 [Services Protocols and Specifications];

“Start-up Plan” has the meaning in Section 3.8.1 [Start-up Plan] of Schedule 4 [Services Protocols and Specifications];

“STC” means Sound Transmission Class which is a single number rating of the effectiveness of a material or construction assembly to retard the transmission of airborne sound;

“Structured Cabling System” has the meaning set out in Section 9.7.2 [Communications] of Schedule 3 [Design and Construction Specifications];

“Sub-Contract” means any contract entered into by a Project Contractor (except Project Contracts), or a sub-contractor of a Project Contractor of any tier, with one or more Persons in connection with the carrying out of Project Co’s obligations under this Agreement, as amended or replaced from time to time;

“Sub-Contractor” means any Person that enters into a Sub-Contract;

“Sub-Contractor Termination Notice” has the meaning set out in Section 5.9 [Replacement of Non-Performing Service Provider or Sub-Contractor] of Schedule 4 [Services Protocols and Specifications];

“Sub Telcom/ESCS Rooms” has the meaning set out in Section 9.7.2.2(6) [Electrical] of Schedule 3 [Design and Construction Specifications];

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

“Submittals” has the meaning set out in Section 1 [Submittals] of Appendix 2B [Review Procedure];

“Suitable Substitute Project Co” has the meaning given to it in the Lenders’ Remedies Agreement

“Supervening Event” means any of a Compensation Event, Relief Event, Excusing Event, Force Majeure Event or Eligible Change in Law Event;

“Supervening Event Notice” has the meaning set out in Section 8.2 [Procedures Upon the Occurrence of a Supervening Event];

“Surveillance Control” means the designated location for security personnel to control access, monitor alarms, view live real time events related to access to the site and associated buildings and direct security staff to address security related events;

“Surveyed Element” has the meaning given in Section 5.11.1.1 [Province Satisfaction System] of Schedule 4 [Services Protocols and Specifications];

“Synchronized Clock System” means the system described in Section 9.6.8.1 [Electrical] of Schedule 3 [Design and Construction Specifications];

“Table 8B-1” means Table 1 attached to Appendix 8B [Construction Period Payments];

“Target Service Commencement Date” means September 30, 2016 unless, updated in accordance with Schedule 2 [Design and Construction Protocols];

“Tax” or **“Taxes”** means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

“Temporary Alternative Accommodation” means accommodation offered to the Province by Project Co as a substitute for any Unavailable Functional Unit pursuant to Section 3.1 [Project Co Option to Provide] of Schedule 8 [Payments];

“Temporary Alternative Accommodation Notice” has the meaning set out in Section 3.1 [Project Co Option to Provide] of Schedule 8 [Payments];

“Temporary Repair” means, in respect of the occurrence of an Unavailability Event, works of a temporary nature that do not constitute Rectification;

“Temporary Repair Proposal” has the meaning set out in Section 2.11(a)(1) [Temporary Repairs] of Schedule 8 [Payments];

“Term” has the meaning set out in Section 2.1 [Term and Termination];

“Termination Date” means the earlier of the Expiry Date or the date of earlier termination referred to in Section 2.1 [Term and Termination];

“Termination Date Benchmark Canada Bond Yield” means the yield to maturity on a benchmark Government of Canada Bond of the same maturity as the average life of the outstanding Senior Debt, Junior Debt and equity on the Termination Date;

“Termination Date Discount Rate” means a discount rate equal to the Project Risk Premium plus the Termination Date Benchmark Canada Bond Yield.

“Termination Payment” means the amount owing by the Province to Project Co pursuant to Schedule 9 [Compensation on Termination];

“Termination Payment Date” means the date on which the Province must make the Termination Payment as provided for in Schedule 9 [Compensation on Termination];

“Test Period” means the 12 month period commencing on the first day of the calendar month immediately following the month in which the 18 month anniversary of the Service Commencement Date occurs;

“Threat Perimeter” or **“Threat Perimeter Zone”** means the area described in Section 3.4.5.2(2) [Safety and Security] of Schedule 3 [Design and Construction Specifications];

“Threshold Equity IRR” means _____, being the Equity IRR as set out in the Financial Model;

“Tool Control Policy and Procedures” means the Security of Tools, Equipment and Materials Policy in the Province’s Adult Institutions Policy and Procedures Manual, included in the Province’s Policies and Procedures, as supplemented or amended from time to time and provided to Project Co in writing;

“Total Time” is the total number of hours during the measured period;

“Total Unavailability” occurs when:

(a) Functional Units with floor area of 25% or more of the Facility are Unavailable at the same time and a Rectification Period has expired with respect to each such Unavailable Functional Unit; or

(b) any of the following are not accessible:

(1) two or more of the required fire exits; or

(2) all of the transfer elevators,

and a Rectification Period has expired with respect to each Event that caused such lack of access and the Province has not approved a mitigation plan put forward by Project Co;

“Transfer Date” means the Termination Date, subject to extension for the period of transitional arrangements under Section 14.3 [Transitional Arrangements];

“Transfer of Administration and Control” has the meaning set out in Section 1.2 [Terms Affecting License Grant] of Schedule 7 [Lands];

“Transfer Restriction Date” has the meaning set out in Section 16.1(d) [Limitations on Assignment of Project by Project Co];

“Transition” means the tolerance level for the making of Deductions in respect of Service Failures as described in Section 2.15 [Transition Periods – Service Failures] of Schedule 8 [Payments];

“Trespasser” has the meaning set out in Section 8.14(a) [Responsibility for Participants and Trespassers];

VAN01: 3149521: v7

“Unavailable” and **“Unavailability”** means, with respect to a Functional Unit, that such Functional Unit is in a state or condition that does not comply with the Availability Condition;

“Unavailability Deduction” means a Deduction which may be made in respect of an Unavailability Event;

“Unavailability Event” means an incident or state of affairs which causes one or more Functional Units to be Unavailable;

“Undisclosed Environmental Liabilities” means all Hazardous Substances located in, on, below or adjacent to the Lands, other than Project Co Hazardous Substances;

“Uninsurable” means, in relation to a risk:

- (a) insurance as required under this Agreement is not available in respect of the Project with Qualified Insurers; or
- (b) the insurance premium payable or the terms and conditions for insuring such risk at the levels and on the terms required by this Agreement are such that contractors, concessionaires, owners or others having a substantially similar interest in a project such as the Project in Canada are not generally insuring against such risk with Qualified Insurers;

“Uninsurable Risk” has the meaning set out in Section 6.15 [Consequences of Risks Becoming Uninsurable];

“Unit Deduction Amounts” means the amount of the Deduction specified in Appendix 8A [Functional Units, Priority Levels and Unit Deduction Amounts];

“Units” means units or other equity interests of any class in the capital of Project Co;

“Updated Project Schedule” has the meaning set out in Section 9.2 [Project Schedule Updates] of Schedule 2 [Design and Construction Protocols];

“UPS” means uninterruptible power supplies;

“Use”, “Used” and **“Using”** means any and all means and methods of use and exploitation, including copying, loading, installing, accessing, configuring, implementing, executing, operating, hosting, supporting, maintaining, modifying, enhancing, translating, adapting, storing, backing-up, archiving, and creating derivative works, for any and all operational, training, development, testing and enhancement purposes, but in all cases subject to the limitations and restrictions expressly set forth in this Agreement;

“Utility” or **“Utilities”** includes:

- (a) Energy and emergency power;
- (b) steam and chilled water;

- (c) water;
- (d) sanitary waste;
- (e) storm water;
- (f) medical gas compounds;
- (g) telephone, data and CATV; and
- (h) geothermal energy.

“Utility Company” means any company designated by the Province to provide Utilities to the Facility, including Senkulmen Utilities Limited;

“Utility Management Services” means the services and requirements described in Appendix 4G [Utility Management Services];

“Valuator” means a firm of chartered accountants as represented by a fully qualified member of the Canadian Institute of Chartered Business Valuators; and

“Video Court System” has the meaning set out in Section 9.7.8 [Communications] of Schedule 3 [Design and Construction Specifications];

“Video Visitation”, “Video Visitation System” or “VV” means the systems described in Section 9.7.4 [Communication] of Schedule 3 [Design and Construction Specifications].

“Visits” or “Visiting Areas” means the area described in Section 4.7.2.1 [Interior Building Components] of Schedule 3 [Design and Construction Specifications];

“VMS” means a video management system consisting of hardware and software for processing digital video information used by operators for display, recording and playback of surveillance video;

“Waste Management and Recycling Services” means the services and requirements as described in Part 13 [Waste Management and Recycling Services] of Appendix 4D [Plant Services];

“Weather Data” means a record of daily maximum and minimum dry and wet bulb temperature, dew point humidity, relative humidity, total horizontal solar radiation, wind speed and direction, cloud amount and atmospheric pressure at, and in the vicinity of, the Facility;

“Weather Monitoring Station” means one or more weather monitoring stations to be installed by Project Co on the Site to record and monitor Weather Data; and

“Wildlife Act Permit” means Permit PE13-90529 issued pursuant to the *Wildlife Act*, R.S.B.C. 1996, c.488, with respect to the relocation of wildlife from the Lands;

“Women’s Living Unit” means the Living Unit described in Table 3.3A [Design Capacity] of Schedule 3 [Design and Construction Specifications].

2. INTERPRETATION

This Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Agreement otherwise require:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (c) each reference to a Section, Schedule or Appendix is a reference to a Section of, Schedule to or Appendix to a Schedule to this Agreement; each Appendix is uniquely designated by using the number of the Schedule to which the Appendix is attached following by an alphabetical designator in sequence (for example, Appendix 4C [Handback Requirements] means the third Appendix attached to Schedule 4 [Services Protocols and Specifications]). A Schedule includes all of the Appendices attached to that Schedule;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;

- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (j) unless the context otherwise requires, each reference to “parties” means the parties to this Agreement and each reference to a “party” means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement;
- (k) all monetary amounts are expressed in Canadian Dollars;
- (l) whenever this Agreement obliges a party (the “Payor”) to pay any amount to the other party (the “Payee”) in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Payee:
 - (1) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis (including when the payment is made to an Affiliate of the Payee), so much of them as are proper and reasonable; and
 - (2) the Payee will, when requested by the Payor, provide supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums;
- (m) the Province will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the Province’s Representative) who have responsibilities in connection with the conduct of the Services or the Project;
- (n) without limiting the extent of its actual knowledge, Project Co will for all purposes of this Agreement be deemed to have such knowledge in respect of the Design, the Construction and the Services as is held (or ought reasonably to be held) by those employees or agents of Project Co, or any Project Contractor or Sub-Contractor, who have responsibilities in connection with the carrying out of the Design, the Construction or the Services to which the fact, matter or thing relates or is applicable;
- (o) each requirement for a thing or action to be “in accordance with” or “in compliance with” any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- (p) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;

- (q) when a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Agreement;
- (r) any consent contemplated to be given under this Agreement must be in writing;
- (s) general words are not given a restrictive meaning:
 - (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (t) words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- (u) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person’s own benefit, provided that the foregoing will not require the Province to:
 - (1) take any action which is contrary to the public interest, as determined by the Province in its discretion; or
 - (2) undertake any mitigation measure that might be available arising out of its status as a public body that would not normally be available to a private commercial party;
- (v) the expressions “by Project Co” and “by or through Project Co” and expressions of like import are synonymous and mean by Project Co or by anyone employed by or through Project Co, including Project Co and all contractors, sub-contractors and suppliers of any tier and their respective officers, employees, consultants and agents;
- (w) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied;
- (x) where this Agreement requires the calculation of something that is calculated in the Financial Model, including Net Present Value of Distributions and Equity IRR but not

including Payments and Deductions, the calculation will be done in a manner consistent with the calculation methodology in the Financial Model;

- (y) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (z) each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect; and
- (aa) each release, waiver of liability and indemnity in this Agreement expressed to be given in favour of a party is and will be interpreted as having been given in favour of and may be enforced by that party and, in the case of the Province, by the Province Indemnified Persons, and, in the case of Project Co, by Project Co Persons.

3. PRIORITY OF AGREEMENTS AND SCHEDULES

In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Agreement, the provisions will prevail in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the provisions establishing the higher quality, manner or method of performing the Design, Construction or Services, using the more stringent standards, will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, reliability, durability, performance and service will prevail;
- (b) the provisions of the main body of this Agreement will prevail over any of the Schedules hereto other than Schedule 11 [Material Project Contractor Collateral Agreement] or Schedule 10 [Lenders' Remedies Agreement];
- (c) the provisions of the Lenders' Remedies Agreement will prevail over the Material Project Contractor Collateral Agreement; and
- (d) the provisions of this Agreement (other than the provisions of Appendix 2G [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)]) will prevail over the provisions of Appendix 2G [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)]; provided however that in determining whether an ambiguity, conflict or inconsistency exists between Appendix 2G [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)] and

any other provisions in this Agreement, to the extent that Appendix 2G [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)] include additional requirements for higher standards of quality or performance or additional requirements for more extensive scope of design, work or services than otherwise required, no such ambiguity, conflict or inconsistency will be deemed to exist and Project Co's obligations hereunder will include compliance with all such additional requirements; and

- (e) if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Design, Construction or Services, the provision that applies to the specific part of the Design, Construction or Services shall prevail for that specific part of the Design, Construction or Services.

4. FINANCIAL MODEL

Except where expressly referred to, the Financial Model and its contents will not be used to interpret, and will not affect the meaning of, this Agreement.

SCHEDULE 2

DESIGN AND CONSTRUCTION PROTOCOLS

TABLE OF CONTENTS

1.	PARTIES' DESIGN AND CONSTRUCTION REPRESENTATIVES	1
1.1	Appointment of Representatives	1
1.2	Replacement.....	1
1.3	Authority of Representatives	1
1.4	Review Procedure	1
1.5	Province Not Responsible for Design or Construction	2
1.6	Project Co's Additional Observer.....	2
1.7	Construction Period Joint Committee	3
2.	INDEPENDENT CERTIFIER.....	4
2.1	Appointment.....	4
2.2	Appointment and Replacement	4
2.3	Monthly Inspection and Report.....	5
2.4	Payment Certificates	6
2.5	Application for Certificate of Service Commencement.....	6
2.6	Permitted Access.....	6
2.7	No Responsibility for Design or Construction.....	6
3.	PROJECT CO'S RESPONSIBILITIES	7
3.1	Design/Build Responsibility	7
3.2	Standard of Performance for Design and Construction	7
3.3	Defects in Design or Construction	7
3.4	Compliance with Laws and Province Policies and Procedures.....	7
3.5	Permits for the Design and Construction.....	8
3.6	LEED Gold Certification.....	9
3.7	LEED Project Checklist	10
3.8	Threat and Risk Assessments.....	10
4.	DESIGN.....	11
4.1	Additional Design Considerations.....	11
4.2	Design Process	11
4.3	Design Change.....	14
4.4	Mock Ups and Prototype Rooms.....	14
4.5	Security of Design	16
4.6	Life Cycle Report	17
4.7	Ownership of Design	17

5.	CONSTRUCTION.....	17
5.1	Construction of the Facility	17
5.2	Amendments and Changes to the Drawings and Specifications	17
5.3	Reference Product.....	17
5.4	Skilled Workers.....	18
5.5	Control of the Construction.....	18
5.6	Existing Utilities	18
5.7	Site Investigation	18
5.8	[Not Used].....	18
5.9	Geotechnical Report.....	18
5.10	Archaeological Report	19
5.11	Site Issues	19
5.12	The Province's Access to Site	19
5.13	Inspection	20
5.14	<i>Builders Lien Act</i> and Builders Liens	21
5.15	Safety.....	21
5.16	Protection of Property.....	21
5.17	Construction Survey and Monitoring	21
5.18	Control of Dust and Noise	22
5.19	Signage.....	22
5.20	Temporary Works	22
5.21	Project Meetings.....	23
5.22	Project Records	23
6.	EQUIPMENT SUPPLY AND INSTALLATION	24
6.1	Design and Construction Requirements.....	24
6.2	Asset Tagging.....	25
6.3	Asset Register	25
7.	QUALITY MANAGEMENT.....	26
7.1	Quality of the Design and Construction.....	26
7.2	Quality System.....	26
7.3	Project Co's Quality Consultant.....	26
7.4	Quality Assurance Program.....	26
7.5	Quality Assurance Plan	28
7.6	Reporting	29
7.7	Quality Review by the Province.....	30
8.	WORKERS COMPENSATION	30
8.1	Evidence of WorkSafe BC Compliance.....	30
8.2	Indemnity for WorkSafe BC Non-Compliance	30
8.3	Prime Contractor	30
8.4	Failure to Comply with WorkSafe BC Requirements.....	31

9.	PROJECT SCHEDULE AND SCHEDULING	31
9.1	Initial Project Schedule	31
9.2	Project Schedule Updates	31
9.3	Failure to Update Project Schedule.....	32
9.4	Compliance with Project Schedule	32
9.5	Staged Occupancy	32
9.6	Move-In Schedule.....	32
10.	DELAYS AND ACCELERATION	32
10.1	Acceleration to Recover Project Co Delays	32
10.2	Service Commencement Delay Costs.....	33
10.3	Acceleration to Advance Service Commencement Date	33
11.	COMMISSIONING.....	33
11.1	Testing and Commissioning	33
11.2	Equipment and Systems Operation and Training.....	34
11.3	Commissioning Plan	34
12.	COMPLETION.....	36
12.1	Deficiency List.....	36
12.2	Advance Notice of Application for Service Commencement.....	37
12.3	Application for Certificate of Service Commencement.....	37
12.4	Correction of Deficiencies.....	38

APPENDIX 2A – INDEPENDENT CERTIFIER AGREEMENT

APPENDIX 2B – REVIEW PROCEDURE

APPENDIX 2C – ADMINISTRATION CONSULTATION PROTOCOL

APPENDIX 2D – ENERGY

APPENDIX 2E – EQUIPMENT AND FURNITURE

APPENDIX 2F – INITIAL PROJECT SCHEDULE

APPENDIX 2G – PROPOSAL EXTRACTS (DESIGN AND CONSTRUCTION)

SCHEDULE 2

DESIGN AND CONSTRUCTION PROTOCOLS

1. PARTIES' DESIGN AND CONSTRUCTION REPRESENTATIVES

1.1 Appointment of Representatives

Project Co will, within 5 Business Days after the Effective Date, designate in writing a person (the "**Project Co's Design and Construction Representative**") to be Project Co's single point of contact with respect to the Design and Construction. Project Co's Design and Construction Representative will be a Key Individual. Project Co's Design and Construction Representative may also be Project Co's Operating Period Representative.

The Province will, within 5 Business Days after the Effective Date, designate in writing a person (the "**Province's Design and Construction Representative**") to be the Province's single point of contact with respect to the Design and Construction. The Province may from time to time designate a second Province's Design and Construction Representative, in which case, one will be the Province's primary point of contact with respect to Design and the other will be the Province's primary point of contact with respect to Construction.

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.

1.2 Replacement

Subject to Section 2.8 [Key Individuals] 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 Design and Construction Representative. If at any time a party objects to a Design and Construction Representative of the other party then the other party will give reasonable consideration to replacing its Design and Construction Representative with a person reasonably acceptable to the objecting party.

1.3 Authority of Representatives

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, in the case of the Province's Design and Construction Representative, giving any review, acceptance, approval or confirmations, which may be given by the Province. 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.

1.4 Review Procedure

The parties will comply with Appendix 2B [Review Procedure] in respect of all Design and Construction Submittals.

1.5 Province Not Responsible for Design or Construction

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

1.6 Project Co's Additional Observer

If Project Co appoints a representative of the Design Builder as Project Co's Design and Construction Representative then Project Co may, at its discretion, designate in writing an additional person (the "**Project Co's Additional Observer**") who may participate in Design and Construction as follows:

- (a) Project Co's Additional Observer will be permitted to participate in, observe and be fully informed on all aspects of the Design and Construction, including:
 - (1) accompanying Project Co's Design and Construction Representative to any Design and Construction meeting with the right to speak and be heard at such meeting (including for illustration the meetings described in Section 5.21 [Project Meetings] of this Schedule;
 - (2) participating in and observing the inspections and discussions relating to the issuance of the Certificate of Service Commencement described in Section 12.3 [Application for Certificate of Service Commencement] of this Schedule; and
 - (3) participating in and observing the inspections to identify Service Commencement Deficiencies as described in Section 12.1 [Deficiency List] of this Schedule;
- (b) the appointment of Project Co's Additional Observer will not amend or alter the authority of Project Co's Design and Construction Representative as provided by this Agreement;
- (c) Project Co may, from time to time, give notice to change the person who is Project Co's Additional Observer but at any one time there may not be more than one person who is Project Co's Additional Observer;
- (d) the Province will co-operate to facilitate the participation of Project Co's Additional Observer, including copying Project Co's Additional Observer on notices and written communications that it issues to Project Co's Design and Construction Representative and inviting Project Co's Additional Observer to all meetings held between the Province and Project Co's Design and Construction Representative; and
- (e) all costs and expenses incurred by, or with respect to, Project Co's Additional Observer will be for the account of Project Co.

1.7 Construction Period Joint Committee

- (a) Not less than 20 Business Days after the Effective Date, the Province and Project Co will establish, and will maintain until the Service Commencement Date, a joint liaison committee (the "**Construction Period Joint Committee**") consisting of each party's Design and Construction Representative 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. 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 Province 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 the Province unless the Province requires that a representative of Project Co chair the Construction Period Joint Committee.
- (f) The Province will keep minutes of all recommendations and meetings of the Construction Period Joint Committee and circulate such minutes to Project Co within five Business Days of the making of the recommendation or the holding of the meeting.

2. INDEPENDENT CERTIFIER

2.1 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 Province 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.

2.2 Appointment and Replacement

If, within 20 Business Days after 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 Province and Project Co, then:

- (a) within 5 Business Days after the date that is 20 Business Days after the Effective Date (or within five 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 Province;

- (b) within 10 Business Days after receiving the candidate names, the Province will notify Project Co of the candidates acceptable to the Province, 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 Province, acting reasonably, or if for any reason an Independent Certifier is not appointed within 40 Business Days after the Effective Date (or within 20 Business Days after 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. The person appointed by the British Columbia International Commercial Arbitration Centre to act as Independent Certifier will at a minimum:
 - (1) have commercial dispute resolution experience;
 - (2) be qualified and experienced with respect to the design and construction of projects in British Columbia similar to the Project;
 - (3) be independent from both the Province and Project Co (and impartial to the parties); and
 - (4) have such other training, qualifications and experience as may be considered relevant in the circumstances.

2.3 Monthly Inspection 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 fulfil the Independent Certifier's functions under this Agreement, and, no later than the 10th day of each month, prepare and deliver to the Province 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 explanation and 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].

2.4 Payment Certificates

As contemplated in Appendix 8B [Construction Period Payments], the parties will require the Independent Certifier to, promptly after the end of each month in the Construction Period, but in any event on or before the fifth Business Day of the month, and promptly upon request by Project Co in relation to a payment under Section 7 [Construction Period Payment] of Schedule 8 [Payments], prepare and deliver to the Province and Project Co a certificate certifying the Cost to Date.

2.5 Application for Certificate of Service Commencement

The parties will require the Independent Certifier to perform the obligations of the Independent Certifier described in Section 12 [Completion] of this Schedule.

2.6 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 Province expressly otherwise agree; and
- (d) keep the Independent Certifier fully informed as to the progress of the Design and 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.

2.7 No Responsibility for Design or Construction

Nothing in this Agreement (including this Schedule) 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.

3. PROJECT CO'S RESPONSIBILITIES

3.1 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 correctional centre 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
 - (3) to reflect and capture the intent and benefits to the Province of the Proposal Extracts (Design and Construction).

Each of the obligations in Sections 3.1(b)(1), 3.1(b)(2) and 3.1(b)(3) [Design/Build Responsibility] 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.

3.2 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 [Standards of Design and Construction] of Schedule 3 [Design and Construction Specifications].

3.3 Defects in Design or Construction

Project Co will, without cost to the Province, 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.

3.4 Compliance with Laws and Province Policies and Procedures

Project Co will undertake and perform the Design and Construction in accordance with applicable Laws and the Province Policies and Procedures, 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 and the Province Policies and Procedures. If there is any conflict or ambiguity between:

- (a) the provisions of applicable Laws;
- (b) the provisions of the Province Policies and Procedures;
- (c) the provisions of this Agreement, including the Design and Construction Specifications; or
- (d) a provision of applicable Laws, the Province Policies and Procedures and this Agreement, including the Design and Construction Specifications,

then the provisions establishing the higher quality, manner or method of performing the Design or Construction, using the more stringent standards, will prevail.

3.5 Permits for the Design and Construction

Except as expressly provided otherwise in this Agreement, Project Co will obtain all Permits required for the Design and Construction. Project Co will keep the Province'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 and, upon request from the Province's Design and Construction Representative, Project Co will provide to the Province copies of all documentation and correspondence with a Government Province relating to such Permits.

Without limiting the preceding paragraph, Project Co will be fully responsible to obtain all Permits required for the Construction of the Facility, including the Minister's Consent to Construct and such other servicing agreements, development Permits and building Permits as may be required by the applicable Governmental Authorities.

Project Co will provide reasonable advance notice to the Province of any meetings with Governmental Authorities and upon request by the Province a representative of the Province may 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 3.5 [Permits for the Design and Construction], 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 Province will provide Project Co with such information within the Province'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 Province has obtained the CEA Report, the SARA Permit and the Wildlife Act Permit. Project Co shall comply with the requirements of all Permits applicable to the Design and Construction, and fulfill all mitigation measures described in the CEA Report, the SARA Permit and the Wildlife Act Permit. Project Co will retain one or more qualified environmental professionals, acceptable to the Province acting reasonably, to inspect, evaluate and report on Project Co's compliance with the requirements of all environmental Permits applicable to the Design and Construction and fulfillment of all applicable mitigation measures. The qualified environmental professional(s) retained by Project Co shall:

- (a) be registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that organization's code of ethics and subject to disciplinary action by that organization; and
- (b) act only within their area of expertise.

Prior to making an application for Service Commencement, Project Co shall submit to the Province a report from the qualified environmental professional(s) retained by Project Co certifying that Project Co has complied with the requirements of all environmental Permits applicable to the Design and Construction, and fulfilled all mitigation measures described in the CEA Report, the SARA Permit and the Wildlife Act Permit.

3.6 LEED Gold Certification

The Facility has been registered with CaGBC.

Project Co will, subject to Section 3.6(d) [LEED Gold Certification] of this Schedule, obtain LEED Gold Certification of the Facility in accordance with the following:

- (a) Project Co will, subject to this Section 3.6 [LEED Gold Certification], 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, except that Project Co will not include any points or credits which require any action by or on behalf of the Province without the Province's prior written consent, which may be granted or withheld in the Province's discretion. Where the Province consents to the inclusion of points or credits which require any action by or on behalf of the Province, the Province will take reasonable steps, consistent with the nature of the Facility, to cooperate with Project Co in respect of its achievement of such LEED points and credits, provided that such cooperation shall not require that the Province incur any liability, cost or expense;
- (b) if at any time after registration of the Facility with CaGBC in accordance with Section 3.6(a) [LEED Gold Certification] of this Schedule the requirements to achieve LEED Gold Certification under the LEED Rating System change, and Project Co is required to comply with such change in order to achieve LEED Gold Certification of the Facility, then Project Co will forthwith notify the Province of such change and such change will be handled in accordance with, and subject to, the procedure set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];
- (c) Project Co will compile and submit all required documents for LEED Gold Certification;
- (d) 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 Province, immediately pay to the Province \$100,000 for every point less than 60 points, to a maximum payment amount of \$1,000,000; and

- (e) upon payment of amounts, if any, owing under this Section 3.6 [LEED Gold Certification], Project Co will have no further obligations or liabilities in respect of obtaining LEED Gold Certification, except to provide the Province with such information and administrative assistance as the Province 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.

3.7 LEED Project Checklist

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

- (a) a LEED project checklist, generally in accordance with CaGBC requirements, together with a written confirmation that, in Project Co's judgment, LEED Gold Certification will be achieved for the Facility as required by Section 3.6 [LEED Gold Certification] of this Schedule; and
- (b) a written opinion from a LEED accredited professional supporting the confirmation described in Section 3.7(a) [LEED Project Checklist] of this Schedule.

3.8 Threat and Risk Assessments

Project Co will, by the date specified in the Submittal Schedule, deliver to the Province:

- (a) 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 Province associated with the Facility and the surrounding community, and describing how the design of the Facility will mitigate these risks and vulnerabilities. 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).
- (b) a comprehensive threat and risk assessment report for the ESCS, including the ESCS Data Network, all ESCS servers and ESC subsystems, (the "**Network Threat and Risk Assessment**"), identifying: (i) specific threats and vulnerabilities which have the capacity to compromise the security of the ESCS, the ESCS Data Network, any ESCS server or any ESC subsystem; (ii) the likelihood and risk level associated with each identified threat or vulnerability; (iii) the impact to the ESCS, including the ESCS Data Network, all ESCS servers and all ESC subsystems, should the identified threat or vulnerability materialize or be exploited; and (iv) available mitigation strategies and contingency plans.

The Province may provide comments on each of the Facility Threat and Risk Assessment and the Network Threat and Risk Assessment within 15 Business Days of receiving the applicable report. Project Co will, acting reasonably, take account of the Province's comments in finalizing the Facility Threat and Risk Assessment and Network Threat and Risk Assessment and shall deliver to the Province a copy of the final Facility Threat and Risk Assessment and Network Threat and Risk Assessment within 15 Business Days of receiving the Province's comments with respect to the applicable report. Project Co will implement the mitigation strategies and contingency plans described in the Facility Threat and Risk

Assessment and Network Threat and Risk Assessment in developing the design of the Facility and the ESCS.

4. DESIGN

4.1 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 Laws or Good Industry Practice) licensed or registered professional engineers, architects and other professionals; 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.

4.2 Design Process

Project Co will undertake the Design:

- (a) with appropriate consultation with representatives of the Facility Administration (the "**Administration Consultation Group**"), in accordance with Appendix 2C [Administration Consultation Protocol];
- (b) in accordance with Appendix 2B [Review Procedure], including providing Submittals to the Province in accordance with the Submittal Schedule;
- (c) in the following progressive phases, with each phase capturing the information and detail reviewed in a previous phase:
 - (1) Schematic Design Phase – this 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 engineering systems, all in sufficient detail to describe how the parts of the Facility functionally relate to each other,

such as the Site plan, spatial relationship diagrams, operational and service movement patterns, principal floor plans, Room Data Sheets, sections, elevations landscape, ESCS and equipment drawings together with a written project brief;

- (2) Design Development Phase – this phase will include drawings and other documents, including a Site plan, elevations and sections, together with a written project brief detailing area calculations, building systems, materials and outline specifications, to fully describe the size and character of the Facility, including the architectural, structural, mechanical, electrical, ESCS, civil and landscape systems, materials, Room Data Sheets and other elements to fully describe the Facility; and
- (3) Construction Documents Phase - this phase will include construction documents consisting of drawings, specifications and calculations describing in detail the requirements for the construction of all components, systems and equipment of the Facility:
 - (A) at 50% completion and at 95% completion;
 - (B) in accordance with the Submittal Schedule and Appendix 2B [Review Procedure] and in a timely way in advance of Construction with sufficient detail to permit the Province 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 Province to understand and assess the design of that element) in advance of the design documents for other elements of the Facility;

- (d) so that in each phase, Project Co will provide to the Province the level of detail and documentation that the Province 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) Site and landscaping plans;
 - (2) dimensioned floor plans;
 - (3) enlarged room layout plans;
 - (4) dimensioned roof plan;
 - (5) building sections;
 - (6) wall and plan details;

- (7) reflected ceiling plans;
- (8) exterior building elevations;
- (9) typical building cross sections;
- (10) interior elevations for all rooms showing all millwork;
- (11) interior finish schedules;
- (12) Room Data Sheets
- (13) hardware schedule;
- (14) Code reports, including descriptions of Code compliances and any associated equivalencies;
- (15) structural, mechanical, electrical, ESCS, civil drawings;
- (16) furniture and equipment list;
- (17) standard millwork types and details;
- (18) systems diagrams for ESCS drawings including ESC sub systems;
- (19) wireless network RF predictive simulation and analysis;
- (20) preliminary electrical load redundancy and spare capacity calculations for all branches of power identifying loads of different types, such as individual mechanical equipment, lighting, general receptacles, equipment, IT/Communications and security equipment and elevators;
- (21) finalised Network Threat Risk Assessment and ESCS disaster recovery plan, including narrative describing how the design of the Communications and ESCS has incorporated the mitigation and contingency strategies of each;
- (22) HMI screen layout designs;
- (23) reports detailing and describing the manner in which the following have been taken into account in the design:
 - (A) LEED Gold Certification, including energy efficiency/sustainability and the relevant LEED project checklist and points;
 - (B) material selection;
 - (C) constructability;
 - (D) Life Cycle Requirements;

- (E) the Facility Threat and Risk Assessment; and
 - (F) building operating services; and
- (24) the following design disciplines at a minimum shall be described in each submittal:
- (A) architectural;
 - (B) structural;
 - (C) mechanical;
 - (D) plumbing
 - (E) fire suppression system
 - (F) electrical;
 - (G) geotechnical (temporary/permanent); and
 - (H) IT/Communications (including ESCS).

4.3 Design Change

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

- (a) revisions to drawings and specifications and additional Design requested by the Province under the processes described in Section 4 [Design] of this Schedule and in Appendix 2C [Administration Consultation Protocol], 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, in which case 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 Province); and
- (b) if, and to the extent, the Province requires a variation of any design described in the Reviewed Drawings and Specifications (other than a variation required to bring the design of the Facility into conformity with this Agreement, including the Design and Construction Specifications or the Proposal Extracts (Design and Construction)) then such variation will be handled in accordance with and subject to the procedure set out in Schedule 6 [Changes, Minor Works and Innovation Proposals].

4.4 Mock Ups and Prototype Rooms

Project Co will, at its cost, provide "mock-ups" and "prototype" spaces as follows:

- (a) at an early stage of the user consultation process described in Appendix 2C [Administration Consultation Protocol], Project Co will provide:
- (1) three dimensional computer modeling mock-ups of the following spaces, indicating the dimensions and sizing of the room, location of millwork, services, equipment and furniture and configuration of headwalls:
 - (A) two adjoining Cells, including the service chase and party wall;
 - (B) one Sally Port corridor security door assembly with detention hardware and electronic controls;
 - (C) one private telephone room;
 - (D) each Living Unit;
 - (E) one set of Video Visitation Booths;
 - (F) the Booking/Video Capture Station; and
 - (G) an officer's workstation within a General Population Living Unit (7.102); and
 - (2) three dimensional computer modeling of the OCP and each Living Unit, sufficient to demonstrate the layout of each space and compliance of the sight-lines from the OCP into each Living Unit with the applicable Design and Construction Specifications, including Appendix 3A [Functional Program];
- (b) at an early stage of the user consultation process described in Appendix 2C [Administration Consultation Protocol], Project Co will provide fully constructed mock-ups (the "**Mock-Ups**") of the following rooms (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 and furniture included in the design of the room so that the Province and the Administration Consultation Group can experience all features of the design and provide comments on the design:
- (1) two adjoining Cells, including the service chase and party wall, complete with all mechanical (i.e. air ducts, plumbing risers and fixtures and sprinkler system), electrical (i.e. junction boxes, conduit, light fixtures and receptacles), and communication/security services;
 - (2) Sally Port corridor security door assembly with detention hardware and electronic controls; and
 - (3) an officer's workstation within a General Population Living Unit (7.102);

- (c) during Construction, Project Co will construct an in-situ “prototype” of each of the following rooms and make each prototype available to the Province at appropriate stages of construction so that the Province and the Administration Consultation Group can review the prototype room (including all materials, services, millwork, finishes, equipment and furniture) in its actual location within the Facility at various stages of construction, and consider whether any design adjustments are necessary:
- (1) two adjoining Cells, including the service chase and party wall, complete with all mechanical (i.e. air ducts, plumbing risers and fixtures and sprinkler system), electrical (i.e. junction boxes, conduit, light fixtures and receptacles), and communication/security services;
 - (2) corridor security door assembly with detention hardware and electronic controls;
 - (3) typical Cell to typical Cell with acoustic treatment in place for purposes of acoustic testing in accordance with Schedule 3 [Design and Construction Specifications]; and
 - (4) an officer’s workstation within a General Population Living Unit (7.102); and
- (d) during Construction, Project Co will develop and submit HMI GUI screen design for wireless devices to the Province in accordance with Administration Consultation Protocol. HMI screen printouts will only be permitted as the first iteration, all subsequent iterations will be submitted as a functional GUI, demonstrated on a computer/screen and accompanied by screen printouts. In addition, Project Co will:
- (1) set up a fully functional prototype of the ESCS workstations for the SSP and OCP based on the final draft screen design including all ESC sub systems and typical field components/devices to demonstrate the compliance with Schedule 3 [Design and Construction Specifications]; and
 - (2) provide one fully functional SSP and OCP workstation, on-Site and connected to the ESCS component and field devices to effectively demonstrate the ESCS HMI GUI and overall ESCS functionality. Project Co will maintain the prototype SSP and OCP workstations and provide the Province with a period of not less than 2 weeks for user testing.

Project Co will modify the Mock-Ups and prototypes as may be required as the design develops based on feedback from the Administration Consultation Group and the Province.

4.5 Security of Design

Project Co will ensure that the design of the Facility is kept confidential and that only persons authorized by Project Co to review the design of the Facility are permitted access.

The Province, acting reasonably, may designate any portion of the Design as Security Sensitive Work subject to the following restrictions:

- (a) all Persons preparing or viewing the design of the Facility will be required to comply with the requirements of Section 17.3 [Security Sensitive Work] of this Agreement; and
- (b) all design materials will be kept confidential and only released to those persons who have been cleared by the Province pursuant to Section 17.3 [Security Sensitive Work].

4.6 Life Cycle Report

On or before the Service Commencement Date, Project Co will prepare, in consultation with the Design-Builder and the Service Provider, a report (“**Life Cycle Report**”) that sets out the proposed parameters for the anticipated life of major elements in the Facility, and the Life Cycle Requirements relating thereto, to be used as a basis for the Life Cycle Plan referred to in Section 3.11 [Life Cycle Plan] of Schedule 4 [Services Protocols and Specifications], and deliver such report to the Province. If a copy of a proposed Life Cycle Report is included in the Proposal Extracts (Design and Construction), the Life Cycle Report will be an update of the proposed Life Cycle Report. The Province will, acting reasonably, make its staff who work in building maintenance and repair available for consultation with Project Co, the Services Provider(s) and the Design-Builder regarding Design issues and the Life Cycle Report.

4.7 Ownership of Design

With respect to ownership and property rights relating to the design of the Facility, the Province 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, but the Province will have the licenses to use the design of the Facility as expressly set forth in this Agreement.

5. CONSTRUCTION

5.1 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.

5.2 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 Province's Design and Construction Representative for review under Appendix 2B [Review Procedure].

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

5.3 Reference Product

Except where Schedule 3 [Design and Construction Specifications] provides that no substitutions are permitted, where reference manufacturers or products are described in Schedule 3 [Design and

Construction Specifications], such references are provided for purposes of establishing the minimum performance requirements.

5.4 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.

5.5 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 Province, the Province's Design and Construction Representative or any other representative or agent of the Province, or to the Independent Certifier.

5.6 Existing Utilities

Project Co will confirm the location of, and protect:

- (a) all existing off-Site Utilities that may be affected by the Construction; and
- (b) all existing on-Site Utilities that may be affected by the Construction.

5.7 Site Investigation

By entering into this Agreement, Project Co will be deemed to have inspected the Site 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 (except as expressly provided to the contrary in this Agreement).

5.8 [Not Used]

5.9 Geotechnical Report

The Province has made available the Geotechnical Report in the Disclosed Data. The Province makes no representation whatsoever as to the accuracy or completeness of any information in the Geotechnical Report and Project Co specifically acknowledges that the Province 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 the performance of any other responsibilities of Project Co pursuant to this Agreement. Project Co will not be entitled to any compensation from the Province if actual conditions vary from those described in the Geotechnical Report.

5.10 Archaeological Report

The Province has made available the Archaeological Report in the Disclosed Data. The Province makes no representation whatsoever as to the accuracy or completeness of any information in the Archaeological Report and Project Co specifically acknowledges that the Province assumes and accepts no responsibility that the archaeological information, as may be available in the Archaeological Report, is accurate or completely describes actual site conditions that may affect the Design or Construction.

Project Co will comply with all applicable Laws, including the *Heritage Conservation Act* (British Columbia), and with the Good Industry Practice should any archaeological sites or heritage objects, protected under the *Heritage Conservation Act* (British Columbia), be discovered during the Construction.

5.11 Site Issues

Project Co will:

- (a) provide a 24-hour hotline (and post the phone number in a prominent location on the Site) for:
 - (1) Province 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;
- (b) provide a community liaison officer to provide a single point of contact with Project Co regarding construction and development issues.

5.12 The Province's Access to Site

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

- (a) attend the Site and view the Construction and any test or investigation being carried out in respect of the Construction; and
- (b) 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 Province's Design and Construction Representative and its delegates will have the right to attend all progress meetings and site meetings, including meetings between Project Co and the Design-Builder or

its Sub-Contractors, and Project Co shall provide reasonable advance notice of the time and location of all such meetings to the Province's Design and Construction Representative.

Project Co will cooperate with the Province to arrange for tours of the Site at reasonable times during Construction for interested Persons, 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 Province will not grant any Person access to the Site or the Facility during the Construction Period without the consent of Project Co, such consent not to be unreasonably withheld or delayed.

5.13 Inspection

Prior to the Service Commencement Date, Project Co will, upon request by the Province's Design and Construction Representative, including detailed reasons for the request, open up for inspection by the Province's Design and Construction Representative any part of the work on the Facility, which the Province's Design and Construction Representative, acting reasonably, believes is not in compliance with the requirements of this Agreement or is otherwise defective and:

- (a) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are no Defects or other non-compliances in the relevant part of such work, and Project Co complied with the requirements of Section 2.6 [Permitted Access] 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 [Project Co's Entitlements Upon Occurrence of a Compensation Event] 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 noncompliant or defective, then:
 - (1) Project Co will rectify and make good such noncompliance or Defect(s);
 - (2) any consequence of such rectification or making good such noncompliance or Defect(s) will be carried out by Project Co at no cost to the Province; 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 5.13(a) or 5.13(b) [Inspection] of this Schedule 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 Province, provided that Project Co proceeding in accordance with the Province's position will be a Compensation Event if the relevant matter in Dispute is determined in favour of Project Co.

5.14 **Builders Lien Act and Builders Liens**

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

- (a) the Province will not have any responsibility to be the payment certifier under any contract related to Construction, and Project Co shall ensure that an appropriate payment certifier is appointed and identified as required in respect of each such contract;
- (b) Project Co will make all required builders lien holdbacks;
- (c) no builders lien holdback will be retained by the Province under this Agreement;
- (d) if it is determined that any builders lien holdback is required to be retained by the Province, then Project Co agrees that it is making and will make all of its required holdbacks as agent for the Province;
- (e) Project Co will indemnify the Province from any damages, costs, claims and expenses of any kind, including actual solicitors costs, arising from the failure of the Province 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.

5.15 **Safety**

During the Construction Period, Project Co will be solely responsible for the safety of all persons on the Site and any other location where the Construction is performed (whether on the Site or at another location and whether 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.

5.16 **Protection of Property**

Project Co will:

- (a) protect the Province's property (and any third party's property) from damage during 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.

5.17 **Construction Survey and Monitoring**

Project Co will:

- (a) prior to start of any Construction, conduct a pre-construction survey of the Site, roadways, Utilities, services, infrastructure, and adjacent properties, in a form and detail satisfactory to the Province, acting reasonably, which will, without limitation, include field observations and photographs of existing conditions, with spot elevations by a registered British Columbia Land Surveyor (BCLS) at locations that will be accessible throughout and following construction for ongoing settlement monitoring, and deliver a copy of the pre-construction survey report to the Province; and
- (b) re-survey the spot elevations at regular intervals throughout the Construction Period and at six months following Service Commencement, to determine ongoing long-term settlement effects and site conditions and deliver a complete topographic survey to the Province in a form and detail satisfactory to the Province, acting reasonably.

5.18 Control of Dust and Noise

Project Co will take all reasonable steps (including any specific steps reasonably required by the Province) to minimize dust and noise from the Construction and to mitigate any adverse effects on the neighbouring buildings and sites.

5.19 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 Province's Design and Construction Representative, acting reasonably.

5.20 Temporary Works

During the Construction Period, Project Co will:

- (a) have the sole responsibility for the design, erection, operation, maintenance and removal of temporary services, structures and other temporary facilities and the design and execution of construction methods required in their use;
- (b) provide its own services necessary for Project Co's construction use including power, internet service, telephone, water and sewage; and
- (c) provide on-Site temporary private workspace for the Province. The temporary workspace provided for the Province shall:
 - (1) include a conference room sufficient for a minimum of eight people to meet;
 - (2) include at least two private offices with a minimum floor area of 9.0m² each;
 - (3) be accessible to the Province at all times;
 - (4) be heated and cooled to a temperature of 20 to 22°C;

- (5) be constructed and equipped to normal North American standards for construction site offices;
- (6) include all facilities, furniture, and fixtures required for a fully functional site office, including lighting, power, potable water and all physical infrastructure required for telephone and internet connections;
- (7) include secure lockable doors on all offices and conference space;
- (8) include direct access to washrooms facilities; and
- (9) include a levelled parking area for at least 5 cars, in close proximity.

5.21 Project Meetings

Without limiting the obligations pursuant to Section 1.7 [Construction Period Joint Committee] of this Schedule in respect of the Construction Period Joint Committee, at the Province's request, Project Co's Design and Construction Representative will attend meetings in person to update the Province 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 Province.

5.22 Project Records

Notwithstanding any other provision of this Agreement:

- (a) As-Built Drawings and Specifications: Project Co will:
 - (1) throughout the Construction, update the Reviewed Drawings and Specifications (with respect to the drawings, such update will be in hard copy and "CAD" or other electronic format acceptable to the Province's Design and Construction Representative, acting reasonably), including all final shop drawings, so as to produce accurate and complete as-built documents for the Facility;
 - (2) as requested from time to time during the Construction, make available to the Province such as-built drawings and specifications in hard copy and "CAD" or other electronic format acceptable to the Province's Design and Construction Representative, acting reasonably) for review, to permit the Province's Design and Construction Representative to monitor Project Co's compliance with the requirements of this Section 5.22 [Project Records] of this Schedule and for the Province's operational and other use; and
 - (3) provide three full-size hard copies and two electronic copies in ".dwg" format of the completed as-built drawings, specifications and Room Data Sheets to the Province's Design and Construction Representative on or before Service Commencement.
- (b) Maintenance Manuals: Project Co will:

- (1) on or before the Service Commencement Date, make available all maintenance manuals, specifications, warranties and related information, in either written or electronic form, for all the equipment and systems that have been included in the Design and Construction of the Facility for review by the Province'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 development;
- (d) Minutes of Meetings: The Province will retain minutes of the following meetings between the Province and Project Co: Design management meetings, Construction management meetings and Construction Period Joint Committee meetings. Project Co will retain minutes of all other meetings between the Province and Project Co relating to the Design and Construction. The party responsible for keeping minutes will circulate such minutes to the other party'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 Test Results: Project Co will retain official reports and certified test records of all inspections and tests which were undertaken as part of the Construction including copies of all professional consultant's field reports including architectural, engineering and certified professional;
- (f) Monitoring Results: Project Co will retain all survey and monitoring records obtained in connection with Section 5.17 [Construction Survey and Monitoring] of this Schedule;
- (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 Design, 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 Design and Construction, together with all records of the Quality Assurance Program implemented, as required by this Agreement.

6. EQUIPMENT SUPPLY AND INSTALLATION

6.1 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 the 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.

6.2 Asset Tagging

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

- (a) all Equipment (excluding non-physical Equipment such as software licenses); and
- (b) all mechanical, HVAC and communications systems equipment.

Each asset identification tag will include a unique numerical identifier.

6.3 Asset Register

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

- (a) all Equipment; and
- (b) all electrical, mechanical, HVAC and Communications and ESCS equipment.

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

- (a) make, model and device type;
- (b) equipment item number;
- (c) unique asset tag number;
- (d) serial number;
- (e) purchase order or equipment purchase contract identifier;
- (f) equipment supplier and contact information for the equipment supplier;
- (g) installed location (room number);

- (h) date installed;
- (i) anticipated replacement date or timeframe;
- (j) warranty start date and expiry date;
- (k) required utility, HVAC or other connections; and
- (l) any other information that may be agreed upon by the Province and Project Co.

7. QUALITY MANAGEMENT

7.1 Quality of the Design and Construction

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

7.2 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.

7.3 Project Co's Quality Consultant

Project Co will retain an independent qualified expert in quality management ("**Project Co's Quality Consultant**") to develop, implement and oversee a Quality Assurance Program and Quality Assurance Plan in conjunction with Project Co.

7.4 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) ensure that Design and Construction activities are planned and controlled;
- (9) ensure that the right items, processes, and practices will be used;
- (10) ensure that materials and services are verified to confirm that they are correct and that persons giving verification will be sufficiently qualified and will be independent from those who perform or install the materials or services;
- (11) ensure that peer reviews and inspections will be performed on a structured planned basis on all elements of the Design and Construction and:
 - (A) errors and deficiencies will be identified and recorded;
 - (B) when errors and deficiencies are remedied or corrected, that a record is maintained of the remedy or correction, and
- (12) ensure that records are maintained as required by this Agreement;
- (e) provide for independent design verification in accordance with Good Industry Practice; and
- (f) provide that the Registered Professionals of Record will:
 - (1) carry out field reviews, on-site inspections, review of materials testing and inspector's reports, undertake required surveying, measuring, and verification of materials and construction methods to ensure conformance of the Design and Construction with this Agreement, including the Design and Construction Specifications, and the Reviewed Drawings and Specifications; and

- (2) provide letters of assurance in the form required by the “*Procedure for Obtaining a Minister’s Consent to Construct*” document included in the Disclosed Data, that are an attestation that the relevant Design and Construction has been performed in accordance with this Agreement, including the Design and Construction Specifications, the Reviewed Drawings and Specifications and all applicable enactments respecting safety; and
- (g) provide that the Architect, as the Coordinating Registered Professional, will:
 - (1) coordinate all field reviews, on-site inspections, review of materials testing and inspector’s reports, performance of surveying and measuring and verification of materials and construction methods required to ensure conformance with this Agreement, the Reviewed Drawings and Specifications and the Design and Construction Specifications;
 - (2) coordinate the functional testing of the fire protection, life safety systems and the IT/Communications systems (including the ESCS); and
 - (3) provide letters of assurance in the form required by the “*Procedure for Obtaining a Minister’s Consent to Construct*” document included in the Disclosed Data, that are an attestation:
 - (A) of the coordination of the field reviews by the Registered Professionals of Record;
 - (B) of the coordination of the functional testing of the fire protection, life safety systems and the IT/Communications systems (including the ESCS); and
 - (C) that the Design and Construction has been performed in accordance with this Agreement, including the Design and Construction Specifications, the Reviewed Drawings and Specifications and all applicable enactments respecting safety.

7.5 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 Province 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 Province 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 Province a preliminary draft of the Quality Assurance Plan, but if Project Co has not delivered to the Province 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 7.5(a) [Quality Assurance Plan] will increase to \$5,000 for each week or part thereof;

- (b) the Province 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 Province not less than 20 Business Days after receiving the Province's comments, failing which, the Province 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 Province's comments were received by Project Co until Project Co has delivered to the Province a revised draft of the Quality Assurance Plan;
- (d) the Province will, within 15 Business Days after receipt of the revised draft, advise Project Co whether the Province accepts the Quality Assurance Plan, and if the Province does not accept it the Province will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (e) if the Province 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 Province's reasons for non-acceptance;
- (f) if the Province 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 Province is entitled to make pursuant to Section 7.5(a) or Section 7.5(c) [Quality Assurance Plan] 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 7.5 [Quality Assurance Plan] will not be counted for the purposes of Sections 11.1 [Province Step-in Rights] or 12.1(h) [Project Co Events of Default] Sections 5.8 [Increased Monitoring] or 5.9 [Replacement of Non-Performing Service Provider or Sub-Contractor] of Schedule 4 [Services Protocols and Specifications].

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

7.6 Reporting

Project Co will deliver to the Province 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.

7.7 Quality Review by the Province

The Province 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 Province, upon request from the Province, all records of the Quality Assurance Program and the Quality Assurance Plan to permit the Province to be satisfied that Project Co is following its Quality Assurance Plan.

8. WORKERS COMPENSATION

8.1 Evidence of WorkSafe BC Compliance

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

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

8.2 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* (British Columbia), 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 Province from any cost, loss, liability or obligation which the Province may incur as a result.

8.3 Prime Contractor

For the purposes of applicable Laws, 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* (British Columbia), 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 Province, the Province's Design and Construction Representative, any other contractors and everyone engaged by or through any of them;
- (b) delivering any notices (or modified notices) of the Project as required by applicable Laws; and

- (c) complying with the obligations of a prime contractor for a multi-employer workplace as prescribed by the applicable Laws.

If for any reason 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 Province and perform on behalf of the Province the obligations which the Province is required to undertake as prime contractor in connection with the Construction by virtue of the *Workers Compensation Act* (British Columbia) and any other Laws.

8.4 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* (British Columbia), then such failure or refusal will be considered a Project Co Material Breach.

9. PROJECT SCHEDULE AND SCHEDULING

9.1 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.

9.2 Project Schedule Updates

Project Co will, as required from time to time until Service Commencement, but no less than once per calendar month and by the 15th day of each month, in consultation with the Province 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) as the Design progresses, best estimates of:
 - (1) the start and completion dates for the design phases described in Section 4.2 [Design Process] of this Schedule; and
 - (2) the commencement of Construction;
- (c) the planned start and completion dates of the major activities of Construction; and
- (d) the Target Service Commencement Date, which (except to the extent necessary to reflect adjustments made in accordance with Section 9.2(a) [Project Schedule Updates] of this Schedule) may not be updated or otherwise changed within 12 months of such date unless the Province, in its discretion, consents.

Project Co will deliver an updated Project Schedule monthly to the Province 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 Province 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.

Project Co is not entitled to achieve Service Commencement prior to the Target Service Commencement Date in effect as of the Effective Date. Project Co is not entitled to any Service Payments prior to that date and the date is not subject to change to an earlier date for any reason, including for the occurrence of any Supervening Event.

9.3 Failure to Update Project Schedule

If Project Co fails or refuses to deliver an Updated Project Schedule as required under Section 9.2 [Project Schedule Updates] of this Schedule, then such failure or refusal will be deemed to be a Project Co Material Breach.

9.4 Compliance with Project Schedule

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

9.5 Staged Occupancy

Staged occupancy of the Facility will not be permitted.

9.6 Move-In Schedule

Project Co acknowledges that the Province will rely on the Service Commencement Date as set out in the Project Schedule (as may be adjusted under Section 9.2 [Project Schedule Updates] 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 Province's Design and Construction Representative a move-in schedule in respect of the Facility (the "**Move-in Schedule**"), indicating the anticipated dates when the Facility will become available for occupation by the Province. The Province'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 Province's requirements and requests. Project Co will, as may be required from time to time, up-date the Move-in Schedule.

10. DELAYS AND ACCELERATION

10.1 Acceleration to Recover Project Co Delays

If at any time the Province, acting reasonably, determines that Project Co is behind the Updated Project Schedule and will not achieve Service Commencement by the Target Service Commencement Date, then the Province may deliver notice to Project Co's Design and Construction Representative to use its best efforts, at Project Co's own cost and at no cost to the Province, to accelerate the Construction so as to

conform to the Updated Project Schedule and achieve Service Commencement by the Target Service Commencement Date.

10.2 Service Commencement 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 pay to the Province, as liquidated damages and not as a penalty, the sum of \$25,000 per day for each and every day that the Service Commencement Date is delayed beyond the Target Service Commencement Date. Project Co and the Province expressly agree that such sums represent a genuine pre-estimate of the costs which the Province would reasonably incur because the Province relied on the Move-in Schedule which are in excess of the costs which the Province would have incurred had Project Co achieved the dates set out in the relevant Move-in Schedule (other than due to a Supervening Event or a Change).

10.3 Acceleration to Advance Service Commencement Date

Without prejudice to the Province's rights under Section 10.1 [Acceleration to Recover Project Co Delays] of this Schedule, if at any time the Province determines that it requires the Construction to proceed in advance of the Updated Project Schedule then the Province may give written notice to Project Co to provide the Province with a written proposal to accelerate the Construction, including cost estimates and an estimate of the time saved, and if the Province acting reasonably decides to proceed with the acceleration then Project Co will implement the directed acceleration and if the acceleration is a Change then such Change will be made in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

11. COMMISSIONING

11.1 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 Province, acting reasonably), to test and commission all equipment (including Equipment on the Equipment List) and systems in the Facility to demonstrate to the reasonable satisfaction of the Province's Design and Construction Representative that the Facility equipment and systems are operating so that the Province 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; and
- (b) end to end testing and commissioning of key equipment and systems.

11.2 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 Communication and ESCS, and, except as otherwise provided in Appendix 2E [Equipment and Furniture], will provide sufficient training and education to the Province staff to enable the Province to properly utilize such equipment and systems. The Province will identify the relevant Province 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 required, or otherwise agreed, by the Province, acting reasonably.

11.3 Commissioning Plan

Project Co will prepare and deliver to the Province's Design and Construction Representative and the Independent Certifier, not less than 365 days before the Service Commencement Date, a detailed plan (the "**Commissioning Plan**") setting out the testing, commissioning, training and other activities Project Co intends to carry out to satisfy Sections 11.1 [Testing and Commissioning], 11.2 [Equipment and Systems Operation and Training] and 11.3 [Commissioning Plan] of this Schedule and to achieve Service Commencement, including:

- (a) a description of the specific equipment and systems to be tested and commissioned and the associated commissioning requirements, including those to be completed before Service Commencement;
- (b) supporting documentation, including as appropriate:
 - (1) design calculations and/or assumptions;
 - (2) manufacturer's specifications;
 - (3) identification of all equipment and systems that are required, 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 seismic 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 Province'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 Province's staff to enable the Province 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 Province 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, 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 Province's staff.

The Commissioning Plan must be reasonable having regard to the requirements of Sections 11.1 [Testing and Commissioning], 11.2 [Equipment and Systems Operation and Training] and 11.3 [Commissioning Plan] 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 Province not less than 12 months before the Target Service Commencement Date, failing which, the Province 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 Province a preliminary draft of the Commissioning Plan but if Project Co has not delivered to the Province 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 11.3(h) [Commissioning Plan], of this Schedule will increase to \$5,000 for each week or part thereof;
- (i) the Province will provide its comments, if any, on the preliminary draft to Project Co within 20 Business Days after receipt of the preliminary draft;
- (j) Project Co will deliver a revised draft of the Commissioning Plan to the Province not less than 9 months before the Target Service Commencement Date, failing which, the Province will be entitled to make a Deduction of \$5,000 for each week or part thereof after the date falling 9 months before the Target Service Commencement Date until Project Co has delivered to the Province a revised draft of the Commissioning Plan;

- (k) the Province will, within 15 Business Days after receipt of the revised draft, advise Project Co whether the Province accepts the Commissioning Plan, and if the Province does not accept it the Province will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (l) if the Province 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 Province's reasons for non-acceptance;
- (m) if the Province 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 Province is entitled to make pursuant to Section 11.3(h) or Section 11.3(j) [Commissioning Plan] 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 11.3 [Commissioning] of this Schedule will not be counted for the purposes of Sections 11.1 [Province's Step-in Rights] or 12.1(g) [Project Co Events of Default] of this Agreement or Sections 5.8 [Increased Monitoring] or 5.9 [Replacement of Non-Performing Service Provider or Sub-Contractor] of Schedule 4 [Services Protocols and Specifications].

12. COMPLETION

12.1 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 Province's Design and Construction Representative with respect to an application for a Certificate of Service Commencement, prepare a complete list of Defects and deficiencies that are apparent upon inspection of the Facility (the "**Service Commencement Deficiencies**") and deliver to Project Co and the Province's Design and Construction Representative the list of Service Commencement Deficiencies.

Subject to the right of Project Co to refer matters to the Dispute Resolution Procedure as set out below, the list of Service Commencement Deficiencies will include all items required by the Province to be included on such list.

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

12.2 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 Province, and prepare the lists of 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 Province'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 and deficiencies 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.

12.3 Application for Certificate of Service Commencement

If Project Co believes it has achieved the requirements for Service Commencement and complied with Section 12.2 [Advance Notice of Application for Service Commencement] of this Schedule then Project Co may apply to the Independent Certifier (with a copy to the Province'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 Province'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, with respect to an application for a Certificate of Service Commencement:

- (a) if Service Commencement has been achieved, issue a certificate indicating that Service Commencement has been achieved (a "**Certificate of Service Commencement**"), together with a list of Service Commencement Deficiencies (if any); or
- (b) if Service Commencement has not been achieved, provide Project Co and the Province'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.

12.4 Correction of Deficiencies

Upon issuance of the Certificate of Service Commencement, Project Co will proceed expeditiously to correct each Service Commencement 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 Service Commencement Deficiency and that is agreed by the Province, acting reasonably (each Service Commencement Deficiency having its own “**Deficiency Deadline**”). Each Service Commencement Deficiency which has not been fully corrected by its Deficiency Deadline will be deemed (without the requirement for any further action by the Province) 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 12 [Completion] limits Project Co’s responsibilities for correction of Defects that are identified after the preparation of the list of Service Commencement Deficiencies.

Appendix 2A

INDEPENDENT CERTIFIER AGREEMENT

TABLE OF CONTENTS

1. DEFINITIONS..... 2

1.1 Definitions 2

2. INTERPRETATION 3

2.1 Interpretation..... 3

2.2 Obligations and Exercise of Rights by the PA Parties 3

3. ROLE OF THE INDEPENDENT CERTIFIER 4

3.1 Engagement 4

3.2 Acknowledgement by Independent Certifier..... 4

3.3 Standard of Care 4

3.4 Duty of Independent Judgment 4

3.5 Authority to Act 5

3.6 Knowledge of the PA Parties' Requirements 5

3.7 Co-ordination by Independent Certifier 5

3.8 Conflict of Interest..... 6

3.9 Independent Certifier Personnel..... 6

4. ROLE OF THE PA PARTIES..... 6

4.1 Assistance 6

4.2 Instructions in Writing 6

4.3 Information and Services..... 6

4.4 Additional Information 7

4.5 Right to Enter and Inspect..... 7

4.6 PA Parties Not Relieved..... 7

4.7 PA Parties not Liable 7

5. SUSPENSION 7

5.1 Notice..... 7

5.2 Costs of Suspension..... 8

5.3 Recommencement 8

6. INSURANCE AND LIABILITY 8

6.1 Independent Certifier's Professional Indemnity Insurance..... 8

6.2 Workers' Compensation Insurance 9

7. PAYMENT FOR SERVICES 9

7.1 Fee..... 9

7.2 Payment of Fee 9

8. FUNCTIONS VARIATIONS 9

8.1 Notice of Functions Variation..... 9

8.2 No Adjustment 10

8.3 Functions Variation Procedure 10

8.4 Cost of Functions Variation 10

9. TERM AND TERMINATION..... 11

9.1 Term 11

9.2 Notice of Breach 11

9.3 Termination for Breach 11

9.4 Termination for Financial Difficulty 11

9.5 Termination for Convenience 11

9.6 Independent Certifier’s Rights upon Termination for Convenience..... 11

9.7 Procedure upon Termination 12

9.8 Effect of Termination 12

9.9 Survival..... 12

10. INDEMNITY 12

10.1 Indemnity 12

11. GENERAL 13

11.1 Entire Agreement..... 13

11.2 Negation of Employment 13

11.3 Waiver..... 13

11.4 Notices..... 13

11.5 Transfer and Assignment 14

11.6 Governing Laws and Attornment..... 15

11.7 Confidentiality 15

11.8 Project Material..... 15

11.9 Personal Information 16

11.10 Security Sensitive Work..... 16

11.11 Time of the Essence 18

11.12 Amendment 18

11.13 Severability 18

11.14 Enurement 18

11.15 Counterparts..... 18

SCHEDULE 1 FUNCTIONS

SCHEDULE 2 FEE

SCHEDULE 3 INDEPENDENT CERTIFIER PERSONNEL

APPENDIX 2A

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the 18th day of March, 2014

AMONG:

Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Technology, Innovation and Citizens' Services

(the "**Province**")

AND:

Plenary Justice Okanagan Limited Partnership, by its general partner, Plenary Justice Okanagan GP Inc.

(**"Project Co"**)

AND:



(the "**Independent Certifier**")

WHEREAS:

- A. the Province and Project Co have entered into the Project Agreement;
- B. the Province and Project Co wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement; and
- C. the Province, Project Co and the Independent Certifier wish to enter into this Agreement (the "**IC Agreement**") in order to record the terms by which the Independent Certifier will perform such services.

NOW THEREFORE in consideration of the mutual promises and agreements of the Province, Project Co and the Independent Certifier herein expressed and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Province, Project Co and the Independent Certifier covenant and agree as follows:

1. DEFINITIONS

1.1 Definitions

In this IC Agreement including the recitals and Schedules, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this IC Agreement) will have meanings given to them in the Project Agreement and the following terms will have the following meanings:

- (a) **"Fee"** means the fees payable by the PA Parties to the Independent Certifier for the Functions, as such fees are specified and made payable in Schedule 2 [Fee];
- (b) **"Functions"** means:
 - (1) all of the functions and obligations conferred on the Independent Certifier under the Project Agreement;
 - (2) all of the functions and obligations conferred on the Independent Certifier under this IC Agreement, including the functions described in Schedule 1 [Functions] to this IC Agreement; and
 - (3) all other things or tasks which the Independent Certifier is required to do to comply with its obligations under this IC Agreement;
- (c) **"Functions Variation"** means any change to the Functions;
- (d) **"Intellectual Property"** means any or all of the following and all rights, arising out of or associated therewith:
 - (1) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
 - (2) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, confidential information, trade or business names, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
 - (3) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
 - (4) industrial designs, integrated circuit topography rights and any registrations and applications therefor throughout the world;
 - (5) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
 - (6) data bases and data collections and all rights therein throughout the world;
 - (7) moral and economic rights of authors and inventors, however denominated, throughout the world; and

- (8) any similar or equivalent rights to any of the foregoing anywhere in the world;
- (e) **"PA Parties"** means, collectively, the Province and Project Co;
- (f) **"Project Agreement"** means that certain agreement entitled "Project Agreement" and made between the Province and Project Co as of the 18th day of March, 2014 with respect to the design, construction, financing, maintenance and life cycle rehabilitation for the Facility, as the same may be amended, supplemented or replaced from time to time; and
- (g) **"Project Material"** means all material:
 - (1) provided to the Independent Certifier or created by or required to be created by any PA Party; and
 - (2) provided by or created by or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Functions,
 including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).

2. INTERPRETATION

2.1 Interpretation

The division of this IC Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this IC Agreement and will not be used to affect the construction or interpretation of this IC Agreement. The word "including" will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this IC Agreement to "**Section**" and "**Schedule**" is to a Section of, and a Schedule to, this IC Agreement;
- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Vancouver, British Columbia;
- (e) all references to amounts of money mean lawful currency of Canada; and
- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied.

2.2 Obligations and Exercise of Rights by the PA Parties

- (a) The obligations of the PA Parties under this IC Agreement will be several.

- (b) Except as specifically provided for in this IC Agreement, the rights of the PA Parties under this IC Agreement will be jointly exercised by each of the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Functions in accordance with this IC Agreement. The Independent Certifier will perform the Functions in accordance with this IC Agreement.

3.2 Acknowledgement by Independent Certifier

The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

The Independent Certifier will exercise the standard and skill, care and diligence in the performance of the Functions that would be expected of an expert professional experienced in providing services in the nature of the Functions for projects similar to the Project.

3.4 Duty of Independent Judgment

In exercising the Functions, the Independent Certifier will act:

- (a) impartially, honestly and independently;
- (b) reasonably and professionally; and
- (c) in a timely manner:
 - (1) in accordance with the times prescribed in this IC Agreement or the Project Agreement, as applicable; or
 - (2) where no times are prescribed, within five Business Days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement.

Although the Independent Certifier should take account of any opinions or representations made by the PA Parties, the Independent Certifier will not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.

The Independent Certifier acknowledges that, as set out under the Project Agreement, the Independent Certifier's certifications will be final and binding on the PA Parties in respect of the issuance of the Certificate of Service Commencement, and that the Independent Certifier will use its best skill and judgment in providing the Functions and making any certifications. A PA Party may dispute any other decision made by the Independent Certifier, including any list of Service Commencement Deficiencies or list of incomplete Design and Construction that must be completed prior to Service Commencement.

3.5 Authority to Act

The Independent Certifier:

- (a) is an independent consultant and is not, and will not purport to be, a partner, joint venturer or agent of any PA Party;
- (b) other than as may be expressly set out in the Project Agreement, has no authority to give any directions to a PA Party or its officers, employees, contractors, consultants or agents; and
- (c) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a PA Party from any of its obligations under the Project Agreement unless jointly agreed in writing by the PA Parties.

3.6 Knowledge of the PA Parties' Requirements

The Independent Certifier warrants that:

- (a) it has and will be deemed to have informed itself fully of the requirements of the Project Agreement;
- (b) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Functions;
- (c) without limiting Sections 3.6(a) or 3.6(b), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Function which the Independent Certifier carries out under the Project Agreement and this IC Agreement;
- (d) it has and will be deemed to have informed itself fully of the nature of the work necessary for the performance of the Functions and the means of access to and facilities at the Facility and Site including restrictions on any such access or protocols that are required; and
- (e) it has satisfied itself as to the correctness and sufficiency of its proposal for the Functions and that the Fee covers the cost of complying with all of the obligations under this IC Agreement and of all matters and things necessary for the due and proper performance and completion of the Functions.

3.7 Co-ordination by Independent Certifier

The Independent Certifier will:

- (a) fully co-operate with the PA Parties;
- (b) carefully co-ordinate the Functions with the work and services performed by the PA Parties;
- (c) without limiting its obligations under Sections 3.4 [Duty of Independent Judgment] and 3.7(b), perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties;
- (d) provide copies to all PA Parties of all reports, communications, certificates and other documentation that it provides to any PA Party; and

- (e) provide copies to all PA Parties of all instructions or directions received from any PA Party.

3.8 Conflict of Interest

The Independent Certifier warrants that:

- (a) at the date of signing this IC Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this IC Agreement; and
- (b) if, during the term of this IC Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by each of the PA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) Subject to Section 3.9(b), the Independent Certifier will use the partners, directors, officers, employees, servants or agents described in Schedule 3 [Independent Certifier Personnel] hereto in connection with the performance of the Functions and such persons' services will, subject to Section 3.9(b), be available for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Functions. Such persons will have full authority to act on behalf of the Independent Certifier for all purposes in connection with this IC Agreement.
- (b) None of the persons listed in Schedule 3 [Independent Certifier Personnel] will be removed or replaced unless he/she ceases to work as a partner in or director, officer, employee, servant or agent of the Independent Certifier or he/she is unable to work because of death or illness. The Independent Certifier will notify the PA Parties of any such circumstances and will be responsible for finding a replacement with equivalent qualifications, experience and expertise and obtaining the PA Parties prior written approval to such replacement.

4. ROLE OF THE PA PARTIES

4.1 Assistance

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

4.2 Instructions in Writing

All instructions to the Independent Certifier by the PA Parties will be given in writing.

4.3 Information and Services

The PA Parties will each make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Functions, including such information, documents and particulars required in order for the Independent Certifier to determine whether the criteria for Service Commencement have been achieved, and will provide copies of all such information, documents and particulars to the other PA Party.

4.4 Additional Information

If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Functions and have not been provided by Project Co or the Province, as the case may be, then:

- (a) the Independent Certifier will give notice in writing to Project Co's Design and Construction Representative or the Province's Design and Construction Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
- (b) Project Co or the Province, as the case may be, will arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

Upon giving reasonable notice to Project Co's Design and Construction Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, Facility and work in progress at any reasonable time in connection with the exercise or proposed exercise of rights under this IC Agreement, subject to:

- (a) observance of the reasonable rules of Project Co as to safety and security for the Site, Facility and work in progress;
- (b) not causing unreasonable delay to the carrying out of the Construction by reason of its presence at the Site or Facility; and
- (c) not causing any damage to the Site, Facility or work in progress.

4.6 PA Parties Not Relieved

Neither PA Party will be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this IC Agreement or otherwise, provided that any such act or omission will not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. SUSPENSION

5.1 Notice

The Functions (or any part) may be suspended at any time by the PA Parties:

- (a) if the Independent Certifier fails to comply with its obligations under this IC Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or

- (b) in any other case, by the PA Parties giving seven days joint notice in writing to the Independent Certifier.

5.2 Costs of Suspension

The Independent Certifier will:

- (a) subject to the Independent Certifier complying with Section 8 [Functions Variations], be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 5.1(b) [Notice] valued as a Functions Variation under Section 8 [Functions Variations]; and
- (b) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 5.1(a) [Notice].

5.3 Recommencement

The Independent Certifier will immediately recommence the carrying out of the Functions (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

6. INSURANCE AND LIABILITY

6.1 Independent Certifier's Professional Indemnity Insurance

- (a) The Independent Certifier must, without limiting the Independent Certifier's obligations or liabilities and at the Independent Certifier's own expense, purchase and maintain throughout the term insurances with insurers licensed in Canada as follows:
 - (1) Professional Errors and Omissions Liability:
 - (i) in the amount of _____ per claim and in the aggregate, with a deductible of not more than _____ per claim and from an insurer and on terms satisfactory to each of the PA Parties;
 - (ii) with a term and extended reporting period from the date of this IC Agreement until the expiration of _____ from the cessation of the Functions; and
 - (iii) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations under this agreement or any breach of a duty owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this IC Agreement, or the provision of the Functions; and
 - (2) Commercial General Liability insurance in the amount of _____ per occurrence and in the aggregate, with _____ deductible for personal injury or bodily injury, and a deductible of not more than _____ per occurrence for property damage. The policy be provided on terms satisfactory to each of the PA Parties, will contain a cross liability clause and will name the PA Parties as additional insureds;
- (b) The insurance policies described in Section 6.1(a) will be endorsed to provide the PA Parties with 30 days advance written notice of cancellation or material change; and

- (c) The Independent Certifier will provide evidence of all required insurance in the form of a completed Certificate of Insurance to each of the PA Parties within 10 days of commencement of the Functions and within 10 days upon renewal of the required policies. If requested by any of the PA Parties at any time, the Independent Certifier must provide them, certified copies of the required insurance policies:

6.2 Workers' Compensation Insurance

The Independent Certifier will, at its own cost and at all times during the term of this IC Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute, regulation or Laws in relation to its partners, directors, officers, employees, servants or agents engaged in the Functions.

7. PAYMENT FOR SERVICES

7.1 Fee

- (a) In consideration of the Independent Certifier performing the Functions in accordance with this IC Agreement, the PA Parties will pay the Independent Certifier the Fee.
- (b) The Fee includes all taxes (except for Goods and Services Tax), disbursements and expenses (including accommodation, car rental, equipment and travel expenses), overheads and profit to perform the Functions.

7.2 Payment of Fee

- (a) The PA Parties will each pay half the Fee to the Independent Certifier in accordance with the payment schedule specified in Schedule 2 [Fee] to this IC Agreement. The obligation on Project Co and the Province to each pay half of the Fee to the Independent Certifier is not subject to joint and several liability and neither the Province nor Project Co will have any liability whatsoever for the non payment by the other of any fees or costs payable by such other party under this IC Agreement.
- (b) Project Co acknowledges and agrees that if any amount due and payable by Project Co to the Independent Certifier is outstanding, the Independent Certifier will not have any obligation to Project Co to make any certification under the Project Agreement.

8. FUNCTIONS VARIATIONS

8.1 Notice of Functions Variation

- (a) If the Independent Certifier believes, other than a "Functions Variation Order" under Section 8.3 [Functions Variation Procedure], that any direction by the PA Parties constitutes or involves a Functions Variation it will:
 - (1) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers that the direction constitutes or involves a Functions Variation; and
 - (2) within 21 days after giving the notice under Section 8.1(a)(1), submit a written claim to each of the Province's Design and Construction Representative and Project Co's Design and Construction Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.

- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Functions Variation, the Independent Certifier will continue to perform the Functions in accordance with this IC Agreement and all directions, including any direction in respect of which notice has been given under this Section.

8.2 No Adjustment

If the Independent Certifier fails to comply with Section 8.1 [Notice of Functions Variation], the Fee will not be adjusted as a result of the relevant direction.

8.3 Functions Variation Procedure

- (a) The Province's and Project Co's Design and Construction Representatives may jointly issue a document titled "Functions Variation Price Request" to the Independent Certifier which will set out details of a proposed Functions Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a "Functions Variation Price Request", the Independent Certifier will provide each of the Province's and Project Co's Design and Construction Representatives with a written notice in which the Independent Certifier sets out the effect which the proposed Functions Variation will have on the Fee.
- (c) Each of the Province's and Project Co's Design and Construction Representatives may then jointly direct the Independent Certifier to carry out a Functions Variation by written document titled "Functions Variation Order" which will state either that:
 - (1) the Fee is adjusted as set out in the Independent Certifier's notice; or
 - (2) the adjustment (if any) to the Fee will be determined under Section 8.4 [Cost of Functions Variation].

8.4 Cost of Functions Variation

- (a) Subject to Section 8.2 [No Adjustment], the Fee will be adjusted for all Functions Variations or suspensions under Section 5.1(b) [Notice] carried out by the Independent Certifier by:
 - (1) the amount (if any) stated in the "Functions Variation Order" in accordance with Section 8.3(c) [Functions Variation Procedure];
 - (2) if Section 8.4(a)(1) is not applicable, an amount determined pursuant to the fee schedule for Functions Variations in Schedule 2 [Fee]; or
 - (3) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Province's and Project Co's Design and Construction Representatives jointly, acting reasonably.
- (b) Any reductions in the Fee will be calculated on the same basis as any increases.

9. TERM AND TERMINATION

9.1 Term

Subject to earlier termination, this IC Agreement will commence on the Effective Date and continue in full force until:

- (a) 60 days after the Service Commencement Date; or
- (b) such later date as may be mutually agreed between the PA Parties and the Independent Certifier.

9.2 Notice of Breach

If the Independent Certifier commits a breach of this IC Agreement, the PA Parties may give written notice to the Independent Certifier:

- (a) specifying the breach; and
- (b) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

9.3 Termination for Breach

If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 9.2 [Notice of Breach], the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this IC Agreement.

9.4 Termination for Financial Difficulty

The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this IC Agreement immediately if:

- (a) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in insolvency or the control of the Independent Certifier passing to another body or corporation; or
- (b) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

9.5 Termination for Convenience

Notwithstanding anything to the contrary in this IC Agreement, the PA Parties may at any time terminate this IC Agreement upon 30 days written notice to the Independent Certifier.

9.6 Independent Certifier's Rights upon Termination for Convenience

Upon a termination under Section 9.5 [Termination for Convenience], the Independent Certifier will:

- (a) be entitled to be reimbursed by the PA Parties for the value of the Functions performed by it to the date of termination; and

- (b) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (1) the lost opportunity to earn a profit in respect of the Functions not performed at the date of termination; and
 - (2) any lost opportunity to recover overheads from the turnover which would have been generated under this IC Agreement but for it being terminated.

9.7 Procedure upon Termination

Upon completion of the Independent Certifier's engagement under this IC Agreement or earlier termination of this IC Agreement (whether under Sections 9.3 [Termination for Breach], 9.4 [Termination for Financial Difficulty] or 9.5 [Termination for Convenience] or otherwise) the Independent Certifier will:

- (a) co-operate with the PA Parties;
- (b) hand to the PA Parties all Project Material and all other information concerning the Project held or prepared by the Independent Certifier; and
- (c) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Functions.

9.8 Effect of Termination

Except as otherwise expressly provided in this IC Agreement, termination of this IC Agreement will be without prejudice to any accrued rights and obligations under this IC Agreement as at the date of termination (including the right of Project Co and the Province to recover damages from the Independent Certifier).

9.9 Survival

Termination of this IC Agreement will not affect the continuing rights and obligations of Project Co or the Province and the Independent Certifier under Sections 6 [Insurance and Liability], 7 [Payment for Services], 9.6 [Independent Certifier's Rights upon Termination for Convenience], 9.7 [Procedure upon Termination], 9.8 [Effect of Termination], 10 [Indemnity], 11.7 [Confidentiality], 11.8 [Project Material] and 11.9 [Personal Information] and this Section or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

10. INDEMNITY

10.1 Indemnity

The Independent Certifier will indemnify and save harmless the PA Parties, and each of them, and their respective employees, agents, officers and directors from and against any and all losses incurred or suffered by any of them by reason of, resulting from, in connection with, or arising out of:

- (a) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Certifier set out in or arising under this IC Agreement or the Project Agreement; or
- (b) any act or omission of the Independent Certifier in connection with the subject matters of this IC Agreement.

11. GENERAL

11.1 Entire Agreement

This IC Agreement and the Project Agreement constitute the entire agreement between the PA Parties and the Independent Certifier and supersede all communications, arrangements and agreements, either oral, written, made or entered into prior to the date of this IC Agreement between the PA Parties and the Independent Certifier with respect to the subject matter of this IC Agreement.

11.2 Negation of Employment

- (a) The Independent Certifier, its partners, directors, officers, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Functions will not by virtue of this IC Agreement or the performance of the Functions become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such partners, directors, officers, employees, servants and agents and other persons who are engaged by the Independent Certifier.


11.3 Waiver


Failure by any PA Party or the Independent Certifier to enforce a provision of this IC Agreement will not be construed as a waiver by that PA Party or the Independent Certifier of any right in respect of that provision, or any other provisions of this IC Agreement.


11.4 Notices


Any notice or communication required or permitted to be given under this IC Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set out below:

if to the Province:



 Attention: 

 Fax number: 

 E-mail: 

if to Project Co:

Plenary Justice Okanagan Limited Partnership
 400 Burrard Street, Suite 2000
 Commerce Place
 Vancouver, BC V6C 3A6
 Attention:
 Fax number:

E-mail:

if to the Independent Certifier:



Attention:



Fax number:



E-mail:



or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;
- (b) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon the sender receiving confirmation of the transmission, and if not transmitted during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and
- (c) if sent by electronic transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day, provided that:
 - (1) the receiving party has, by electronic transmission, by hand delivery or by facsimile transmission, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also sent a copy of such notice to the receiving party by hand delivery or facsimile transmission.

11.5 Transfer and Assignment

- (a) The Independent Certifier:

- (1) will not assign, transfer, mortgage, charge or encumber any right or obligation under this IC Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
 - (2) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this IC Agreement.
- (b) For the purposes of this Section, an assignment will be deemed to have occurred where there is a Change In Control of the Independent Certifier after the date of this IC Agreement.
 - (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this IC Agreement in accordance with the terms of the Project Agreement.

11.6 Governing Laws and Attornment

This IC Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein without regard to conflicts of law principles that would apply a different body of law, and the Province, Project Co and the Independent Certifier hereby irrevocably submit and attorn to the exclusive jurisdiction of the courts of that Province and all courts competent to hear appeals therefrom with respect to any action, suit, proceeding or dispute in connection with this IC Agreement.

11.7 Confidentiality

- (a) The Independent Certifier will ensure that:
 - (1) neither it nor any of its partners, directors, officers, employees, servants and agents disclose, or otherwise make public, any Project Material or any other information or material acquired in connection with or during the performance of the Functions without prior written approval of the PA Parties; and
 - (2) no Project Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this IC Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its partners, directors, officers, employees, servants and agents engaged in the performance of the Functions to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier will promptly arrange for such agreements to be executed and delivered.

11.8 Project Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Project Material provided to the Independent Certifier or created or required to be created by any PA Party.
- (b) All title and ownership, including all Intellectual Property, in and to the Project Material created or required to be created by the Independent Certifier as part of, or for the

purposes of performing the Functions, is hereby assigned jointly to the Province and Project Co on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Project Material, it will be assigned to the Province and Project Co on creation. In addition, to the extent that copyright may subsist in such Project Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier will ensure that any partners, directors, officers, employees, servants and agents of Independent Certifier will have waived all such moral rights.

- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Project Material referred to in Section 11.8(b) [Project Material].

11.9 Personal Information

The Independent Certifier will, and will require its partners, directors, officers, employees, servants and agents to, only collect, hold, process, use, store and disclose Personal Information:

- (a) with the prior written consent of the PA Parties; and
- (b) only to the extent necessary to perform the Independent Certifier's obligations under this IC Agreement and in circumstances where the PA Parties themselves, could collect, hold, process, use, store and disclose Personal Information if the PA Parties themselves performed the Functions,

in accordance with applicable Laws, including the *Freedom of Information and Protection of Privacy Act*, (British Columbia), as if the provisions of such Laws applied directly to the Independent Certifier and its partners, directors, officers, employees, servants and agents.

The Independent Certifier will allow the PA Parties on reasonable notice to inspect the measures of the Independent Certifier and its partners, directors, officers, employees, servants and agents to protect Personal Information.

11.10 Security Sensitive Work

The Independent Certifier will ensure that each of its partners, directors, officers, employees, servants and agents engaged in the performance of:

- (a) Level 1 Security Sensitive Work has, not more than 30 days prior to first performing any Level 1 Security Sensitive Work, successfully completed a Level 1 Background Check; and
- (b) Level 2 Security Sensitive Work has, not more than 30 days prior to first performing any Level 2 Security Sensitive Work, successfully completed a Level 2 Background Check

For the purpose of this Section 11.10 [Security Sensitive Work], successful completion of a Background Check, means that in respect of an individual, the relevant searches return no positive hits within any of the applicable databases or return one or more positive hits which the PA Parties, in their discretion, determine do not pose a material risk to the Project, the Facility or to the safety and well-being of the Inmates or any other Province Person.

VAN01: 3149221: v7

The Independent Certifier will not permit any of its partners, directors, officers, employees, servants or agents to perform any Security Sensitive Work unless such person has successfully completed the applicable Background Check.

Throughout the Term, the Independent Certifier shall ensure that a Background Check, or the applicable component(s) thereof, is repeated for each of its partners, directors, officers, employees, servants and agents engaged in the performance of Security Sensitive Work: (i) if any information is received by the Independent Certifier that suggests that the risk in respect of such person has materially changed; and (ii) at the following intervals:

- (c) relevant databases maintained by the BC Corrections Branch, including the CORNET and JUSTIN databases, once each year;
- (d) CPIC criminal record database search, once every 3 years; and
- (e) criminal record check in accordance with the *Criminal Records Review Act* (British Columbia), once every 5 years.

Where required pursuant to this Section 11.10 [Security Sensitive Work], the Province will administer and perform the following database searches at no cost to the Independent Certifier:

- (f) all Level 1 Background Checks; and
- (g) all searches of the relevant databases maintained by the Province of British Columbia, which are required as part of a Level 2 Background Check.

In order to obtain a Level 1 Background Check or a search of the relevant databases maintained by the Province of British Columbia in connection with a Level 2 Background Check, the Independent Certifier shall:

- (h) provide the following information to the Contact Person at least 10 Business Days before the date on which the applicable Background Check is required:
 - (i) the name(s) of the individual(s) to be screened;
 - (ii) all consents required in relation to the performance of the applicable Background Checks, in accordance with the applicable Province Policies and Procedures and Section 11.9 [Personal Information];
 - (iii) all consents required for the disclosure of the results of such Background Checks to the Independent Certifier and the PA Parties;
 - (iv) the Province's form of "Criminal History Consent Form for Security Clearance of Contractors and Volunteers at Provincial Correctional Centers", completed and signed by each individual to be screened; and
 - (v) a legible colour copy of a piece of government issued photo identification for each individual to be screened; and

- (i) ensure an orderly flow of Background Check requests, taking into account both the resources available to the Province to conduct such checks and the requirements of the Project Schedule.

The Independent Certifier shall be solely responsible to arrange and pay for any CPIC criminal record database searches and any criminal record checks in accordance with the *Criminal Records Review Act* (British Columbia), required for its partners, directors, officers, employees, servants and agents engaged in the performance of Level 2 Security Sensitive Work.

11.11 Time of the Essence

Time will be of the essence of this IC Agreement and of the transactions contemplated by this IC Agreement.

11.12 Amendment

No change or modification of this IC Agreement will be valid unless it is in writing and signed by each Party to this IC Agreement.

11.13 Severability

If any provision of this IC Agreement will be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability or legality of the remaining provisions of this IC Agreement.

11.14 Enurement

Subject to the restrictions on transfer contained in this IC Agreement, this IC Agreement will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

11.15 Counterparts

This IC Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

IN WITNESS WHEREOF the Province, Project Co and the Independent Certifier have executed this IC Agreement.

SIGNED on behalf of **HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**
by a duly authorized representative of
the **MINISTER OF TECHNOLOGY INNOVATION
AND CITIZENS SERVICES** in the
presence of:

(Witness)

SARF AHMED
Associate Deputy Minister, Ministry of Technology, Innovation
and Citizens' Services

**PLENARY JUSTICE OKANAGAN LIMITED PARTNERSHIP,
by its general partner, PLENARY JUSTICE OKANAGAN
GP INC.**

By: _____

Name:

Title:

By: _____

Name:

Title:

[INDEPENDENT CERTIFIER]:

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE 1 FUNCTIONS

The Independent Certifier will, subject to the provisions of the Project Agreement, provide the services as set out below. In the event of a conflict between any provision of this IC Agreement, including this Schedule 1 [Functions], and a provision of the Project Agreement, the Project Agreement will prevail.

- (a) The Independent Certifier will:
- (i) consult with the Design-Builder and others involved in the Design; and
 - (ii) conduct inspections of the Construction,
- as the Independent Certifier determines is required to be satisfied that the Design and Construction are proceeding in accordance with the requirements of the Project Agreement, and will no later than the 5th Business Day of each month prepare and deliver to the Province and Project Co a monthly written report containing a description of:
- (iii) the Design and Construction completed in the previous calendar month;
 - (iv) the progress of the Design and Construction relative to the Updated Project Schedule, with an explanation and analysis of any variances; and
 - (v) any elements of the Facility that for any reason vary from the requirements of the Project Agreement, with particular reference to Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications] of the Project Agreement.
- (b) The Independent Certifier will, promptly after the end of each month in the Construction Period and promptly upon request by Project Co in relation to a payment under Section 7 [Construction Period Payment] of Schedule 8 [Payments], prepare and deliver to the Province and Project Co a certificate certifying the Cost to Date.
- (c) The Independent Certifier will, in cooperation with Project Co's Design and Construction Representative and the Province's Design and Construction Representative with respect to an application for a Certificate of Service Commencement, prepare a complete list of Service Commencement Deficiencies and deliver to Project Co and the Province's Design and Construction Representative the list of Service Commencement Deficiencies.
- (d) No later than 5 Business Days after application by Project Co for a Certificate of Service Commencement, the Independent Certifier will, in cooperation with Project Co's Design and Construction Representative and the Province'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:
- (i) if Service Commencement has been achieved, issue a Certificate of Service Commencement, together with a list of Deficiencies (if any); or

- (ii) if Service Commencement has not been achieved, provide Project Co and the Province's Design and Construction Representative with a list of all incomplete Design and Construction that must be completed prior to Service Commencement.

**SCHEDULE 2
FEE**

[This Schedule should also include a fee schedule for Functions Variations.]

**SCHEDULE 3
INDEPENDENT CERTIFIER PERSONNEL**

Appendix 2B

REVIEW PROCEDURE

TABLE OF CONTENTS

1. SUBMITTALS	1
2. SUBMITTAL SCHEDULE	1
3. GENERAL REQUIREMENTS FOR SUBMITTALS	2
4. REVIEW PROCEDURE	4
5. REVIEWED DRAWINGS AND SPECIFICATIONS	6
6. DISPUTES.....	7
7. CHANGES.....	7
8. EFFECT OF REVIEW	7
9. SUBMITTAL MEETINGS AND EXPLANATIONS.....	7
10. REVISIONS	8

APPENDIX 2B

REVIEW PROCEDURE

1. SUBMITTALS

- (a) Except as expressly set out otherwise in this Agreement, the provisions of this Appendix 2B [Review Procedure] will apply to any and all drawings, specifications or other documentation ("**Submittals**") required or specified by this Agreement, including Section 4.2 [Design Process] of Schedule 2 [Design and Construction Protocols], in respect of the Design and the Construction to be submitted to, reviewed, accepted or otherwise processed by the Province prior to Service Commencement or after Service Commencement in respect of the completion of Service Commencement Deficiencies, including any and all subsequent revisions, amendments and changes thereto.

2. SUBMITTAL SCHEDULE

- (a) The initial schedule for Submittals (the "**Submittal Schedule**") is attached as Attachment 1 [Submittal Schedule] to this Appendix. The Submittal Schedule may be amended by agreement of the parties in accordance with the terms of this Section 2 [Submittal Schedule].
- (b) Any amendment to the Submittal Schedule will provide for a progressive and orderly flow of Submittals from Project Co to the Province as appropriate to allow sufficient time for review of each Submittal by the Province, taking into account both the resources necessary to be available to the Province to conduct such review (as anticipated by or inferred from the Submittal Schedule attached as Attachment 1 [Submittal Schedule] to this Appendix 2B [Review Procedure] to this Schedule) and any administration group consultations in accordance with the Administration Consultation Protocol.
- (c) Unless a longer period is required by this Agreement or is otherwise reasonably required by the Province, the Province will have 15 Business Days for review of a Submittal from the date the Province received the Submittal. If the Submittal Schedule is inconsistent with the foregoing review period then it will be deemed to be amended to be consistent. If the Province receives a Submittal after 12pm (Pacific time) on a Business Day, the 15 Business Day review period will commence on the next Business Day.
- (d) Project Co will, in scheduling Submittals and consultations with the Administration Consultation Group, and in the performance of the Design and the Construction, allow adequate time prior to performing the Design and the Construction that is the subject of the Submittals, for review of the Submittals by the Province and the Administration Consultation Group, as applicable, and for Project Co to make changes to the Submittals, the Design and the Construction as may be required to account for any comments received from the Province and the Administration Consultation Group.

- (e) If the Submittal Schedule indicates that a large number of Submittals will be made at one time, the Province, acting reasonably, may request a longer period for review or a staggering of the Submittals, and Project Co, acting reasonably, will revise the Submittal Schedule accordingly, taking into account both the availability of resources required by the Province to conduct such review and the availability of the Administration Consultation Group and whether delay in the review of the subject matter of the Submittal will have a material impact on Project Co's ability to progress future anticipated Submittals and the Design or Construction in accordance with the Project Schedule.
- (f) Project Co will submit the then current Submittal Schedule to the Province on a monthly basis until the Service Commencement Date. All amended Submittal Schedules will be required to meet all the requirements of this Section 2 [Submittal Schedule] of this Appendix.
- (g) Project Co will submit all Submittals to the Province in accordance with the then current Submittal Schedule.
- (h) Project Co will bear the risk of delays and additional costs caused as a result of the late submission of Submittals to the Province, by Submittals which are rejected or required to be corrected and re-submitted in accordance with the terms of this Appendix 2B [Review Procedure], or by changes in the Design and Construction required as a result of comments made pursuant to this Appendix 2B [Review Procedure].

3. GENERAL REQUIREMENTS FOR SUBMITTALS

- (a) Unless otherwise specified by the Province, Project Co will:
 - (1) deliver 5 printed copies of each Submittal to the Province, together with an electronic copy in a format acceptable to the Province; and
 - (2) post an electronic copy of each Submittal (in a format acceptable to the Province) on an internet based system that is established by Project Co for the Project and accessible to Province staff.
- (b) All Submittals will be in English.
- (c) All Submittals required by this Agreement, by applicable Law or Good Industry Practice to be signed or sealed by persons with professional designations (including where applicable by registered professional architects or engineers) will be so signed and, where applicable, sealed.
- (d) All Submittals required by this Agreement shall be reviewed and the work of all disciplines shall be coordinated by Project Co. Each Submittal shall include written confirmation of such review and coordination by Project Co's Design and Construction Representative.

- (e) All Submittals will refer to the relevant provisions of the Design and Construction Specifications, the Services Protocols and Specifications (if applicable) and to any matter that has previously been subject to review. All Submittals (or covering documentation delivered with the Submittals) will include a statement confirming that the Submittals comply with, or identifying any elements of the Facility that for any reason vary from, the requirements of the Project Agreement, with particular reference to Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications].
- (f) All Submittals will be clearly identified as a Submittal and will be delivered with appropriate covering documentation, which will include:
- (1) a list of all attached Submittals;
 - (2) a description of:
 - (A) the purpose of the Submittal(s) (including whether the Submittal is being submitted for review by the Administration Consultation Group under Appendix 2C [Administration Consultation Protocol], for review under Section 4 [Review Procedure] of this Appendix or for other purposes);
 - (B) the component of the design that is subject to review by the Province or the Administration Consultation Group; and
 - (C) Project Co's expectations for the Province's review of the Submittal and Project Co's proposed course of action relating to the Submittal and the Design and the Construction that are the subject of the Submittal;
 - (3) if the Submittal is submitted as part of the design phases described in Section 4.2(c) [Design Process] of Schedule 2 [Design and Construction Protocols], a report for the Submittal including the information described in Section 4.2(d)(16) [Design Process] of Schedule 2 [Design and Construction Protocols] as applicable to that Submittal;
 - (4) for each Submittal:
 - (A) the document number(s) or drawing number(s);
 - (B) revision numbers (if applicable);
 - (C) document or drawing title(s);
 - (D) name of entity that prepared the Submittal;
 - (E) the Submittal history showing date and delivery information and/or log number of all previous submissions of that Submittal; and

- (F) identification of any previous Submittal superseded by the current Submittal.
- (g) Project Co will compile and maintain a register of the date, contents and status of the submission of all Submittals, including the date of receipt and content of all returned Submittals and comments thereon.

4. REVIEW PROCEDURE

- (a) The Province will review and respond to each Submittal in accordance with the applicable time periods set out in the Submittal Schedule (as may be amended from time to time in accordance with this Appendix).
- (b) Before commencing Construction of a particular component of the Project, Project Co will submit to the Province a Submittal:
 - (1) for which the Administration Consultation Protocol under Appendix 2C [Administration Consultation Protocol] has been concluded, and including an explanation of how the design reflects the concerns and requests of the Facility Administrators, or why such concerns are not reflected in the design; and
 - (2) describing that component, including all necessary design and other information as the Province may reasonably require, including any design reports and calculations, reasonably necessary for the Province to conduct an appropriate review to confirm that the design described in the Submittal appears to conform to the requirements of this Agreement (including the Design and Construction Specifications and the Proposal Extracts (Design and Construction)).
- (c) Each time before Project Co submits a Submittal or package of Submittals to the Province under Section 4(b) [Review Procedure] above, Project Co will meet with the Province and: (i) make a presentation to the Province regarding the content and purpose of the Submittal(s); (ii) carry out a page-by-page review of the Submittal(s) with the Province; and (iii) answer any questions the Province may have in advance of its review.
- (d) The Province will review Submittals submitted under Section 4(b) [Review Procedure] above and assign one of the following 4 comments:
 - (3) "REVIEWED";
 - (4) "CORRECT DEFICIENCIES";
 - (5) "REJECTED"; or
 - (6) "NOT REVIEWED".
- (e) The comment "REVIEWED" will be assigned to those Submittals that, in the opinion of the Province, acting reasonably, appear to conform to the requirements of this

Agreement, including the Design and Construction Specifications and the Proposal Extracts (Design and Construction).

- (f) The comment “CORRECT DEFICIENCIES” will be assigned to those Submittals that, in the opinion of the Province, acting reasonably, appear to generally conform to the requirements of this Agreement, but in which minor deficiencies have been found and identified by the Province’s review. Project Co will to the extent necessary correct these Submittals and provide a copy of such corrected Submittals to the Province within 15 Business Days. Project Co may proceed on the portions of such Submittals that have not received comments but Project Co will not proceed on the portions of such Submittals that have received the comment “CORRECT DEFICIENCIES” until Project Co obtains a comment that permits Project Co to proceed. Project Co will correct, revise and resubmit Submittals as often as may be required to obtain a comment that permits Project Co to proceed. If at any time it is discovered that Project Co has not corrected the deficiencies on Submittals that were correctly stamped "CORRECT DEFICIENCIES", then Project Co will be required to modify the Submittals and the relevant Design and the Construction as required to correct the deficiencies and Project Co may be required, at the Province’s discretion, acting reasonably, to resubmit relevant Submittals.
- (g) The comment “REJECTED” will be assigned to those Submittals that, in the opinion of the Province, acting reasonably, contain significant deficiencies or do not generally conform with the requirements of this Agreement. Project Co will correct and re-submit these Submittals within 15 Business Days after the comment has been provided to Project Co. The Province will then review such corrected Submittals and assign a comment to the corrected Submittal. Project Co will correct, revise and resubmit Submittals as often as may be required to obtain a comment that permits Project Co to proceed. Except with the written consent of the Province, Project Co will not proceed with any Design or Construction to which such Submittals receiving the comment “REJECTED” relate until Project Co obtains a comment that permits Project Co to proceed.
- (h) The comment “NOT REVIEWED” may be assigned to those Submittals that have not been reviewed by the Province in detail because, in the opinion of the Province, acting reasonably, the Submittals do not comply with the requirements of this Appendix (including Section 4(b) of this Appendix), are incomplete or otherwise insufficient for the purposes of a design review, or are received by the Province before the date scheduled in the Submittal Schedule. Project Co will correct and re-submit these Submittals within 15 Business Days or, if a later date is set out on the Submittal Schedule, by such later date. Project Co will correct, revise and resubmit Submittals as often as may be required to obtain a comment that permits Project Co to proceed. Project Co will not proceed with any Design or Construction to which such Submittals receiving the comment “NOT REVIEWED” relate until Project Co obtains a comment that permits Project Co to proceed.
- (i) The Province may request additional time for the review of any Submittal, including where the Submittal is voluminous or requires extensive review by representatives

(including consultants) of the Province, and Project Co will, in consultation with the Province, extend such time for any reasonable requests by the Province.

- (j) If the Province does not respond to a Submittal within the applicable time period for that Submittal as determined in accordance with Section 2(c) [Submittal Schedule] of this Appendix, the Submittal will be deemed "REVIEWED" and Project Co may proceed with and implement the Design and the Construction on the basis set forth in the applicable Submittal without any further action or documentation required.
- (k) Where the Province issues the comment "CORRECT DEFICIENCIES", "REJECTED" or "NOT REVIEWED", the Province will provide reasons for the comment, referencing particulars of the Section(s) of the Agreement (including the Design and Construction Specifications) that the Submittal fails to satisfy, and if requested by Project Co, the Province will meet with Project Co to discuss the reasons for the comment.
- (l) If at any time after assigning any comment to a Submittal or where Section 4(j) above has applied, the Province or Project Co discovers deficiencies or any failure to conform to the requirements of this Agreement, the Province or Project Co, as the case may be, will promptly notify the other Party of such deficiencies or non-conformance and the Province may revise the comment assigned to any Submittal. If the parties agree or it is determined in accordance with the Dispute Resolution Procedure that the revised comment is correct, Project Co will make all such corrections to the Submittals and the Design and the Construction.
- (m) For the purpose of facilitating and expediting the review and correction of Submittals, the Province and Project Co's Design and Construction Representatives will meet as may be mutually agreed to discuss and review any outstanding Submittals and any comments thereon.
- (n) Where an individual Submittal item is voluminous, the Province at its discretion may elect to stamp only the cover page or first sheet of the Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page, together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages not returned with such an explanation as to their status will be deemed to be "REVIEWED" by the Province.
- (o) In lieu of returning a Submittal, the Province may by letter notify Project Co of the comment assigned to the Submittal and if such comment is "CORRECT DEFICIENCIES", "REJECTED", or "NOT REVIEWED" the letter will contain comments in sufficient detail, including referencing applicable Section(s) of the Agreement, for Project Co to identify the correction sought.

5. REVIEWED DRAWINGS AND SPECIFICATIONS

- (a) The following Submittals will be deemed to be "**Reviewed Drawings and Specifications**":

- (1) Submittals which the Province has marked as "REVIEWED" under Section 4(e) [Review Procedure] of this Appendix;
 - (2) portions of Submittals that Project Co may proceed with under Section 4(f) [Review Procedure] of this Appendix; and
 - (3) Submittals which have been deemed "REVIEWED" by the Province under Section 4(j) [Review Procedure] of this Appendix.
- (b) Project Co's Design and Construction Representative will deliver promptly one complete copy of the Reviewed Drawings and Specifications to the Independent Certifier.

6. DISPUTES

If Project Co disputes any comment issued by the Province in respect of a Submittal made under Section 4 [Review Procedure] of this Appendix, Project Co will promptly notify the Province of the details of such Dispute and will submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Province will review the Submittal, the reasons and supporting documentation and within 7 Business Days after receipt thereof will either confirm the original comment or notify Project Co of a revised comment. Nothing in this Section 6 will limit either party's right to refer a Dispute to the Dispute Resolution Procedure.

7. CHANGES

- (a) If Project Co considers that compliance with any comment raised by the Province in respect of a Submittal made under Section 4 [Review Procedure] of this Appendix would lead to a Change, Project Co will, before taking into account such comment, notify the Province. If it is agreed by the Province that such comment would lead to a Change then the procedure set out in Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply. If the parties are unable to reach agreement, then either party may refer the matter directly to the Referee in accordance with Schedule 13 [Dispute Resolution Procedure].
- (b) In all cases, the parties will cooperate to identify potential alternative solutions to any comments raised that would not lead to a Change.

8. EFFECT OF REVIEW

For clarity, Section 1.5 [Province Not Responsible for Design or Construction] of Schedule 2 [Design and Construction Protocols] applies to any review or comment by the Province on any Submittal.

9. SUBMITTAL MEETINGS AND EXPLANATIONS

At any time, the Province may, acting reasonably, require Project Co, including Project Co's consultants, Sub-Contractors, and any other relevant personnel, at no additional cost to the Province, to meet with representatives of the Province and its advisors to answer questions regarding Project Co's Submittals or to explain to the Province and the Province's advisors the intent of Project Co's Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the requirements of

VAN01: 3149221: v7

this Agreement (including the Design and Construction Specifications). Project Co will, and will cause its consultants, Sub-Contractors, and any other relevant personnel to, attend all meetings requested by the Province and answer all questions asked by the Province in accordance with this Section 9 [Submittal Meetings and Explanation] of this Appendix as soon as practicable and in any event no later than 5 Business Days from the date it received the Province's questions or such longer period as agreed by the parties.

10. REVISIONS

- (a) Project Co will ensure that Submittals keep the same, unique reference number throughout the review process, and that all subsequent revisions of the same Submittal are identified by a sequential revision number. Correspondence related to such Submittal will reference the reference number and revision number.
- (b) Re-submittals will clearly show all revisions from the previous Submittal. Bound documents, including reports and manuals, will contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents will be used (e.g. deletions struck out and additions underscored). Revised portions of drawings will be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision will be included on the drawing.
- (c) All revisions on print media will be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and will identify the persons who initialled the Submittal. Electronic versions of the Submittal will identify the persons who initialled the revisions to the printed version of the Submittal.
- (d) Project Co will keep all Reviewed Drawings and Specifications current. If any Reviewed Drawings and Specifications are revised as part of a Submittal, all other Reviewed Drawings and Specifications relying on or based on that Reviewed Drawing and Specification will also be revised accordingly. All such revised Reviewed Drawings and Specifications will also be submitted with the Submittal to which it relates.

ATTACHMENT 1 (APPENDIX 2B)

SUBMITTAL SCHEDULE

Appendix 2C

ADMINISTRATION CONSULTATION PROTOCOL

1. OVERVIEW 1

2. ADMINISTRATION CONSULTATION PROCESS 1

3. CHANGES 3

4. THE PROVINCE’S SUPPORT AND ASSISTANCE 3

APPENDIX 2C

ADMINISTRATION CONSULTATION PROTOCOL

1. OVERVIEW

- (a) Project Co acknowledges that consultation with the Facility Administrators is an essential step in the completion of the detailed design of the Facility and accordingly Project Co will conduct consultations with the Administration Consultation Group in respect of components of the Design as reasonably required to have regard to Facility Administrators' requests and requirements.
- (b) The parties will undertake consultations with the Administration Consultation Group in accordance with the following:
 - (1) consultations will be conducted at an early stage of the design, and at appropriate stages of Design development, to facilitate meaningful input from Facility Administrators;
 - (2) the Administration Consultation Group will include the Province's designated representatives, but will not include representatives of the Inmates or the general public;
 - (3) consultation meetings will be interactive meetings at which Project Co will test possible design ideas and options with Facility Administrators, and Facility Administrators will provide feedback; and
 - (4) Project Co will endeavour to develop the design to incorporate all requests and design preferences expressed by the Administration Consultation Group (subject to the terms of this Appendix), and Project Co will explain any requests or preference that have not been incorporated.

2. ADMINISTRATION CONSULTATION PROCESS

- (a) Project Co will, for each component of the design of the Facility:
 - (1) prepare and deliver to the Province's Design and Construction Representative drawings, specifications and other documentation and materials together with a written design brief describing the design component (and highlighting design options) in appropriate detail as necessary for meaningful consultations with the Administration Consultation Group;
 - (2) make a presentation to the Administration Consultation Group describing the design component;

- (3) consult with and obtain comments from the Administration Consultation Group at an early stage of design, and at appropriate stages of development of the design; and
 - (4) after receiving input from the Administration Consultation Group, revise the next Submittal(s) to incorporate comments and requests made by the Administration Consultation Group and consult again with the Administration Consultation Group on the revised Submittal(s) if requested by the Province acting reasonably (having regard for the nature and extent of Administration Consultation Group comments on the initial Submittals and the nature and extent of changes made by Project Co to the Submittals).
- (b) The parties will co-operate to determine the specific nature and level of detail of drawings, specifications and other documentation and materials that will be provided prior to and as part of any particular Administration Consultation Group consultation. All Submittals to the Administration Consultation Group will comply with the requirements of Section 3 [General Requirements for Submittals] of Appendix 2B [Review Procedure]. Project Co will deliver copies of all materials to be presented at a consultation meeting at least 2 Business Days before the date of that meeting. Electronic copies of drawings will be in PDF format.
 - (c) An agreed preliminary schedule for consultations with the Administration Consultation Group, and for Submittals to the Administration Consultation Group in advance of such consultations, is included in the Submittal Schedule.
 - (d) The parties acknowledge that design development is an iterative and interactive process and that additional Administration Consultation Group meetings may be required from those shown on the preliminary schedule included in the Submittal Schedule. The parties will co-operate to amend the Submittal Schedule as may be required from time to time to ensure that sufficient consultations with the Administration Consultation Group in relation to each component of the design (and changes to the design resulting from such consultations) are completed prior to Project Co making a Submittal under Section 4(b) [Review Procedure] of Appendix 2B [Review Procedure] for each component of the design. For clarity, amendments to the Submittal Schedule will be subject to the requirements of Appendix 2B [Review Procedure].
 - (e) Administration Consultation Group consultation meetings will be held in space made available by Project Co in Vancouver, BC or at such other location as the parties may agree, acting reasonably.
 - (f) Project Co will keep minutes and records of all Administration Consultation Group consultation meetings, and within 3 Business Days of each meeting Project Co will deliver to the Province a copy of the minutes and records related to that meeting. If the Province notifies Project Co of any errors in the minutes, Project Co will correct such errors within 3 Business Days of the Province's notice

- (g) The Province will specify from time to time the particular persons to be included in the Administration Consultation Group for particular consultation meetings.
- (h) The parties will have further consultations with the Administration Consultation Group with respect to the design if any amendments to the design are proposed or required by reason of a change in Laws, a requirement of a Governmental Authority, or result from the design process set out in Section 4.2 [Design Process] of Schedule 2 [Design and Construction Protocols] or during the Construction and which, in any of the foregoing cases, will have a material effect on Facility Administrators.
- (i) The Province will not be bound by any input or comments provided to Project Co in connection with the consultations with the Administration Consultation Group.

3. CHANGES

- (a) If Project Co considers that compliance with any comment raised by an Administration Consultation Group member would lead to a Change, Project Co will, before taking into account such comment or objection, notify the Province. If it is agreed by the Province that such comments or objections would lead to a Change then the procedure as detailed in Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply. If the parties are unable to reach agreement, then either party may refer the matter directly to the Referee in accordance with Schedule 13 [Dispute Resolution Procedure].
- (b) In all cases, the parties will cooperate to identify potential alternative solutions to any comments or objections raised that would not lead to a Change.

4. THE PROVINCE'S SUPPORT AND ASSISTANCE

- (a) The Province will make reasonable efforts, as requested by Project Co, to assist and support Project Co with the administration consultation process including making arrangements for the persons specified by the Province under Section 2(g) [Administration Consultation Process] of this Appendix to be available to participate in scheduled Administration Consultation Group meetings, but nothing in this Section 4 [The Province's Support and Assistance] of this Appendix will be interpreted to give the Province responsibility for the design, the design schedule or the user consultation process.

Appendix 2D

ENERGY

TABLE OF CONTENTS

1. ENERGY SUPPLY AND CONSUMPTION	1
1.1 Energy Supply and Payment	1
1.2 Weather Data Monitoring and Measurement of Energy Consumption.....	1
1.3 Energy Consumption	1
1.4 Power Factor Surcharges	2
2. ENERGY GUARANTEE.....	2
2.1 Facility to Meet or Beat Energy Targets	2
2.2 Monitoring of Energy Consumption	2
2.3 Adjustment to Energy Targets	2
2.4 Failure to Achieve Energy Targets	3
2.5 Facility Modifications	3
2.6 Retest Period	4
2.7 Retest Period Adjustment to Energy Targets	4
2.8 Failure to Achieve Energy Targets after Retest Period	4
3. ANNUAL ENERGY TARGETS.....	5
3.1 Facility to Meet or Beat Annual Energy Targets.....	5
3.2 Annual Energy Targets.....	5
3.3 Adjustment to Annual Energy Targets.....	5
4. SHARING GAIN AND PAIN.....	5
4.1 Energy Gainshare.....	5
4.2 Energy Painshare	6
4.3 Calculation and Invoicing.....	7
4.4 Entitlement to Environmental Credits	7
4.5 Energy Management Plan	7
4.6 Plan Compliance	7

APPENDIX 2D ENERGY

1. ENERGY SUPPLY AND CONSUMPTION

1.1 Energy Supply and Payment

During the Construction Period, Project Co will be responsible for the supply and delivery of Energy as required for the Design and Construction. Project Co will ensure that on the Service Commencement Date all diesel fuel oil tanks are 100% full.

1.2 Weather Data Monitoring and Measurement of Energy Consumption

Prior to the Service Commencement Date, Project Co will install:

- (a) the Weather Monitoring Station on the Site; and
- (b) equipment to record and monitor consumption of each type of Energy used in the Facility.

The Energy consumption monitoring equipment must be suitable to enable a detailed monitoring of Energy trends and consumption in accordance with the International Performance Measurement & Verification Protocol (IPMVP) Volume III: Concepts and Options for Determining Energy and Water Savings in New Construct, April 2003 and, in compliance with, the requirements of LEED Canada NC, Version 2009, EA Credit 5: Measurement and Verification, to allow analysis of the data collected and to enable various matters, including:

- (c) comparisons to be made with the Design and Construction Energy Targets or the Annual Energy Targets, as applicable; and
- (d) early warning of malfunctions and deviations from norms.

Project Co will cause an independent qualified expert, acceptable to Project Co and the Province acting reasonably, to calibrate the Weather Monitoring Station and all other Energy consumption monitoring equipment prior to the Service Commencement Date, and thereafter annually throughout the Term. Project Co will cause the independent qualified expert to provide a certificate to Project Co and the Province, confirming calibration of the Weather Monitoring Station and all other Energy consumption monitoring equipment, promptly following completion of each calibration.

Project Co will collect the Weather Data and secure all such information so that it is not under any circumstances lost, degraded, adjusted or otherwise modified.

The provisions of this Section 1.2 [Weather Data Monitoring and Measurement of Energy Consumption] do not prejudice or limit the provisions of Schedule 3 [Design and Construction Specifications].

1.3 Energy Consumption

Promptly after the end of each month following the Service Commencement Date, Project Co will deliver to the Province, as part of the Performance Monitoring Report, a certificate showing:

VAN01: 3149221: v7

- (a) the Energy Consumption, in Gigajoules, for each type of Regulated Energy consumed during that month;
- (b) Weather Data recorded for that month;
- (c) details of all Facility Operation Variances; and
- (d) any other variable that affects the Energy Consumption relative to the Province's Baseline Assumptions.

1.4 Power Factor Surcharges

Project Co will be responsible for any Power Factor Surcharge. The Province will notify Project Co of any Power Factor Surcharges and Project Co will pay the Province the amount of such surcharges in accordance with the provisions of Schedule 8 [Payments].

2. ENERGY GUARANTEE

2.1 Facility to Meet or Beat Energy Targets

Project Co warrants to the Province that the Facility will be Designed and Constructed so that the Energy Consumption per year for each type of Regulated Energy will not exceed the applicable Adjusted Energy Target.

The consequences to Project Co for breach of this warranty are limited to those set out in Section 2.4 [Failure to Achieve Energy Targets] and Section 2.8 [Failure to Achieve Energy Targets after Retest Period] of this Appendix, as applicable.

2.2 Monitoring of Energy Consumption

The Occupying Period will be used by the Province to transition into occupying the Facility and by Project Co to monitor and stabilize the Energy Consumption.

During the Adjusting Period, Project Co and the Province will jointly monitor the Energy Consumption in order to allow Project Co to identify and, subject to Section 2.5 [Facility Modifications] of this Appendix, make such modifications and adjustments to the Facility as are necessary for the Facility to achieve the Design and Construction Energy Targets.

During the Test Period, Project Co and the Province will jointly monitor the Energy Consumption in order to establish whether, and to what extent, the actual Energy Consumption for each type of Regulated Energy differs from the applicable Adjusted Energy Target for the Test Period.

2.3 Adjustment to Energy Targets

Prior to the expiry of the Test Period, Project Co will engage an independent energy consultant, acceptable to Project Co and the Province acting reasonably (the "**Independent Energy Consultant**"). Where, for any reason during the Operating Period, the Independent Energy Consultant is, or becomes,

VAN01: 3149221: v7

unable or unwilling to continue to perform the Independent Energy Consultant's services Project Co will promptly engage a replacement Independent Energy Consultant, acceptable to Project Co and the Province, acting reasonably.

Promptly after the expiry of the Test Period, Project Co will cause the Independent Energy Consultant to review the Energy Consumption certificates and all other relevant data collected during the Test Period and to determine, in his or her professional opinion, whether, and to what extent, the Design and Construction Energy Targets should be adjusted to account for observed conditions during the Test Period which differ materially from the Province's Baseline Assumptions. Project Co will ensure that, in determining whether any adjustment should be made to the Design and Construction Energy Targets, the Independent Energy Consultant considers adjustments to the portion of the Design and Construction Energy Target attributable to gas and to electricity separately, and does not take into account any increased Energy Consumption caused by the acts or omissions of any Project Co Persons.

Within 30 days after the expiry of the Test Period, Project Co will cause the Independent Energy Consultant to issue a certificate documenting the applicable adjustments, if any, to be made to the Design and Construction Energy Targets, in respect of the Test Period.

2.4 Failure to Achieve Energy Targets

If the annual Energy Consumption for either type of Regulated Energy during the Test Period exceeds the applicable Adjusted Energy Target for the Test Period, then Project Co will:

- (a) Within 60 days after expiry of the Test Period, complete such modifications and adjustments to the Facility, subject to Section 2.5 [Facility Modifications] of this Appendix, as are necessary for the Facility to achieve the Design and Construction Energy Targets; and
- (b) pay to the Province a lump sum amount calculated as follows:

Payment Amount =

Where:

- E_g** = the Excess Energy Consumption (gas) during the Test Period
- E_e** = the Excess Energy Consumption (electricity) during the Test Period
- AC_g** = the Average Unit Cost of gas for the Test Period
- AC_e** = the Average unit Cost of electricity for the Test Period

2.5 Facility Modifications

Where Project Co is required to make modifications or adjustments to the Facility in order for the Facility to achieve the Design and Construction Energy Targets, all such modifications and adjustments will be subject to:

- (a) compliance with the Design and Construction Specifications;

- (b) minimization of disruption to the operation of the Facility; and
- (c) the prior approval of the Province, not to be unreasonably withheld or delayed.

2.6 Retest Period

Where the annual Energy Consumption for either type of Regulated Energy during the Test Period exceeds the applicable Adjusted Energy Target for the Test Period, then commencing on the day which is 60 days after the expiry of the Test Period, and continuing for a period of 12 months thereafter (the "**Retest Period**"), Project Co and the Province will monitor the Energy Consumption in order to establish whether, and to what extent, the actual Energy Consumption for each type of Regulated Energy during the Retest Period differs from the applicable Adjusted Energy Target for the Retest Period.

2.7 Retest Period Adjustment to Energy Targets

Promptly after the expiry of the Retest Period, Project Co will cause the Independent Energy Consultant to review the Energy Consumption certificates and all other relevant data collected during the Retest Period and to determine whether, and to what extent, the Design and Construction Energy Targets should be adjusted, using the same methodology as applied by the Independent Energy Consultant pursuant to Section 2.3 [Adjustment to Energy Targets] of this Appendix.

Within 30 days after the expiry of the Retest Period, Project Co will cause the Independent Energy Consultant to issue a certificate documenting the applicable adjustments, if any, to be made to the Design and Construction Energy Targets in respect of the Retest Period.

2.8 Failure to Achieve Energy Targets after Retest Period

If the annual Energy Consumption for either type of Regulated Energy during the Retest Period exceeds the applicable Adjusted Energy Target for the Retest Period, then Project Co will pay to the Province a lump sum amount equal to the lesser of:

- (a) \$1,000,000; and
- (b) the net present value of the cost to the Province, over the remainder of the 60 year Design Service Life of the Facility, of the amount by which the Energy Consumption for the applicable type(s) of Regulated Energy will exceed the applicable Adjusted Energy Target(s) for the Retest Period, on the assumption that the Excess Energy Consumption during the Retest Period will continue for the balance of the Design Service Life of the Facility. For the purpose of calculating the net present value pursuant to this Section 2.8(b) [Failure to Achieve Energy Targets after Retest Period], the cost of each type of Regulated Energy (including application of the applicable Escalation Factors) will be discounted using 7.5%.

If this Section 2.8 [Failure to Achieve Energy Targets after Retest Period] is applied, the provisions of Schedule 9 [Compensation on Termination] will be amended as necessary to ensure that the Province

will not, as a consequence of the application of this Section 2.8 [Failure to Achieve Energy Targets after Retest Period], face any additional liability upon early termination of this Agreement.

3. ANNUAL ENERGY TARGETS

3.1 Facility to Meet or Beat Annual Energy Targets

Project Co warrants to the Province that the Facility will be Designed and Constructed and that Project Co will perform the Services so that the Energy Consumption per year, in each Energy Year, will not exceed the Annual Energy Targets for the applicable Energy Year.

The consequences to Project Co for breach of this warranty are limited to those set out in Section 4 [Sharing Gain and Pain] of this Appendix.

3.2 Annual Energy Targets

Where Section 2.8 [Failure to Achieve Energy Targets after Retest Period] of this Appendix is applied, the Annual Energy Targets for each Energy Year after the Retest Period will be the actual Energy Consumption for each type of Regulated Energy during the Retest Period, as they may be adjusted in accordance with Section 3.3 [Adjustment to Annual Energy Targets] of this Appendix.

In all other cases, the Annual Energy Targets for each Energy Year after the Test Period (or the Retest Period, where Section 2.6 [Retest Period] of this Appendix applies), will be the applicable Design and Construction Energy Targets, as they may be adjusted in accordance with Section 3.3 [Adjustment to Annual Energy Targets] of this Appendix.

3.3 Adjustment to Annual Energy Targets

Promptly after the expiry of each Energy Year, Project Co will cause the Independent Energy Consultant to review the Energy Consumption certificates and all other relevant data collected during the applicable Energy Year and to determine whether, and to what extent, the Annual Energy Targets for the applicable Energy Year should be adjusted, using the same methodology as applied by the Independent Energy Consultant pursuant to Section 2.3 [Adjustment to Energy Targets], and where applicable, in accordance with Section 4.6 [Plan Compliance] of this Appendix.

Within 30 days after the expiry of the applicable Energy Year, Project Co will cause the Independent Energy Consultant to issue a certificate documenting the applicable adjustments, if any, to be made to the Annual Energy Targets in respect of the applicable Energy Year.

4. SHARING GAIN AND PAIN

4.1 Energy Gainshare

- (a) Where the Energy Consumption for gas in an Energy Year is less than 97% of the applicable Annual Energy Target, the Energy Gainshare for gas in the applicable Energy Year will be calculated as follows:

Energy Gain Share (gas) =

Where:

- ETg** = the Annual Energy Target (gas) for the applicable Energy Year
- ECg** = the Energy Consumption (gas) in the applicable Energy Year
- ACg** = the Average Unit Cost of gas for the applicable Energy Year

- (b) Where the Energy Consumption for electricity in an Energy Year is less than 97% of the applicable Annual Energy Target, the Energy Gainshare for electricity in the applicable Energy Year will be calculated as follows:

Energy Gain Share (electricity) =

Where:

- ETe** = the Annual Energy Target (electricity) for the applicable Energy Year
- ECe** = the Energy Consumption (electricity) in the applicable Energy Year
- ACE** = the Average unit Cost of electricity for the applicable Energy Year

4.2 Energy Painshare

- (a) Where the Energy Consumption for gas in an Energy Year is greater than 103% of the applicable Annual Energy Target, the Energy Painshare for gas in the applicable Energy Year will be calculated as follows:

Energy Pain Share (gas) =

Where:

- ETg** = the Annual Energy Target (gas) for the applicable Energy Year
- ECg** = the Energy Consumption (gas) in the applicable Energy Year
- ACg** = the Average Unit Cost of gas for the applicable Energy Year

- (b) Where the Energy Consumption for electricity in an Energy Year is greater than 103% of the applicable Annual Energy Target, the Energy Painshare for electricity in the applicable Energy Year will be calculated as follows:

Energy Pain Share (electricity) =

Where:

- ETe** = the Annual Energy Target (electricity) for the applicable Energy Year
- ECe** = the Energy Consumption (electricity) in the applicable Energy Year
- ACE** = the Average unit Cost of electricity for the applicable Energy Year

4.3 Calculation and Invoicing

As soon as practicable, and in any event within 20 Business Days after the end of each Energy Year, Project Co will submit to the Province an invoice setting out Project Co's calculation of the Average Unit Cost for each type of Regulated Energy and the Energy Gainshare or Energy Painshare for each type of Regulated Energy, if any. Within 30 days after delivery of an invoice in accordance with this Section 4.3 [Calculation and Invoicing], the Province will pay to Project Co any undisputed Energy Gainshare and Project Co will pay to the Province any undisputed Energy Painshare, as applicable.

Any unresolved dispute about such calculations will be resolved in accordance with the Dispute Resolution Procedure.

4.4 Entitlement to Environmental Credits

The Province will be entitled to any and all Environmental Credits related to the Facility and its operation. If, however, there is an increase in Environmental Credits after the Test Period (or the Retest Period, where Section 2.6 [Retest Period] of this Appendix applies) as a result of improvements or innovations by Project Co, Project Co will be entitled to, and the Province will transfer to Project Co, 50% of such incremental Environmental Credits.

4.5 Energy Management Plan

Within 12 months after the Effective Date the parties will develop an energy management plan (“**Energy Management Plan**”). Project Co will prepare the first draft and provide the Province with a copy within 9 months after the Effective Date. The Energy Management Plan will detail reasonable operating rules for all Province and Project Co staff in the Facility and will be structured to take into account Good Industry Practice, the anticipated activities of Project Co and the Province and use of the Facility, and will seek to minimise Energy Consumption and Demand Charges while maintaining the required environmental and other conditions specified in the Room Data Sheets and this Agreement, including Schedule 3 [Design and Construction Specifications] and Schedule 4 [Services Protocols and Specifications]. Failure to agree on the Energy Management Plan within 18 months after the Effective Date will be a Dispute that will be resolved pursuant to the Dispute Resolution Procedure.

4.6 Plan Compliance

The parties will monitor compliance with the Energy Management Plan at each meeting of the Operating Period Joint Committee. Where the Province does not comply with the Energy Management Plan and such non-compliance:

- (a) was not caused by, or the result of, a failure by Project Co to comply with the Energy Management Plan; and
- (b) causes a material increase or decrease in Energy Consumption,

then the Annual Energy Targets will be adjusted by an appropriate amount to reflect the effect of the non-compliance.

Appendix 2E

EQUIPMENT AND FURNITURE

TABLE OF CONTENTS

1. CATEGORY 2 AND CATEGORY 4 EQUIPMENT 1

1.1 Category 2 and Category 4 Equipment 1

1.2 Responsibilities For Category 2 and Category 4 Equipment 1

1.3 Timing of Delivery and Installation of Category 2 and Category 4 Equipment..... 1

1.4 Staging and Storage 2

2. CATEGORY 1 AND CATEGORY 3 EQUIPMENT 2

2.1 Category 1 and Category 3 Equipment 2

2.2 Responsibilities for Category 1 and Category 3 Equipment..... 2

2.3 Standards for Equipment..... 2

2.4 Training..... 3

2.5 Guidance Material and Manuals..... 3

3. GENERAL 3

3.1 Integration of Equipment with Design of Facility 3

3.2 Changes Affecting Design or Construction 4

3.3 Equipment Commissioning..... 4

3.4 Addition of Additional Equipment..... 4

3.5 Equipment Committee 4

3.6 Equipment Consultant 4

3.7 Title 5

3.8 Taxes 5

3.9 Maintenance and Life Cycle Responsibilities 5

3.10 Minimizing Disruptions..... 5

3.11 Asset Tagging..... 5

1. CATEGORY 2 AND CATEGORY 4 EQUIPMENT

1.1 Category 2 and Category 4 Equipment

- (a) Category 2 Equipment means the equipment, furniture and fixtures described and listed as "Category 2 Equipment" in the Equipment List (or similar equipment, furniture and fixtures); and
- (b) Category 4 Equipment means the equipment, furniture and fixtures described and listed as "Category 4 Equipment" in the Equipment List (or similar equipment, furniture and fixtures).

1.2 Responsibilities For Category 2 and Category 4 Equipment

The items of Category 2 Equipment and Category 4 Equipment shown on the Equipment List are those which the Province intends to procure but, subject to Section 3.2 [Changes Affecting Design or Construction] of this Appendix, the Province is not obligated to procure such items.

Project Co will not be responsible for procurement, setup, delivery, installation, commissioning, maintaining, repairing, replacing or refurbishing any Category 2 Equipment.

Project Co will not be responsible for procurement, setup, delivery, installation or commissioning any Category 4 Equipment, but shall be responsible for maintaining, repairing, replacing and refurbishing all Category 4 Equipment in accordance with Schedule 4 [Services Protocols and Specifications].

1.3 Timing of Delivery and Installation of Category 2 and Category 4 Equipment

Project Co shall:

- (a) as early as practicable in accordance with Good Industry Practice, identify to the Province:
 - (1) for each item of Category 2 Equipment and Category 4 Equipment, the earliest date when the Facility will be available to the Province to install such item;
 - (2) each item of Category 2 Equipment and Category 4 Equipment, if any, that must be installed in the Facility for Project Co to achieve Service Commencement; and
 - (3) for each item of Category 2 Equipment and Category 4 Equipment identified by Project Co under Section 1.3(a)(2) [Timing of Delivery and Installation of Category 2 and Category 4 Equipment] above, if any, the date by which such item must be delivered, installed and in good working order so as not to delay the Design, the Construction, Service Commencement or the Province's use and occupation of the Facility; and
- (b) as required from time to time until Service Commencement, but no less than once per calendar month, update the information in Section 1.3(a) [Timing of Delivery and Installation of Category 2 and Category 4 Equipment] above, so that at all times it is an accurate, reasonable and realistic representation of Project Co's plans for the completion of the Design and Construction of the Facility and the availability of the Facility to the Province for the installation of Category 2 Equipment and Category 4 Equipment.

The Province will cause each item of Equipment identified by Project Co under Section 1.3(a)(2) [Timing of Delivery and Installation of Category 2 and Category 4 Equipment] above to be delivered by the date

specified by Project Co under Section 1.3(a)(3) [Timing of Delivery and Installation of Category 2 and Category 4 Equipment] of this Appendix.

1.4 Staging and Storage

Project Co shall, as early as practicable in accordance with Good Industry Practice and without limiting any of Project Co's other obligations under Section 1.3 [Timing of Delivery and Installation of Category 2 and Category 4 Equipment] of this Appendix:

- (a) provide a secure, accessible, dry space to accommodate staging and storage of any Category 2 Equipment and Category 4 Equipment;
- (b) allow Province representatives to access and work within the space;
- (c) ensure that the space is heated and lighted, in accordance with Good Industry Practice;
- (d) provide power to the space and notify the Province, in advance, of any power interruptions;
- (e) ensure that the space has a fire alarm and sprinkler system in place and a 24 hour video camera security system, with trip alarm; and
- (f) ensure that the space is fenced in and that all doors are locked after business hours.

2. CATEGORY 1 AND CATEGORY 3 EQUIPMENT

2.1 Category 1 and Category 3 Equipment

- (a) Category 1 Equipment means the equipment, furniture and fixtures described and listed as "Category 1 Equipment" in the Equipment List and such other furniture, fixtures and equipment as described in, or otherwise required by, the Design and Construction Specifications; and
- (b) Category 3 Equipment means the equipment, furniture and fixtures described and listed as "Category 3 Equipment" in the Equipment List.

2.2 Responsibilities for Category 1 and Category 3 Equipment

Project Co shall procure, pay, deliver, setup, install, commission, maintain, repair, replace and refurbish all Category 1 Equipment.

Project Co shall procure, pay, deliver, setup, install and commission all Category 3 Equipment, but shall not be responsible for maintaining, repairing, replacing or refurbishing any Category 3 Equipment.

Without limiting Section 2 [Category 1 and Category 3 Equipment] of this Appendix, the Category 1 Equipment and Category 3 Equipment shown on the Equipment List, is not intended to be exhaustive or to be relied upon by Project Co, does not limit the requirements of the Design and Construction Specifications, and provides only an indication of some of the equipment, furniture and fixtures expected to be provided by Project Co.

2.3 Standards for Equipment

Project Co shall cause all Category 1 Equipment and Category 3 Equipment to be:

VAN01: 3149221: v7

- (a) new;
- (b) of good quality and in a safe, serviceable and clean condition in accordance with the Equipment List and Good Industry Practice;
- (c) in compliance with all applicable requirements of the Design and Construction Specifications;
- (d) of the type specified in the Design and Construction Specifications, if applicable; and
- (e) in compliance with all Laws.

Project Co shall, as soon as practicable after receiving a request from the Province, supply to the Province evidence to demonstrate its compliance with this Section 2.3 [Standards for Equipment].

2.4 Training

Project Co shall be knowledgeable on the proper use, maintenance and repair of all Category 1 Equipment and Category 3 Equipment installed in the Facility and shall provide sufficient training and education of the Province staff in accordance with Good Industry Practice to enable the Province to properly utilize such Category 1 Equipment and Category 3 Equipment. Project Co shall not be responsible for providing the Province staff with training and education in respect of Category 2 Equipment and Category 4 Equipment.

2.5 Guidance Material and Manuals

Before the Service Commencement Date, Project Co shall transfer and deliver to the Province all guidance material and manuals relating to Category 1 Equipment and Category 3 Equipment, as produced and provided by the manufacturer or the supplier of such items, including:

- (a) user manuals (print and electronic versions);
- (b) purchase documentation;
- (c) inspection documentation;
- (d) acceptance and commissioning documentation;
- (e) spare parts lists; and
- (f) required disposables.

3. GENERAL

3.1 Integration of Equipment with Design of Facility

Project Co shall ensure that all Equipment is integrated in accordance with Good Industry Practice with the overall design of the Facility and shall include such Equipment as part of the Design development process under Section 4.2 [Design Process] of Schedule 2 [Design and Construction Protocols]. To the extent practicable, any required changes to the design of the Facility as a result of changes to Equipment requirements shall be resolved as part of the design development process under Section 4.2 [Design Process] of Schedule 2 [Design and Construction Protocols].

VAN01: 3149221: v7

3.2 Changes Affecting Design or Construction

If the Province increases or decreases the quantities of Equipment, procures other items in substitution for those identified on the Equipment List, or otherwise changes the items to be procured and there is an effect on the Design or Construction or provision of the Services, such increase, decrease, procurement or change, and the effect thereof, will be handled in accordance with, and subject to the procedures set out in, Schedule 6 [Changes, Minor Works and Innovation Proposals]. The parties will endeavour to agree to an expedited Change process to deal with Equipment changes.

3.3 Equipment Commissioning

Project Co shall incorporate its Equipment commissioning responsibilities under this Appendix into its commissioning activities for the Facility as contemplated in this Agreement, including Section 11 [Commissioning] of Schedule 2 [Design and Construction Protocols]. Without limiting, and in addition to the requirements of, the preceding sentence, for each item of Category 1 Equipment and Category 3 Equipment, Project Co shall, in consultation with the Province, develop a protocol for testing the relevant Equipment to demonstrate that it has been installed in accordance with the manufacturer's requirements and is functioning in accordance with the requirements of the applicable Design and Construction Specifications.

3.4 Addition of Additional Equipment

If the Province identifies Equipment that is in addition to, or in replacement of certain items of, Equipment, the Province may in its sole discretion:

- (a) elect to have Project Co procure, deliver, setup, install, commission, maintain, repair, replace and/or refurbish such additional Equipment, in accordance with and subject to the procedures set out in Schedule 6 [Changes, Minor Works and Innovation Proposals]; or
- (b) itself perform any of the activities described in Section 3.4(a) [Addition of Additional Equipment] above.

3.5 Equipment Committee

The parties will establish an Equipment Committee composed of 2 (or any other number agreed between the parties) representatives of each party. The Equipment Committee will meet regularly during the Construction Period (and not less than once per calendar quarter) to review the status of, and to provide advice to the parties with respect to, Equipment procurement, delivery, setup, installation and commissioning.

3.6 Equipment Consultant

Project Co shall engage an Equipment consultant experienced with the equipment requirements of a correctional facility similar to the Facility and experienced with the specification, procurement, setup, installation and commissioning of equipment similar to the Equipment. If, for any reason, the Equipment consultant resigns or is otherwise unavailable, then Project Co shall use all reasonable efforts to retain a replacement consultant, acceptable to the Province acting reasonably, with similar expertise and experience to the original Equipment consultant. Project Co shall not replace the Equipment consultant without the Province's consent, not to be unreasonably withheld.

Project Co shall cause the Equipment consultant to:

VAN01: 3149221: v7

- (a) participate in the design development processes described in Section 4.2 [Design Process] of Schedule 2 [Design and Construction Protocols], including to attend relevant consultations with the Administration Consultation Group and to identify and address issues related to the Equipment; and
- (b) attend Equipment Committee meetings.

3.7 Title

Project Co shall cause the procurement arrangements for Category 1 Equipment and Category 3 Equipment to provide for a direct transfer of title to such Equipment from the suppliers to the Province. Title to Category 1 Equipment and Category 3 Equipment may be reserved by third party unpaid suppliers until the earlier of the date of payment and the Service Commencement Date. Project Co shall pay all such unpaid suppliers prior to the Service Commencement Date for amounts owing on outstanding invoices.

3.8 Taxes

On the transfer of title to Category 1 Equipment and Category 3 Equipment from the suppliers to the Province, Project Co shall be responsible for all taxes payable on such transfer.

3.9 Maintenance and Life Cycle Responsibilities

Project Co is not responsible for the maintenance, repair, replacement or refurbishment of any Equipment other than Maintained Equipment, which it will maintain, repair, replace and refurbish in accordance with Schedule 4 [Services Protocols and Specifications].

3.10 Minimizing Disruptions

Project Co shall ensure that its procurement, delivery, setup, installation, commissioning, maintenance, repair, decommissioning, upgrade, replacement and refurbishment of Equipment as required under this Agreement shall be effective and efficient so as to minimize to the greatest extent reasonably possible all disruptions of Province Activities and any additional costs to the Province.

3.11 Asset Tagging

As required by Section 6.2 [Asset Tagging] of Schedule 2 [Design and Construction Protocols], Project Co shall, in consultation with the Province, prior to Service Commencement, affix an Province approved unique identifying asset identification tag to all Equipment. As required by Section 6.3 [Asset Register] of Schedule 2 [Design and Construction Protocols], Project Co shall also include all Equipment in the Asset Register to be created, maintained, updated and shared with the Province.

Appendix 2F

INITIAL PROJECT SCHEDULE

[Replace this page with separate printout of Appendix 2F document.]

Appendix 2G

PROPOSAL EXTRACTS (DESIGN AND CONSTRUCTION)

**SCHEDULE 4
SERVICES PROTOCOLS AND SPECIFICATIONS**

TABLE OF CONTENTS

PART 1.	PERFORMANCE OF SERVICES	1
1.1	Services	1
1.2	Services Performance Indicators.....	1
1.3	Delivery of Services	1
1.4	Service Standards	3
1.5	Changes to Province Policies and Procedures	3
1.6	General and Emergency Communications.....	4
1.7	Staffing.....	4
1.8	Supervision	9
1.9	Other General Management Services.....	10
1.10	Qualified Environmental Professional	10
PART 2.	OPERATING PERIOD ADMINISTRATION	12
2.1	Operating Period Representatives	12
2.2	Operating Period Committee	12
2.3	Joint Technical Review.....	14
2.4	Province Not Responsible for the Services	15
PART 3.	OPERATING PERIOD PLANS	16
3.1	Preparation of Plans	16
3.2	Submission of Plans to the Province.....	16
3.3	Failure to Prepare Plans.....	16
3.4	Amendment of Plans	16
3.5	Implementation of Plans	16
3.6	Operating Period Submittal Deadlines	16
3.7	Life Cycle Schedule.....	18
3.8	Start-up Plan.....	18
3.9	Annual Service Plans	18
3.10	Five Year Maintenance Plan	27
3.11	Life Cycle Plan.....	27
3.12	Environmental Management Plan and System	28
3.13	Energy Management Plan	30
3.14	Contingency Planning and Crisis Management:	30
3.15	Plan Updates	30

PART 4. NOT USED 31

PART 5. PERFORMANCE MONITORING AND REPORTING 31

5.1 Project Co Performance Monitoring 31

5.2 Periodic Reporting 32

5.3 Periodic Province Reporting 34

5.4 Province Inspection and Audit 34

5.5 Reporting Failures 34

5.6 Reporting Errors 34

5.7 Parties to Advise of Reporting Errors 35

5.8 Increased Monitoring 35

5.9 Replacement of Non-Performing Service Provider or Sub-Contractor..... 36

5.10 Province's Right of Access 36

5.11 Province Satisfaction System 37

PART 6. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM..... 40

6.1 Supply of CMMS..... 40

6.2 Functionality Requirements 40

6.3 Project Co Services 41

PART 7. PROVINCE FM SERVICES 43

APPENDIX 4A PROPOSAL EXTRACTS (SERVICES)

APPENDIX 4B ROADS, GROUNDS AND LANDSCAPE MAINTENANCE SERVICES

APPENDIX 4C HANDBACK REQUIREMENTS

APPENDIX 4D PLANT SERVICES

APPENDIX 4E PERFORMANCE INDICATORS

APPENDIX 4F HELP DESK SERVICES

APPENDIX 4G UTILITY MANAGEMENT SERVICES

APPENDIX 4H ENVIRONMENTAL AND SUSTAINABILITY SERVICES

APPENDIX 4I OPERATING PERIOD REVIEW PROCEDURE

SCHEDULE 4 SERVICES PROTOCOLS AND SPECIFICATIONS

PART 1. PERFORMANCE OF SERVICES

1.1 Services

This Schedule (together with the Appendices, including the Proposal Extracts (Services)) describes the following main categories of facilities management Services to be delivered by Project Co:

- 1.1.1 General Requirements;
- 1.1.2 Roads, Grounds and Landscape Maintenance Services;
- 1.1.3 Handback Requirements;
- 1.1.4 Plant Services;
- 1.1.5 Help Desk Services;
- 1.1.6 Utility Management Services;
- 1.1.7 Environmental and Sustainability Services; and
- 1.1.8 Additional Services - in addition to the services expressly described in this Schedule 4 [Services Protocols and Specifications], Project Co will provide all other ancillary and additional services as may be reasonably required to achieve the standards and specifications set out in this Agreement and as required by Good Industry Practice.

1.2 Services Performance Indicators

- 1.2.1 Certain Services described within these Services Protocols and Specifications have a corresponding Performance Indicator that describes the criteria used to determine whether Project Co has delivered the Services in accordance with the requirements of this Agreement. The Performance Indicators identified will not limit the scope of the Services to be performed. Appendix 4E [Performance Indicators] contains the consolidated list of the Performance Indicators.

1.3 Delivery of Services

- 1.3.1 Project Co will continuously perform the Services, including provision of comprehensive general management with respect to the delivery of the Services, from the Service Commencement Date to the Termination Date, 24 hours per day 365 (366) days per year, as applicable, and in accordance with:

VAN01: 3149223: v7

- 1.3.1.1 this Agreement, including the specifications set out in this Schedule and the appendices to this Schedule;
 - 1.3.1.2 all applicable Laws;
 - 1.3.1.3 Proposal Extracts (Services);
 - 1.3.1.4 the Plans and Operational Policies and Procedures then in effect; and
 - 1.3.1.5 Good Industry Practice.
- 1.3.2 Without limiting the requirements of the Agreement, including the provisions of each appendix to this Schedule, Project Co will:
- 1.3.2.1 provide high quality, efficient and flexible Services at all times;
 - 1.3.2.2 meet all requirements of applicable Laws, the Code and Province Policies and Procedures. Where there are conflicts between Operational Policies and Procedures and Province Policies and Procedures, the Province Policies and Procedures will prevail;
 - 1.3.2.2A obtain, maintain and comply with all Permits required for the performance of the Services and comply with all mitigation obligations described in any environmental Permits applicable to the Services, including any mitigation obligations described in the CEA Report, the SARA Permit or the Wildlife Act Permit. Project Co shall not be responsible for obtaining or maintaining any Permits required for corrections operations at the Facility;
 - 1.3.2.3 research and develop new service delivery methods and apprise the Province of their benefits;
 - 1.3.2.4 manage matters and marshal resources as required to respond to Demand Requisitions, including emergencies, and to provide a high level of customer care;
 - 1.3.2.5 keep the Province informed in such detail as the Province may reasonably require of the progress of any negotiations regarding Project Co Persons;
 - 1.3.2.6 provide Services that are integrated and coordinated with the delivery of other services by the Province, Province Persons, their contractors, the Service Provider and it's Sub-Contractors;

- 1.3.2.7 ensure a collaborative working relationship with the Province, Province Persons and Facility Administrators;
- 1.3.2.8 exercise competent supervision of the Services at all times;
- 1.3.2.9 administer all insurance and warranty claims in connection with the provision of the Services at the Facility; and
- 1.3.2.10 provide all quality assurance and quality monitoring relevant to the Services.

1.4 **Service Standards**

- 1.4.1 Project Co will at all times during the Operating Period provide the Services:
 - 1.4.1.1 in accordance with the standards set out in this Schedule (including the appendices to this Schedule), including the applicable Response Times and Rectification Periods;
 - 1.4.1.2 in compliance with all applicable Laws, all applicable Province Policies and Procedures, as they may be amended from time-to-time;
 - 1.4.1.3 without materially interfering (except to the extent approved, in advance, by the Province), with: (i) the Province FM Services; (ii) the day-to-day operation of the Facility or any other Province Activities;
 - 1.4.1.4 to the standards required to maintain the Province's ISO 14001 Certification; and
 - 1.4.1.5 continuously and in a manner based on sound technical and operational procedures in accordance with Good Industry Practice.
- 1.4.2 Where more than one of the standards described in Section 1.4 [Service Standards] of this Schedule is applicable to any particular Service, Project Co will at all times perform the Services in accordance with the highest of such standards.

1.5 **Changes to Province Policies and Procedures**

- 1.5.1 If the Province changes any Province Policies and Procedures, including by any amendments or additional policies or procedures referenced in the definition of "Province Policies and Procedures", and such changes to Province Policies and Procedures are a Change or might reasonably be expected to result in a material

increase or decrease in Project Co's costs of performing the Services, the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.

1.6 **General and Emergency Communications**

- 1.6.1 Project Co's management and supervisory staff will, at all times, liaise and communicate with: (i) the Province's Operating Period Representative; (ii) designated external advisors to the Province; and (iii) all applicable Governmental Authorities, in accordance with the communication and cooperation protocol included in the then current Annual Service Plan.
- 1.6.2 Project Co will promptly notify the Province's Operating Period Representative upon becoming aware of any hazard that has resulted, or which may result, in a serious injury or a life threatening outcome to any Project Co Person, Inmate, Province Person or other Facility Administrator.

1.7 **Staffing**

- 1.7.1 Project Co will comply with the requirements of this Section to deliver the Services and to meet the obligations set out in this Agreement, including these Services Protocols and Specifications, and will ensure that each Project Co Person engaged in the delivery of the Services has all authorizations, qualifications, licenses, training, experience, skills, expertise, trade certifications, registrations and professional designations required to perform all Services to which they are assigned.
- 1.7.2 Project Co will:
- 1.7.2.1 carry out all necessary recruitment in order to fulfil its obligations under Section 1.7 [Staffing] of this Schedule 4 [Services Protocols and Specifications];
- 1.7.2.2 ensure that prior to the performance of any Services, each Project Co Person engaged in the delivery of the Services:
- 1.7.2.2(1) executes a pledge of confidentiality, in a form approved by the Province; and
- 1.7.2.2(2) successfully completes: (i) an orientation and training course which is consistent with, and incorporates, all relevant aspects of the Province Facility Orientation Course, and (ii) all other

orientation and training as specified in the Staffing Plan included in the then current Annual Service Plan;

- 1.7.2.3 cause each Project Co Person engaged in the delivery of the Services to attend any additional orientation and training required by the Province;
- 1.7.2.4 provide, and ensure that each Project Co Person engaged in the delivery of the Services provide, a high level of customer care in connection with their performance of all Services;
- 1.7.2.5 deliver to the Province's Operating Period Representative, once every six (6) months, a list identifying:
 - 1.7.2.5(1) each Project Co Person engaged to perform Services during the preceding six-month period; and
 - 1.7.2.5(2) the date on which each Project Co Person engaged to perform Services during the preceding six-month period successfully completed his or her orientation and training;
- 1.7.2.6 ensure that each Project Co Person engaged in the delivery of the Services:
 - 1.7.2.6(1) has a good command of the verbal English language;
 - 1.7.2.6(2) receives all ongoing training, knowledge and skills development and other professional development required by applicable Law and the Staffing Plan included in the then current Annual Service Plan;
 - 1.7.2.6(3) at all times complies with all applicable Laws, Province Policies and Procedures, Operational Policies and Procedures, and other requirements of this Agreement, including those related to:
 - (a) security clearances;
 - (b) personal identification and Facility access control;
 - (c) physical and other searches of persons and property;
 - (d) control and detection of contraband;
 - (e) immunization and infection control; and
 - (f) tool control;

- 1.7.2.6(4) is at all times properly and adequately notified, trained and instructed with regard to:
- (a) the tasks that such Project Co Person is required to perform;
 - (b) the Services Protocols and Specifications applicable to the Services to be performed;
 - (c) the contents of all manuals, standard operating procedures and business processes established by Project Co, to the extent applicable to the Services to be performed;
 - (d) all relevant health and safety hazards associated with the Services to be performed and the rules, policies and procedures established by Project Co concerning health and safety at the Facility;
 - (e) all applicable fire precautions, procedures and contingency plans;
 - (f) use of all equipment and machines applicable to the Services to be performed;
 - (g) handling and usage of chemicals, including pesticides, herbicides and fertilizers, and other Hazardous Substances applicable to the Services to be performed;
 - (h) use of personal protective equipment applicable to the Services to be performed;
 - (i) the requirements of all applicable Laws; and
 - (j) the requirements of all applicable Province Policies and Procedures and all Operational Policies and Procedures;
- 1.7.2.7 ensure that all training, knowledge and skills development and professional development activities, including continuing professional development, are recorded and retained in the personnel records of the applicable Project Co Persons;
- 1.7.2.8 manage all human resource matters in respect of Project Co Persons and performance of the Services including:
- 1.7.2.8(1) ensuring that all Project Co Persons, when on duty at the Facility:

- (a) are properly and presentably dressed in appropriate uniforms, which are noticeably different from those of the Province's employees and which otherwise comply with all applicable Province Policies and Procedures;
 - (b) wear appropriate work wear, including personal protective equipment;
 - (c) maintain a high standard of personal hygiene, courtesy and consideration and conduct themselves in a professional manner at all times; and
 - (d) wear identification badges provided by the Province, and comply with all applicable identification systems, at all times while at the Facility; and
- 1.7.2.8(2) ensuring all Project Co Persons engaged in the delivery of the Services understand the Province's employment and labour relations environment and that they conduct themselves according to the requirements and obligations of the applicable collective agreement(s) and work to promote good relationships with the Province's unions and employees;
- 1.7.2.9 Project Co will carry out all occupational health and safety and risk management responsibilities with respect to the Services, including:
- 1.7.2.9(1) establishing a Project Co health and safety committee and participating in any joint health and safety committees established by the Province;
 - 1.7.2.9(2) ensuring that all Project Co Persons engaged in the delivery of the Services comply with the Operational Policies and Procedures with respect to occupational health and workplace safety, as detailed in the Staffing Plan, included in the then current Annual Service Plan;
 - 1.7.2.9(3) administering and managing Project Co's compliance with its health and safety obligations insofar as they relate to the provision of the Services;
 - 1.7.2.9(4) ensuring that Project Co Persons engaged in the delivery of the Services:

- (a) have received all immunizations required by applicable Laws, Province Policies and Procedures, Operational Policies and Procedures, and this Agreement, at no cost to the individual, and that Project Co retains records of such immunizations in accordance with Schedule 14 [Records and Reports]; and
 - (b) have received training in infection control and proper hand washing procedures;
- 1.7.2.9(5) retaining the services of a Qualified (as defined in Part 1 of the Occupational Health and Safety Regulation (BC)) safety adviser and causing such adviser to review and coordinate the production, amendment and updating of the occupational health and workplace safety policies and procedures of Project Co, the Project Contractors and any Sub-Contractors engaged in the delivery of the Services;
- 1.7.2.9(6) ensuring first aid training and first aid facilities are provided to all Project Co Persons engaged in the delivery of Services, to the extent required by the Workers Compensation Act, R.S.B.C. 1996, c.492 and the Occupational Health and Safety Regulation BCREg 296/97;
- 1.7.2.9(7) maintaining up-to-date health and safety records in accordance with Schedule 14 [Records and Reports] and documentation and making these available, upon demand, for inspection by the Province, and authorized Governmental Authorities, including:
- (a) occupational health and safety risk assessments in respect of all of the Services;
 - (b) health and safety program manuals;
 - (c) public health and safety notices;
 - (d) health and safety monthly reports, identifying the occurrence of any health and safety incidents and whether each incident led to a loss of work days; and
- 1.7.2.9(8) providing an annual statement of compliance with all health and safety aspects of the applicable Laws, in a form acceptable to the Province.

- 1.7.3 Project Co will ensure that all Project Co Persons providing Services are trained and coordinated with Province Persons on Contingency Crisis/Management Plans as required. As a minimum, the Service Provider Lead shall participate in all Province emergency drills and training with respect to contingency and emergency preparedness.
- 1.7.4 Without limiting any of Project Co's obligations pursuant to Section 1.7 [Staffing] of this Schedule 4 [Services Protocols and Specifications], Project Co will advise the Province, in writing, promptly upon becoming aware of any occupational health and safety or risk management concerns, whether within or outside of Project Co's scope of responsibility. Where such concerns relate to elements outside of Project Co's scope of responsibility, Project Co will provide reasonable assistance to the Province to minimize the cost and disruptions of addressing such concerns.

1.8 **Supervision**

- 1.8.1 Not less than 90 days before the Target Service Commencement Date, Project Co will designate, in writing, a Service Provider Lead and an Assistant Service Provider Lead:
- 1.8.1.1 one of whom may also be Project Co's Operating Period Representative;
 - 1.8.1.2 who will be the representatives of Project Co at the Facility, with full authority to act on behalf of and bind Project Co with respect to the Services, except that the Service Provider Lead and Assistant Service Provider Lead will not have the authority to execute or to agree to any amendments or to grant any waivers in relation to this Agreement;
 - 1.8.1.3 at least one of whom will be available and contactable through the Help Desk, 24 hours per day, 365 (366) days of the year; and
 - 1.8.1.4 who will at all times exercise competent management of the Services and of all Project Co Persons engaged in the delivery of Services.
- 1.8.2 Project Co may at any time and at its discretion by written notice to the Province change the person appointed as its Service Provider Lead or Assistant Service Provider Lead. If at any time the Province objects to the Service Provider Lead, or Assistant Service Provider Lead, then Project Co will give reasonable consideration to replacing the Service Provider Lead, or delegate, as applicable, with a person with equal experience and qualifications, and who is reasonably acceptable to the Province.

1.9 Other General Management Services

- 1.9.1 Project Co will coordinate communication between Project Contractors, Sub-Contractors and Project Co, and, as may be reasonably required from time to time, between Project Contractors, Sub-Contractors and the Province.
- 1.9.2 Project Co will cooperate with and assist the Province in the interface and coordination with the Province Activities, the Province FM Services, and the Province's contractors.
- 1.9.3 Project Co will prepare and maintain Operational Policies and Procedures.
- 1.9.4 In connection with the provision of the Services, Project Co will liaise with:
 - 1.9.4.1 the Province to minimize any interruptions to the delivery of Province Activities and Province FM Services, and
 - 1.9.4.2 external advisors and Governmental Authorities in respect of the Services, as reasonably required by the Province.
- 1.9.5 Project Co will keep the Province informed, in such detail as the Province may reasonably require, of the progress of collective agreement negotiations with Project Co Persons, if any.
- 1.9.6 Upon request by the Province, Project Co will provide for, and cooperate with the Province in the management of, visits to the Facility by visitors and other invitees of the Province.
- 1.9.7 Project Co will actively participate, and ensure that all Project Co Persons engaged in the delivery of the Services actively participate, in the response to, and mitigation of, any declared emergencies, riots, outbreaks, pandemics, labour disruptions and other major disasters at, or affecting the Facility, as described in Section 3.14 [Contingency Planning and Crisis Management] of this Schedule.

1.10 Qualified Environmental Professional

- 1.10.1 Project Co will retain one or more qualified environmental professionals, acceptable to the Province acting reasonably, to inspect, evaluate and report on Project Co's compliance with the requirements of CEA Report, the SARA Permit, the Wildlife Act Permit and any other environmental Permits applicable to the Services, including fulfillment of all applicable mitigation obligations required by such Permits.

- 1.10.2 The qualified environmental professional(s) retained by Project Co shall:
 - 1.10.2.1 be registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that organization's code of ethics and subject to disciplinary action by that organization; and
 - 1.10.2.2 act only within their area of expertise.
- 1.10.3 Concurrently with the submission of each Annual Service Plan, Project Co shall submit to the Province a report, in a form and with content acceptable to the Province acting reasonably, from the qualified environmental professional(s) retained by Project Co, certifying that Project Co has: (i) complied with the requirements of all environmental Permits applicable to the Services including the CEA Report, the SARA Permit or the Wildlife Act Permit; and (ii) fulfilled all mitigation obligations required by such environmental Permits to be completed during the previous Contract Year.

PART 2. OPERATING PERIOD ADMINISTRATION

2.1 Operating Period Representatives

- 2.1.1 Not less than one year before the Target Service Commencement Date, each of the parties will designate in writing a person (the “**Operating Period Representative**”) to be that party’s single point of contact with respect to the Operating Period and the Services.
- 2.1.2 A party’s Operating Period Representative will have full authority to act on behalf of and bind the party with respect to the Services, provided that an Operating Period Representative will not have the authority to execute or to agree to any amendments or to grant any waivers in relation to this Agreement.
- 2.1.3 A party may at any time and at its discretion by written notice to the other party change the person appointed as its Operating Period Representative. If at any time a party objects to the Operating Period Representative of the other party then the other party will give reasonable consideration to replacing the Operating Period Representative with a person reasonably acceptable to the objecting party.
- 2.1.4 Except as otherwise set out in this Agreement, all costs or expenses incurred by or with respect to a party’s Operating Period Representative will be for the account of that party.

2.2 Operating Period Committee

- 2.2.1 Not less than one year before the Target Service Commencement Date, the Province and Project Co will establish, and will maintain throughout the Operating Period, a joint liaison committee (the “**Operating Period Joint Committee**”) consisting of the Operating Period Representatives and such other members as the parties may agree from time to time.
- 2.2.2 The purpose of the Operating Period Joint Committee is to provide a formal forum for the parties to consult and cooperate in all matters relating to the Facility and the Services during the Operating Period and any member appointed to the Operating 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.
- 2.2.3 The Operating Period Joint Committee:

- 2.2.3.1 will only have the authority as expressly delegated to it by the Province and Project Co, and both parties will give reasonable consideration to delegating appropriate authority to permit efficient decision making with respect to the Facility and the Services;
 - 2.2.3.2 may strike, establish terms of reference for, delegate authority and appoint members having the necessary experience and qualifications to such sub-committees as the Operating Period Joint Committee may determine are necessary from time to time and all such sub-committees will report to the Operating Period Joint Committee;
 - 2.2.3.3 will establish protocols and procedures for undertaking the tasks and responsibilities delegated to it, including a co-operative and consultative process to review all Plans submitted to it pursuant to Part 3 [Operating Period Plans] of this Schedule;
 - 2.2.3.4 may make recommendations to the parties on all matters relating to the Facility and the Services, which the parties may accept or reject in their complete discretion; and
 - 2.2.3.5 will have no authority to agree to any amendments or to grant any waivers in relation to this Agreement.
- 2.2.4 Subject to the provisions of this Agreement, the members of the Operating Period Joint Committee may adopt such procedures and practices for the conduct of the activities of the Operating Period Joint Committee as they consider appropriate from time to time and may:
- 2.2.4.1 invite to any meeting of the Operating Period Joint Committee such other (non-voting) persons as a member may decide; and
 - 2.2.4.2 receive and review a report from any person agreed by the members of the Operating Period Joint Committee.
- 2.2.5 Recommendations of the Operating Period Joint Committee must be unanimous and any matters which cannot be resolved by the Operating Period Joint Committee may be referred for dispute resolution, in accordance with the Dispute Resolution Procedure by either the Province or Project Co.

- 2.2.6 The Operating Period Joint Committee will meet (unless otherwise agreed by its members) in person at least once each month:
- 2.2.6.1 prior to Service Commencement Date, at an agreed upon site in Oliver, British Columbia; and
 - 2.2.6.2 after the Service Commencement Date, at the Facility, unless otherwise agreed.
- 2.2.7 Any member of the Operating Period Joint Committee may convene a meeting of the Operating Period Joint Committee at any time by giving not less than 10 Business Days' notice to the other party (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.
- 2.2.8 Records of recommendations and decisions of the Operating Period Joint Committee will be kept by Project Co in accordance with Schedule 14 [Records and Reports] and copies circulated promptly to the parties within five Business Days of the making of the recommendation or the holding of the meeting.

2.3 **Joint Technical Review**

- 2.3.1 At the end of each five-year period throughout the Operating Period, Project Co and the Province, supported by a duly qualified independent inspector and such technical resources as are mutually deemed necessary, will conduct a joint technical review (the "**Joint Technical Review**") of the Facility. The independent inspector shall be experienced in conducting facility condition assessment for facilities that are required to operate 24 hours per day 365 (366) days per year. The Joint Technical Review will assess the performance and effectiveness of both the scheduled maintenance and life cycle works completed over the previous 5 year period and the work planned and scheduled for the upcoming five-year period in accordance with the then current Five-Year Maintenance Plan, Life Cycle Plan and these Services Protocols and Specifications. The cost of the independent inspector engaged to conduct Joint Technical Review will be split equally between the Province and Project Co.
- 2.3.2 The findings of each Joint Technical Review will be documented in a written report for each Facility and prepared by the independent inspector (the "**Facility Condition Reports**"). Each report will identify:
- 2.3.2.1 the condition of the Facility; and

- 2.3.2.2 any deficiencies in the performance of the obligations of Project Co under this Agreement by referring to the Services Protocols and Specifications and the Life Cycle Plan.
- 2.3.3 Within 30 days after receipt of the Facility Condition Report, Project Co will prepare a remediation plan outlining its approach and proposed schedule for rectification of any identified deficiencies (a "**Remediation Plan**").
- 2.3.4 The parties will convene a meeting of the Operating Period Joint Committee to examine the findings of each Joint Technical Review and the Project Co Remediation Plans for the Facility. If, in the opinion of the Operating Period Joint Committee, a subsequent inspection of the remediation work completed by Project Co is necessary, the inspector will undertake a subsequent inspection of the remediation work completed by Project Co and issue a revised Facility Condition Report.
- 2.3.5 The Life Cycle Plan and the Five-Year Maintenance Plan, including any life cycle replacement and/or refurbishment works will be amended and updated, as applicable, to include all remediation work identified in the Facility Condition Report and/or the revised Facility Condition Report. Project Co will rectify any identified deficiencies to the standards required by this Agreement within a reasonable time period as approved by the Operating Period Joint Committee.
- 2.3.6 During the last five years of the Operating Period, the parties on mutual agreement may cancel the requirement for a Joint Technical Review and carry out the inspection provisions of the Handback Requirements.
- 2.4 **Province Not Responsible for the Services**
- 2.4.1 The Province's rights of review, acceptance, approval or confirmation of compliance with respect to any aspect of the Services will be for the Province's benefit only, and no review, acceptance, approval or confirmation of compliance by the Province's Operating Period Representative or any other representative of the Province will in any way relieve Project Co of its obligation for all aspects of the Services.

PART 3. OPERATING PERIOD PLANS

3.1 Preparation of Plans

3.1.1 Project Co will work co-operatively with the Province's Operating Period Representative in the preparation of all Plans and will submit draft Plans for review and comment by the Operating Period Joint Committee prior to formal submission of such Plans to the Province pursuant to Section 3.2 [Submission of Plans to the Province] of this Schedule.

3.2 Submission of Plans to the Province

3.2.1 Project Co will submit each Plan and the Operational Policies and Procedures to the Province in accordance with the processes and deadlines described in Appendix 4I [Operating Period Review Procedure].

3.3 Failure to Prepare Plans

3.3.1 Any failure of Project Co to prepare and submit to the Province any Plan or Operational Policy and Procedure in accordance with this Part 3 and Appendix 4I [Operating Period Review Procedure] will be deemed a service failure in accordance with Appendix 4E [Performance Indicators].

3.4 Amendment of Plans

3.4.1 Any proposed amendment to a Reviewed Plan shall be subject to the review procedure described in Appendix 4I [Operating Period Review Procedure].

3.5 Implementation of Plans

3.5.1 Project Co will implement and comply with all plans marked as "REVIEWED".

3.6 Operating Period Submittal Deadlines

3.6.1 In consultation with the Design-Builder and the Service Provider:

3.6.1.1 180 days prior to Target Service Commencement Date, Project Co will submit:

3.6.1.1(1) a draft Start-up Plan;

3.6.1.1(2) a draft Life Cycle Schedule; and

3.6.1.1(3) an outline of all Operation Period Submittals;

- 3.6.1.2 not later than 120 days prior to Target Service Commencement Date, Project Co will submit:
 - 3.6.1.2(1) the final Draft of Start-Up Plan, and
 - 3.6.1.2(2) the final Draft of Life Cycle Schedule;
- 3.6.1.3 not later than 90 days prior to Target Service Commencement Date, Project Co will submit:
 - 3.6.1.3(1) the proposed Operating Period Submittal Schedule for the first year;
 - 3.6.1.3(2) the Province Satisfaction System; and
 - 3.6.1.3(3) a final draft of all Operating Period Submittals;
- 3.6.1.4 for each year after the Service Commencement Date (commencing with the Contract Year that starts April 1 of the year following the Service Commencement Date) and not later than March 1, Project Co will submit:
 - 3.6.1.4(1) the Annual Service Plan;
 - 3.6.1.4(2) the Life Cycle Plan;
 - 3.6.1.4(3) the Environmental Management Plan;
 - 3.6.1.4(4) the Energy Management Plan;
 - 3.6.1.4(5) the Operating Period Submittal Schedule;
 - 3.6.1.4(6) an updated Five-Year Maintenance Plan; and
 - 3.6.1.4(7) any updates to the Operational Policies and Procedures;
- 3.6.1.5 no more than 360 days after the Effective date, Project Co will submit the Energy Management Plan;
- 3.6.1.6 upon request, Project Co will submit:
 - 3.6.1.6(1) the Contingency / Crisis Management Plan; and
 - 3.6.1.6(2) the Remediation Plan.

3.7 Life Cycle Schedule

- 3.7.1 Project Co will prepare a report that sets out the design or anticipated service life of each major element in the Facility and the initial Project Co plans and strategies for Life Cycle replacement and/or refurbishment relating thereto (“**Life Cycle Schedule**”). The Life Cycle Schedule will be used as the basis for the Life Cycle Plan.

3.8 Start-up Plan

- 3.8.1 Project Co will establish and implement a start-up plan (the “**Start-up Plan**”) which will include each of the following:
- 3.8.1.1 a comprehensive system of financial and management controls relating to the delivery of the Services;
 - 3.8.1.2 a schedule identifying the tasks to be completed prior to the Service Commencement Date and the targeted completion dates of each task required to ensure that Project Co will be in a position to commence delivery of the Services on the Service Commencement Date;
 - 3.8.1.3 the Annual Service Plan for the first 12 months of the Operating Period, in accordance with Section 3.9 [Annual Service Plans] of this Schedule;
 - 3.8.1.4 a preliminary Five Year Maintenance Plan in accordance with Section 3.10 [Five Year Maintenance Plan] of this Schedule;
 - 3.8.1.5 a preliminary Environmental Management Plan, in accordance with Section 3.12 [Environmental Management Plan and System] of this Schedule;
 - 3.8.1.6 preliminary Operational Policies and Procedures; and
 - 3.8.1.7 a detailed description of all elements of the Performance Monitoring Program and the mechanism for implementation of the Performance Monitoring Program by the Service Commencement Date.

3.9 Annual Service Plans

- 3.9.1 Project Co will establish and implement an annual service plan (the “**Annual Service Plan**”) for the delivery of the Services, in accordance with the terms of this Agreement and Good Industry Practice, which will include each of the following sub-sections:
- Operational Plan in accordance with Section 3.9.1.1 [Annual Service Plans] of this Schedule;

- Staffing Plan in accordance with Section 3.9.1.2 [Annual Service Plans] of this Schedule;
- Training Program in accordance with Section 3.9.1.3 [Annual Service Plans] of this Schedule;
- Quality Assurance Program in accordance with Section 3.9.1.4 [Annual Service Plans] of this Schedule;
- Maintenance History in accordance with Section 3.9.1.5 [Annual Service Plans] of this Schedule;
- One-Year Scheduled Maintenance Plan in accordance with Section 3.9.1.6 [Annual Service Plans] of this Schedule;
- Preventative Maintenance Program in accordance with Section 3.9.1.7 [Annual Service Plans] of this Schedule;
- Critical Spare Parts List in accordance with Section 3.9.1.8 [Annual Service Plans] of this Schedule;
- Building Systems in accordance with Section 3.9.1.9 [Annual Service Plans] of this Schedule;
- Equipment and Systems Commissioning in accordance with Section 3.9.1.10 [Annual Service Plans] of this Schedule;
- Fire, Life Safety and Emergency Plan in accordance with Section 3.9.1.11 [Annual Service Plans] of this Schedule;
- Service Failure Response Plan in accordance with Section 3.9.1.12 [Annual Service Plans] of this Schedule;
- Communication and Cooperation Protocol in accordance with Section 3.9.1.13 [Annual Service Plans] of this Schedule.

3.9.1.1 **Operational Plan** – an operational plan detailing the methods by which Project Co will deliver the Services, such that the Services:

3.9.1.1(1) comply with these Services Protocols and Specifications and the appendices to this Schedule 4 [Services Protocols and Specifications];

3.9.1.1(2) will not interfere in any material respect with, and will be complementary to, the delivery of Province Activities and Province FM Services and use of the facility by Facility Administrators and Inmates; and

3.9.1.2 **Staffing Plan** – a detailed organizational and Staffing Plan for all Project Co Persons, including the personnel of the Service Provider and the Sub-Contractors engaged to perform the Services which will include:

3.9.1.2(1) provision for sufficient and appropriately qualified, licensed, trained, experienced and competent Project Co Persons or

Sub-Contractors with the skills necessary to perform the Services;

- 3.9.1.2(2) job role descriptions, tasks and responsibilities, reporting relationships and lines of communication, for all Project Co Persons engaged in the delivery of the Services;
- 3.9.1.2(3) personnel policies, practices and procedures with respect to occupational health and workplace safety, consistent with the requirements of the *Workers Compensation Act*, R.S.B.C. 1996, c.492 and the *Occupational Health and Safety Regulation* BCREg 296/97, and including detailed policies, practices and procedures relating to:
- (a) infection control (including, routine precautions, isolation, hand washing, blood, body fluid protocols);
 - (b) provision of immunization and infection testing programs (including those for influenza, Hepatitis B and Tuberculosis), consistent with those of the Province in effect for the Facility;
 - (c) personal hygiene and hand washing;
 - (d) pandemic planning;
 - (e) early return to work/transitional work programs;
 - (f) appropriate dress and use of personal protective equipment (including gowns, face shields, masks, etc.);
 - (g) first aid training;
 - (h) use and application of the Workplace Hazardous Materials Information System (WHMIS), including Material Data Safety Sheets (MSDS); and
 - (i) use of all applicable equipment and machines;
- 3.9.1.2(4) personnel policies, practices and procedures with respect to job training and orientation, including Project Co's policies, practices and procedures relating to:
- (a) handling, storage and use of cleaning materials and equipment and the Facility's materials and finishes;
 - (b) manual material handling;
 - (c) mutual respect standards;

- (d) use and operation of the CMMS;
 - (e) tool controls;
 - (f) working with, and in proximity to, an inmate population;
 - (g) responding to codes and emergency alarms and procedures used by Project Co and the Province (to the extent the Province has notified Project Co of such codes, alarms and procedures) at the Facility;
 - (h) prevention of violence in the workplace;
 - (i) human rights matters;
 - (j) confidentiality and privacy, consistent with those of the Province in effect for the Facility and the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c.165;
 - (k) appropriate rules of conduct for the Facility;
 - (l) roles, responsibilities and obligations pursuant to the Contingency/Crisis Management Plan;
 - (m) Project Co's policies, practices and procedures for ensuring compliance with the requirements of Section 17.3 [Security Sensitive Work]; and
 - (n) appropriate Facility orientation and job training;
- 3.9.1.2(5) Copies of all training and Facility orientation materials to be utilized by Project Co, in each case, consistent with the applicable Province Policies and Procedures, in effect for the Facility.
- 3.9.1.2(6) Procedures for reporting to the Province:
- (a) any Project Co Person engaged in the delivery of the Services suffering from any illness which may compromise the health or safety of any Inmate, Province Person or other Facility Administrator;
 - (b) instances of any Project Co Person engaged in the delivery of the Services having had contact with any person suffering from any illness which may compromise the health or safety of any Inmate, Province Person or other Facility Administrator; and
 - (c) instances of any Project Co Person engaged in violence, coercion, possession of contraband or other known violation of law or policy and procedures.

- 3.9.1.3 **Training Program** - a training program that begins no later than 60 days before Service Commencement and includes provision for the bi-annual training and re-training of all Facility Administrators designated by the Province as to the use and operation of the Help Desk, communication systems and all other electronic monitoring systems and equipment provided by Project Co.
- 3.9.1.4 **Quality Assurance Program** – a comprehensive Quality Assurance Program including both quality assurance and quality control plans that are derived from Good Industry Practice for monitoring the performance of the Services and all aspects of the Facility.
- 3.9.1.5 **Maintenance History** - details of all maintenance undertaken during the previous year, including a summary of all Service Failures and Unavailability Events incurred and corrective actions taken.
- 3.9.1.6 **One-Year Scheduled Maintenance Plan** – a detailed one year plan of Scheduled Maintenance for the ensuing year, including:
- 3.9.1.6(1) a description of the proposed work and job plan;
 - 3.9.1.6(2) the planned date and time when the work is scheduled to be performed;
 - 3.9.1.6(3) location of the work to be undertaken;
 - 3.9.1.6(4) identification of activities which may cause disruption to the Province, Facility Administrators or Inmates and the methods by which Project Co will to minimize such disruptions; and
 - 3.9.1.6(5) any changes proposed either by the Province or Project Co.
- 3.9.1.7 **Preventative Maintenance Program** - a comprehensive Preventive Maintenance program comprised of planned and scheduled cyclical maintenance of all building elements, components, systems and equipment that are planned, scheduled, controlled and monitored utilizing the CMMS, including:
- 3.9.1.7(1) hierarchical based component identification;
 - 3.9.1.7(2) description (make, model, serial #, capacity, etc);

- 3.9.1.7(3) location;
- 3.9.1.7(4) priority classification;
- 3.9.1.7(5) unique identification code;
- 3.9.1.7(6) maintenance job plan description, including:
 - (a) detailed maintenance procedures;
 - (b) warranty requirements;
 - (c) parts and consumables;
 - (d) regulatory or statutory requirements; and
 - (e) special instructions;
- 3.9.1.7(7) frequency;
- 3.9.1.7(8) scheduled dates;
- 3.9.1.7(9) maintenance history including planned and unplanned Maintenance;
- 3.9.1.7(10) the provider (Project Co Person or Project Contractor) of the Service;
- 3.9.1.7(11) status;
- 3.9.1.7(12) notes, including inspection observations, recommendations and comments; and
- 3.9.1.7(13) a schedule for planned tests, inspections and issuance of reports, including observations, recommendations and comments. The testing and inspection schedule will include all routine inspection, testing and servicing as i) required by the insurers of the Facility; ii) required by applicable Laws; iii) required by local, regional and provincial health authorities and other Governmental Authorities; (iv) as recommended by the applicable manufacturers, to the extent required to maintain applicable warranty coverage; and (v) as prescribed by Good Industry Practice.

- 3.9.1.8 **Critical Spare Parts List** - a listing and inventory of spare parts and supplies to retain at the Facility, so as to comply with the applicable Response Times and Rectification Periods;
- 3.9.1.9 **Building Systems:** a schedule for all Building Systems, including:
- 3.9.1.9(1) Heating, ventilation and air conditioning (HVAC);
 - 3.9.1.9(2) plumbing and water systems;
 - 3.9.1.9(3) boilers and related systems and components;
 - 3.9.1.9(4) elevators and conveying devices;
 - 3.9.1.9(5) mechanical systems;
 - 3.9.1.9(6) electrical distribution systems;
 - 3.9.1.9(7) life safety and emergency systems including, but not limited to: standby generators and associated transfer switches, uninterrupted power supplies (UPS) standby domestic pumps, fire alarms, firefighting equipment and suppression systems, security systems and devices, emergency lighting systems and exit signs and voice communication systems;
 - 3.9.1.9(8) interior and exterior building finishes and fabric including: floors, walls and ceiling coverings, paint, hardware, windows, doors, cladding, roofing systems and other architectural and structural components;
 - 3.9.1.9(9) the potable and non-potable water supply (including testing for Legionella); and
 - 3.9.1.9(10) all portable tools and testing devices.
- 3.9.1.10 **Equipment and Systems Commissioning** – details of Project Co's plans and procedures for commissioning and re-commissioning all new plant operations, systems and equipment installed by Project Co during the Operating Period.
- 3.9.1.11 **Fire, Life Safety and Emergency Plan** – a comprehensive fire, life safety, emergency, disaster preparedness, post-disaster operational and

contingency response plan for the Facility (the "**Fire, Life Safety and Emergency Plan**"), which is: (i) compliant with the British Columbia Emergency Response Management System; (ii) compliant with all applicable Governmental Authorities' emergency response plans and procedures; and (iii) integrated with the Province's emergency response systems, plans and procedures. The Fire, Life Safety and Emergency Plan will be coordinated and integrated with the Province's Contingency/Crisis Management Plan and will include plans and procedures for:

- 3.9.1.11(1) conducting fire drills on all work shifts in conjunction with the Province and the relevant fire officials;
- 3.9.1.11(2) evacuation of the Facility under different emergency scenarios including fire, explosion, flood, earthquake, hurricane, tornado, toxic material release, radiological and biological accident, civil disturbance and workplace violence, and details of the means by which Project Co will ensure fulfillment of its role in the evacuation of the Facility.
- 3.9.1.11(3) fulfilling Project Co's roles during and after a declared outbreak or pandemic;
- 3.9.1.11(4) fulfilling Project Co's role during and after a natural disaster such as floods or earthquakes;
- 3.9.1.11(5) implementing Project Co's business contingency and service resumption plans, including, where applicable, the Contingency / Crisis Management Plan included in the then current Annual Service Plan;
- 3.9.1.11(6) training of all Project Co Persons engaged in the delivery of Services with respect to fire and life safety;
- 3.9.1.11(7) maintenance of access to the Facility by emergency vehicles by roadway and alternative fire paths and ensuring that all such routes are well marked by way of road signs and the use of hatched road markings;

- 3.9.1.11(8) provision that all available Project Co Persons on Site will provide whatever assistance can safely be provided in response to an emergency including:
- (a) responding to a fire or other emergency alarm;
 - (b) reporting blocked fire access routes to the Help Desk and to the Province;
- 3.9.1.11(9) assisting the Province's security personnel limit unauthorized access to the scene of a fire or other emergency;
- 3.9.1.11(10) assisting in the evacuation of the affected areas;
- 3.9.1.11(11) liaising with external agencies, including the fire department as part of its response in relation to an incident; and
- 3.9.1.11(12) confirming that:
- (a) all emergency procedures and contingency plans including, fire compartmentalization design, provision of escape routes and provision of firefighting equipment and systems are compliant with the requirements of this Agreement;
 - (b) up-to-date, as-built drawings are maintained at the Facility and accessible to emergency personnel at a designated location, acceptable to the Province;
 - (c) the fire alarm system is properly certified; and
 - (d) the emergency or standby generator is properly tested, including simulation of power interruptions, and the generator is successfully performing under full load;
- 3.9.1.12 **Service Failure Response Plan** – detailed procedures for responding to Unavailability Events and Service Failures;
- 3.9.1.13 **Communication and Cooperation Protocol** - protocols and procedures for cooperation with the Province and other Facility Administrators in respect to the Province Activities at the Facility, including:
- 3.9.1.13(1) repair and maintenance protocols for all infrastructure, utilities, systems and equipment integrated or connected with those of the Province or other Facility Administrators;

- 3.9.1.13(2) the receipt at the loading dock of goods and supplies required by Project Co to perform the Services and Project Co's movement and control of such goods and supplies within the Facility.
- 3.9.1.13(3) a procedure to ensure regular liaison and communication between Project Co's managers and supervisors and the Province, Province Persons and relevant Governmental Authorities, in order to facilitate the delivery of the Services and ensure Project Co is aware of the day-to-day specific requirements of the Province, the Facility Administrators and the Inmates; and
- 3.9.1.13(4) a description of the arrangements and services to be provided by Project Co in respect of religious observances and other special cultural occasions which the Province notifies Project Co are to be observed and recognized at the Facility, provided any such arrangements and services will be consistent with those commonly recognized within the community.

3.10 **Five Year Maintenance Plan**

- 3.10.1 Project Co will establish and implement throughout the Operating Period a rolling five year maintenance plan (the "**Five Year Maintenance Plan**") for the Facility and all Maintained Elements based on Good Industry Practice. The Five Year Maintenance Plan will include details and scheduling of planned, preventative and replacement maintenance programs, including those set out in the Life Cycle Plan, to be undertaken during that period.

3.11 **Life Cycle Plan**

- 3.11.1 Project Co will establish and implement throughout the Operating Period, in conjunction with the Five Year Maintenance Plan, an asset life cycle and rehabilitation plan (the "**Life Cycle Plan**") for the Term for all Maintained Elements based on the Life Cycle Schedule and Good Industry Practice. The Life Cycle Plan will include:
 - 3.11.1.1 the methods, procedures and practices by which Project Co will:
 - 3.11.1.1(1) ensure the long-term integrity and ongoing operational serviceability of the Facility;

- 3.11.1.1(2) ensure that on the Expiry Date all aspects of the Facility are functional to the standard specified in the Handback Requirements;
 - 3.11.1.1(3) minimize, to the extent reasonably possible, disruption to the Province's Activities and programs at the Facility; and
 - 3.11.1.1(4) initiate emergency procurement to enable timely replacement and response to the unexpected failure of elements of the Facility;
- 3.11.1.2 specific refurbishment and replacement plans, key assumptions and annual cost provisions for all aspects of the Facility, categorized by major elements.

3.12 Environmental Management Plan and System

- 3.12.1 Project Co will establish and implement throughout the Operating Period an environmental management plan (the "**Environmental Management Plan**") for the Facility based on Good Industry Practice and the Environmental Management System developed in accordance with Appendix 4H [Environmental and Sustainability Services]. The Environment Management Plan will include:
- 3.12.1.1 maintaining compliance with all applicable Laws, including those regarding the handling, storage and disposal of Hazardous Substances;
 - 3.12.1.2 maintaining a safe environment through the use of processes, practices, materials and products that avoid or minimize the production or disposal of Hazardous Substances;
 - 3.12.1.3 will develop a plan that is consistent with the Province's Environmental Policy;
 - 3.12.1.4 ensuring that the Services are performed in a careful and environmentally responsible fashion to minimize adverse effects on health and the environment; and
 - 3.12.1.5 providing monitoring, inspection, testing, handling, storage and cleanup of all Hazardous Substances introduced by Project Co and that all such activities.

3.12.2 Environmental Management System

3.12.2.1 Project Co will develop, implement and maintain throughout the Operating Period a comprehensive ISO 14001 certified environmental management system (the “**Environmental Management System**”) for the Facility. The Environmental Management System shall include the following:

- 3.12.2.1(1) emissions management (air and wastewater);
- 3.12.2.1(2) GHG emission reduction;
- 3.12.2.1(3) halocarbons (ozone depleting substance) management;
- 3.12.2.1(4) management of Hazardous Substances;
- 3.12.2.1(5) non-hazardous solid waste management and recycling;
- 3.12.2.1(6) storage tanks management;
- 3.12.2.1(7) potable water quality management;
- 3.12.2.1(8) water conservation;
- 3.12.2.1(9) indoor air quality management;
- 3.12.2.1(10) green materials and supplies;
- 3.12.2.1(11) proactive mould growth prevention;
- 3.12.2.1(12) continuous hazardous gas monitoring;
- 3.12.2.1(13) managing sound pollution;
- 3.12.2.1(14) developing an occupant environmental awareness program in conjunction with the Province; and
- 3.12.2.1(15) reporting to the Province on the development and implementation of all programs and procedures intended to reduce the environmental impact of the delivery of Services.

3.12.3 Project Co will perform the Services in accordance with the EMS on an ongoing basis in a careful and environmentally responsible fashion to minimize effects on health and the environment.

- 3.12.4 Project Co will employ environmentally sound processes, materials, supplies and equipment.
- 3.12.5 Project Co will put programs in place to ensure monitoring, inspection, testing, handling, storage and clean up as required for all elements of the EMS.

3.13 **Energy Management Plan**

- 3.13.1 Project Co will establish and implement throughout the Operating Period an energy management plan (the “**Energy Management Plan**”) for the Facility based on Good Industry Practice and the developed in accordance with Appendix 2D [Energy] and Appendix 4H [Environmental and Sustainability Services] and will include Project Co’s policies and procedures for developing and promoting an energy awareness program for all staff in conjunction with the Province.
- 3.13.2 The parties will monitor compliance with the Energy Management Plan at each meeting of the Operating Period Joint Committee.

3.14 **Contingency Planning and Crisis Management:**

- 3.14.1 Upon request from the Province, Project Co will cooperate with the Province and assist the Province to develop a Facility contingency/crisis management plan (the “**Contingency/Crisis Management Plan**”), including:
 - 3.14.1.1 measures to protect the safety and well being of Project Co Persons, Inmates, Province Persons and other Facility Administrators, in the event of a declared emergency, riot, outbreak, pandemic, labour disruption or other major incident;
 - 3.14.1.2 a description of Project Co’s role and obligations in support of the Province during a declared emergency, riot, outbreak, pandemic, labour disruption or other major incident; and
 - 3.14.1.3 provisions for shelter-in-place in the event of a declared emergency, riot, outbreak, pandemic, labour disruption or other major incident.

3.15 **Plan Updates**

- 3.15.1 Project Co will provide details of any proposed updates or amendments to:
 - 3.15.1.1 the manner in which Project Co delivers the Services and the anticipated impact of those changes on the Province and Facility Administrators; and

- 3.15.1.2 the Performance Monitoring Program and the methods by which Project Co will satisfy the reporting requirements described in this Schedule.

PART 4. NOT USED

PART 5. PERFORMANCE MONITORING AND REPORTING

5.1 Project Co Performance Monitoring

5.1.1 Project Co will at all times during the Operating Period have in place a Performance Monitoring Program pursuant to which Project Co will monitor the delivery of the Services and which will, at all times, permit the Province to determine whether or not Project Co has delivered the Services in accordance with the applicable performance requirements. The Performance Monitoring Program will include monitoring the following:

5.1.1.1 all electronically recorded or written data, information or communications made in respect of the Services and the Facility, including:

5.1.1.1(1) such data, information, communications and records made to or generated by the BMS, the CMMS, the Help Desk and any other information systems used by Project Co in connection with the Facility and the Services;

5.1.1.1(2) trending reports from the CMMS with respect to Malicious Damage, repair of Malicious Damage and any modifications or adjustments to the Design, Construction or performance of the Services implemented in accordance with Section 2 [Deductions from Service Payments] of Schedule 8 [Payments]; and

5.1.1.1(3) trend logs from the BMS; and

5.1.1.2 all other Project Co self-monitoring and reporting, including:

5.1.1.2(1) records of compliance with Response Times and Rectification Periods;

5.1.1.2(2) Help Desk Reports and other Help Desk records;

5.1.1.2(3) tracking of any failure to comply with these Services Protocols and Specifications, including failures to comply with any

applicable Laws, Province Policies and Procedures and any other service quality issues identified through Project Co's operating period Quality Monitoring Program, included in the then current Annual Service Plan; and

- 5.1.1.2(4) all reports in Project Co's possession or otherwise available to Project Co made by or to any Governmental Authority with respect to the Facility or the Services.

5.2 Periodic Reporting

5.2.1 Project Co will prepare and deliver a performance monitoring report (the "**Performance Monitoring Report**") to the Province's Operating Period Representative within five Business Days after the end of each Payment Period during the Operating Period. Each Performance Monitoring Report will include the following information for the relevant Payment Period:

- 5.2.1.1 all statistical data required for any provincial or federal reports or returns reasonably required by the Province;

- 5.2.1.2 all regulatory testing and actions taken as required by:

- 5.2.1.2(1) insurers of the Facility;

- 5.2.1.2(2) applicable Laws;

- 5.2.1.2(3) local, regional and provincial health authorities; and

- 5.2.1.2(4) other Governmental Authorities;

- 5.2.1.3 all monitoring which has been performed by Project Co in accordance with the Performance Monitoring Program with a summary of all findings;

- 5.2.1.4 a summary of all Unavailability Events, Service Failures and Demand Requisitions, including:

- 5.2.1.4(1) the number and a summary of each individual Demand Requisition;

- 5.2.1.4(2) the applicable Response Time and Rectification Period for each Demand Requisition in accordance with Appendix 8D

[Response Time and Rectification Period Requirements] of
Schedule 8 [Payments];

- 5.2.1.4(3) identification of the affected Functional Unit(s); and
- 5.2.1.4(4) actual Response Time and Rectification Period for each;
- 5.2.1.5 a summary detailing the implementation of the Annual Service Plan then in effect, including a summary of:
 - 5.2.1.5(1) the Staffing Plan;
 - 5.2.1.5(2) all Scheduled Maintenance and planned shutdowns implemented during the applicable Payment Period and planned for the next reporting period, including schedules and job plans;
 - 5.2.1.5(3) all Demand Maintenance performed during applicable Payment Period;
 - 5.2.1.5(4) the delivery of all other Services; and
 - 5.2.1.5(5) a summary of all failures by Project Co Persons to comply with, or fulfil the requirements of, any applicable Laws, Province Policies and Procedures or the then current Operational Policies and Procedures or Plans;
- 5.2.1.6 a summary of any other information required to be reported by these Services Protocols and Specifications for each Demand Requisition arising out of an act of Malicious Damage, along with details of the cause of the Malicious Damage, the location of the Malicious Damage and an analysis of whether the cause of the Malicious Damage could have been reasonably prevented or substantially mitigated during Design and Construction or Services;
- 5.2.1.7 a copy of any reports required by a Governmental Authority in respect of any failure of a Maintained Element; and
- 5.2.1.8 a summary and calculation of all adjustments to the relevant Periodic Payment and details of the root cause(s) of each Deduction.

5.3 Periodic Province Reporting

5.3.1 In addition to the monthly performance reporting, Project Co. will prepare and deliver other reporting as reasonably requested by the Province, including details of completed Minor Works and Changes.

5.4 Province Inspection and Audit

5.4.1 Project Co will ensure that systems and controls, acceptable to the Province are in place to safeguard property, Inmate and Province information, confidentiality, cash and commodities, and that appropriate records of such systems and controls are kept and available for inspection by the Province;

5.4.2 Project Co will:

5.4.2.1 permit the Province to access, review and audit all records, information and reports maintained by Project Co including all Performance Monitoring Reports and other reports generated in accordance with the Performance Monitoring Program, including the methods and equipment used to calculate or determine the information therein;

5.4.2.2 ensure that the Performance Monitoring Program stores information and generates reports such that they are capable of, and readily available for, audit; and

5.4.2.3 facilitate and assist the Province with, and participate in, any audit or inspection undertaken by the Province with respect to the Facility, the Services or the Performance Monitoring Program.

5.5 Reporting Failures

5.5.1 Any failure of Project Co to prepare and submit to the Province a Performance Monitoring Report in accordance with this Schedule will be deemed a failure to satisfy a Performance Indicator and deemed a Service Failure as described in Appendix 4E [Performance Indicators].

5.6 Reporting Errors

5.6.1 If any of the matters contained in a Performance Monitoring Report are incorrect or the Performance Monitoring Report fails to refer to any Unavailability Event or Service Failure that was not Rectified within the applicable Rectification Period (each of which is a "**Reporting Error**"), Project Co will:

- 5.6.1.1 if the Reporting Error occurred other than as a result of fraud, deliberate misrepresentation, gross negligence, incompetence or wilful misconduct, or if the Reporting Error is discovered by Project Co and reported to the Province prior to its discovery by the Province, immediately pay to the Province an amount equal to the amount overpaid by the Province as a result of the Reporting Error, with interest at the Default Rate from the date of payment by the Province to the date of repayment to the Province; or
- 5.6.1.2 if the Reporting Error occurred as a result of fraud, deliberate misrepresentation, gross negligence, incompetence or wilful misconduct, or the Reporting Error is discovered by the Province before it is discovered and reported to the Province by Project Co, immediately pay to the Province an amount equal to twice the amount overpaid by the Province as a result of the Reporting Error.

5.6.2 The Province will promptly pay to Project Co an amount equal to the amount underpaid by the Province as a result of the Reporting Error.

5.7 **Parties to Advise of Reporting Errors**

5.7.1 If at any time either the Province or Project Co becomes aware of a Reporting Error, the party who discovers the error will immediately advise the other party of its nature and, if possible, its effect.

5.8 **Increased Monitoring**

5.8.1 If Project Co incurs:

- 5.8.1.1 Deductions, in respect of any Service, exceeding \$18,000 (Index Linked) in any two consecutive Payment Periods or \$90,000 (Index Linked) in any 12 consecutive Payment Periods; or
- 5.8.1.2 a Reporting Error (whether related to the same type of Reporting Error or not) occurs on more than three occasions in any 12 consecutive month period,

the Province may increase its monitoring of the performance by Project Co under this Agreement and carry out any inspections and audits which it reasonably requires for a period of up to 90 days. Project Co will reimburse the Province for all reasonable costs and expenses incurred by the Province in carrying out such additional monitoring,

inspections and audits within five Business Days after the Province delivers an invoice to Project Co for such amounts.

5.9 Replacement of Non-Performing Service Provider or Sub-Contractor

5.9.1 If Project Co has accrued Deductions in excess of \$90,000 (Index Linked) in any two consecutive Payment Periods or \$150,000 (Index Linked) in any twelve consecutive Payment Periods in respect of any Services performed by a Service Provider, Sub-Contractor or Sub-Contractors to the Service Provider:

5.9.1.1 the Province may, by written notice to Project Co (a "**Sub-Contractor Termination Notice**"), require Project Co to cause the termination of the Sub-Contract or Sub-Contracts of the Sub-Contractor or Sub-Contractors delivering the Service(s) which gave rise to such Deductions; or

5.9.1.2 if the Services which gave rise to such Deductions is being provided directly by the Service Provider, the termination of the Service Provider's engagement to provide such Service(s).

5.9.2 Within 90 days of receipt of the Sub-Contractor Termination Notice, Project Co will cause a replacement of such Sub-Contractor(s) or Service Provider(s) (in respect of such Services) as the case may be, in accordance with Sections 4.5 [Use of Sub-Contractors] and 4.9 [Delivery of Amended Material Contracts].

5.10 Province's Right of Access

5.10.1 Without in any way limiting Project Co's exclusive responsibility for the Services, the Province (either itself or by engaging others) may at all times during the Operating Period, without notice, access, audit and inspect the Facility and Project Co's records of delivery of the Services so as to confirm:

5.10.1.1 the performance by Project Co of its obligations under this Agreement; and

5.10.1.2 that the Facility is being maintained in accordance with the terms of this Agreement, provided that:

5.10.1.2(1) the Province does not unreasonably interfere with the performance by Project Co of its obligations under this Agreement; and

5.10.1.2(2) the Province complies with Project Co's reasonable safety and security policies, provided that Project Co has delivered copies of such policies to the Province and such policies do not unreasonably impair or limit the Province's ability to access all aspects of the Facility.

5.11 Province Satisfaction System

5.11.1 No fewer than 120 days prior to the Target Service Commencement Date, Project Co will submit to the Province, Project Co's proposed system for assessment of designated Facility Administrators' satisfaction with Project Co's provision of the Services (the "**Province Satisfaction System**"). Project Co's proposed Province Satisfaction System will:

5.11.1.1 include a breakdown of each element of the Services to be surveyed (i.e. cleanliness, security, building and plant equipment, emergency response, asset management, general maintenance, facility condition, environmental controls, communication, cooperation, management of personnel and Sub-Contractors, responsiveness, reporting, invoicing, relationship management, realization of Province priorities, etc.) (each, a "**Surveyed Element**");

5.11.1.2 specifically identify any questions designed to elicit information only ("**Informational Questions**"), and all questions to which the rated provisions of this section will apply ("**Rated Questions**"), provided that, no more than 40% of the questions on a survey may be Informational Questions;

5.11.1.3 include the weighting to be applied to each Surveyed Element and to each sub-component comprising the Surveyed Element;

5.11.1.4 provide for each Rated Question to be measured using the following scale:

1 = Very Dissatisfied	2 = Dissatisfied
3 = Neither Satisfied nor Dissatisfied	4 = Satisfied
5 = Very Satisfied	N/A = Don't Know or Unable to Answer

5.11.1.5 provide for each Informational Question to be answered using either the same scale as set out in Section 5.11.1.4 [Province Satisfaction System] of this Schedule, narrative responses or a combination of both; and

- 5.11.1.6 be generally consistent with the Province satisfaction system described in Appendix 4A [Proposal Extracts (Services)].
- 5.11.2 No fewer than 90 days prior to the Target Service Commencement Date, Project Co will submit a finalized draft of the Province Satisfaction System to the Province's Operating Period Representative in accordance with Appendix 4I [Operating Period Review Procedure].
- 5.11.2.1 Project Co will implement the "REVIEWED" Province Satisfaction System by no later than the Service Commencement Date and will thereafter survey those Province Persons and other Facility Administrators designated by the Province, in accordance with the requirements of the Province Satisfaction System, at least once each Contract year.
- 5.11.2.2 Following completion of each survey of designated Province Persons and other Facility Administrators, Project Co will document the survey results in a written report, including a detailed breakdown of all satisfaction ratings on each Surveyed Element and a consolidated list of all narrative comments (each, a "**Province Satisfaction Report**"). For the purpose of this Section, Project Co's satisfaction rating in respect of a Surveyed Element will be the weighted average of all scores received in respect of the relevant Surveyed Element.
- 5.11.3 Within 30 Days of completion of each survey, Project Co will deliver to the Province's Operating Period Representative a copy of the Province Satisfaction Report, together with details of Project Co's proposed remedial plan if required in accordance with Section 5.11.4 [Province Satisfaction System] of this Schedule.
- 5.11.4 For each Surveyed Element in respect of which:
- 5.11.4.1 Project Co's satisfaction rating is [85%] or greater, no remedial action will be required;
- 5.11.4.2 Project Co's satisfaction rating is between [65%] and [84.9%], Project Co will prepare a plan, acceptable to the Province, to promptly address and improve its performance of the relevant Services; and
- 5.11.4.3 Project Co's satisfaction rating is [65%] or less, refer to Appendix 4E [Performance Indicators] for action.

- 5.11.5 Where Section 5.11.4.2 [Province Satisfaction System] of this Schedule applies, unless Project Co achieves a satisfaction rating of [85%] or greater in respect of the relevant Surveyed Element during the next scheduled survey then, without limiting the other requirements of this Section, such failure to achieve a satisfaction rating of [85%] or greater shall be deemed to be a service failure as described in Appendix 4E [Performance Indicators].
- 5.11.6 At least once every five years throughout the Term, Project Co will review and propose revisions to the Province Satisfaction System to:
- 5.11.6.1 ensure that it at all times constitutes a meaningful and informative tool for assessment of Province Persons' and other Facility Administrators' satisfaction with Project Co's provision of the Services; and
 - 5.11.6.2 address any deficiencies or other weaknesses in the Province Satisfaction System which are identified by Project Co, the Province, the Operating Period Joint Committee or the survey respondents.
- 5.11.7 Project Co will submit all proposed Province Satisfaction System revisions to the Province's Operating Period Representative in accordance with Appendix 4I [Operating Period Review Procedure].

PART 6. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM

6.1 Supply of CMMS

6.1.1 Prior to the Target Service Commencement Date, Project Co will supply and install a Computerized Maintenance Management System that will have as its users both Project Co Persons engaged in the delivery of Services and designated Province Persons.

6.1.1.1 In addition to the number of CMMS user licenses required by Project Co for performance of the Services, Project Co will provide a minimum of five concurrent user licenses to the Province, which licenses will be sufficient to permit Province Persons to obtain full "read only" access, including continuous access to reporting as provided in this Schedule, at all times throughout the Term, to all non-financial CMMS data and other CMMS information related to the operation and maintenance of the Facility.

6.1.1.2 Project Co will ensure that all information regarding the CMMS is at all times correct and current and will provide updated information regarding the CMMS to the Province on a timely basis. Project Co will ensure that all information regarding the CMMS which it provides to the Province is sufficient and appropriate to enable the Province to train and orient designated Province Persons with respect to the use and operation of the CMMS.

6.1.1.3 Once the CMMS is established, Project Co will be required to maintain so as to accurately to reflect all existing maintained elements.

6.2 Functionality Requirements

6.2.1 The CMMS will, at a minimum:

6.2.1.1 be a comprehensive maintenance work management solution for planned and unplanned activities including predictive, preventive and corrective Maintenance, schedule management, resource optimization, inventory planning, asset management, monitoring and costing, long and short-term planning, report creation and management, warranty tracking, and Performance Indicator tracking;

6.2.1.2 use a non-proprietary, industry standard, database which: (i) provides ease of data migration to an area enterprise computerized maintenance

management system, if one becomes available to the Province in the future;
and (ii) at all times remains compatible with the database systems then
being employed by the Province;

- 6.2.1.3 have application functionality that does not occur at the database level;
- 6.2.1.4 operate on a performance based internet browser program that is compatible with the Province's operating system, as it may be updated or replaced from time to time;
- 6.2.1.5 not require any PC client software;
- 6.2.1.6 have the capability to trace duplicate work requests and work orders;
- 6.2.1.7 have the capability to track and report Response Times and Rectification Periods;
- 6.2.1.8 have the capability to track Malicious Damage as a separate category and report it separately;
- 6.2.1.9 track work orders for Services as well as Province FM Services; and
- 6.2.1.10 employ appropriate security, data protection and access protocols, all in accordance with Good Industry Practice.

6.3 **Project Co Services**

6.3.1 Project Co will:

- 6.3.1.1 load each building element, component systems and piece of equipment that will be planned, scheduled, controlled and monitored on to the CMMS with the information described in Section 3.9.1.7 [Annual Service Plans] of this Schedule;
- 6.3.1.2 perform all CMMS Maintenance, administration and support and provide initial and annual refresher training (or on an as needed basis, as determined by the Province) to designated Project Co Persons, Province Persons and other Facility Administrators with respect to the use and operation of the CMMS;

- 6.3.1.3 be responsible for all CMMS hardware and software, hardware and software installations, upgrades, repairs, annual maintenance service agreements, updates and for maintaining all system and associated equipment;
 - 6.3.1.4 maintain all nameplate data for every piece of equipment in the CMMS and ensure that every piece of equipment has a unique identifier code;
 - 6.3.1.5 provide the Province with customized CMMS reports on request;
 - 6.3.1.6 affix a CMMS integrated identifier sticker with barcode on each piece of Equipment, and ensure that identifier and barcode information will be printed on each service ticket and work order; and
 - 6.3.1.7 use wireless mobile devices to read barcodes and/or radio frequency identification in performing routes/rounds, observations, inspections and Maintenance. Project Co will provide wireless mobile devices that will record work status, materials, time and attendance, failure codes, tools, and comments at a minimum, and have the capability to create new service tickets and work orders on demand, and capture signatures for completed tasks.
- 6.3.2 Data created and captured in the wireless mobile devices must be capable of being wirelessly transmitted in a secure manner to the CMMS. Project Co is responsible for all equipment and costs associated with wireless mobile devices. In addition to the number of wireless devices required by Project Co for performance of the Services, Project Co will supply and maintain five additional wireless mobile devices for Province Persons.

PART 7. PROVINCE FM SERVICES

- 7.1.1 Project Co acknowledges that there is an interface between the Services and the Province FM Services, and that for the Province to perform the Province FM Services, the Province requires information from Project Co regarding the interface.
- 7.1.2 Project Co will from time to time provide written information to the Province setting out reasonable measures Project Co considers are required for Good Industry Practice related to the interface between the Services and the Province FM Services.
- 7.1.3 The Province will, acting reasonably, consider the information provided by Project Co and provide comments to Project Co and seek to agree on the implementation of Good Industry Practice for the interface between the Services and the Province FM Services.
- 7.1.4 The Province reserves the right not to implement any measure identified by Project Co, provided however that such right will not limit Project Co's entitlement to issue a Supervening Event Notice.

Appendix 4A

PROPOSAL EXTRACTS (SERVICES)

Appendix 4B

ROADS, GROUNDS AND LANDSCAPE MAINTENANCE SERVICES

TABLE OF CONTENTS

PART 1. SERVICES 2

 1.1 General Requirements 2

PART 2. ROADS, GROUNDS AND LANDSCAPE MAINTENANCE SERVICES..... 2

 2.1 Services 2

 2.2 Reporting 5

**APPENDIX 4B
ROADS, GROUNDS AND LANDSCAPE MAINTENANCE SERVICES**

PART 1. SERVICES

1.1 General Requirements

1.1.1 In addition to the standards and specifications set out in Schedule 4 [Services Protocols and Specifications], Project Co will deliver the Roads, Grounds and Landscape Maintenance Services:

- 1.1.1.1 24 hours per day, 365 (366) days per year, as applicable;
- 1.1.1.2 in a manner integrated and coordinated with all other Services, so as to facilitate the smooth operation of the Facility; and
- 1.1.1.3 in accordance with the Environmental Management System and the Environmental Management Plan and so as to minimize the environmental impact of the Roads, Grounds and Landscape Maintenance Services, including the impact on environmental noise sensitivity.

PART 2. ROADS, GROUNDS AND LANDSCAPE MAINTENANCE SERVICES

2.1 Services

2.1.1 Project Co will provide Roads, Grounds and Landscape Maintenance Services for all Roads, Grounds and Landscape Maintained Elements, including:

- 2.1.1.1 provision of Scheduled Maintenance in accordance with the then current Annual Service Plan and Five Year Maintenance Plan, the Life Cycle Plan, the Environmental Management System, the Environmental Management Plan and the Operational Policies and Procedures;
- 2.1.1.2 Maintenance of the Roads, Grounds and Landscape Maintained Elements, in accordance with the applicable service standards set out in Table 1 [Service Standards] to this Appendix and so as to: (i) facilitate the smooth operation of the Facility, including ensuring safe, logical, clear and barrier-free access to the Facility and across the Site at all times; and (ii) promote a positive image of the Facility and the Province;
- 2.1.1.3 Maintenance of irrigation systems, exterior lighting, internal roadways and parking areas, and other Site Improvements;

- 2.1.1.4 provision of a full horticulture service across the Site which will include:
 - 2.1.1.4(1) tree maintenance/surgery;
 - 2.1.1.4(2) planting, including shrubs, trees, and flower beds; and
 - 2.1.1.4(3) effective irrigation procedures;
- 2.1.1.5 provision of oversight, technical direction and guidance to, but not the direct custodial supervision of, Inmate workers who (under supervision of the Province's custodial personnel) will perform basic horticultural services, including:
 - 2.1.1.5(1) lawn care, mowing and edging;
 - 2.1.1.5(2) flowerbed maintenance; and
 - 2.1.1.5(3) weeding;
- 2.1.1.6 protecting all existing and new plants, Site services, curbs, paving, structures, finishes and any other features from damage, during the course of providing the Services;
- 2.1.1.7 obtaining the approval of the Province before using any herbicides, pesticides, fertilizers or other chemicals in the delivery of the Roads, Grounds and Landscape Maintenance Services and maintaining records of all herbicides, pesticides, fertilizers or other chemicals used on the Site;
- 2.1.1.8 ensuring all external areas of the Facility are functional, sound, safe, tidy, of good appearance and Maintained in accordance with Table 1 [Service Standards] to this Appendix;
- 2.1.1.9 provision of snow and ice removal from sidewalks and roadways, including:
 - 2.1.1.9(1) snow ploughing, clearing, sanding and salting (including the application of other ice melt products);
 - 2.1.1.9(2) development of a snow and ice clearing priority protocol, in consultation with the Province;

2.1.1.9(3) removal of snow and ice to a storage area which: (i) will not create a hazard to Inmates, Province Persons or other Facility Administrators; (ii) will not restrict surface or subsurface drainage systems; and (iii) which is acceptable to the Province;

2.1.1.9(4) provision of winter fencing, as required; and

- 2.1.1.10 as set out in Schedule 8 [Payments], the direct costs of snow ploughing, sanding, and salting and removal will be a flow through to the Province and invoiced on a monthly basis, without mark up;
- 2.1.1.11 conducting inspections to ensure that the Roads, Grounds or Landscape Maintained Elements are at all times maintained in accordance with the requirements of this Appendix 4B [Roads, Grounds and Landscape Maintenance Services];
- 2.1.1.12 maintaining all Roads, Grounds and Landscape Maintained Elements in compliance with Crime Prevention through Environmental Design (CPTED) principles;
- 2.1.1.13 performing regular inspections of all internal road and parking area Maintained Elements and promptly reporting all identified issues, such as the following, to the Help Desk:
- 2.1.1.13(1) damaged car park or road surfaces;
 - 2.1.1.13(2) damaged curbing or footpaths;
 - 2.1.1.13(3) overhanging or obtrusive vegetation;
 - 2.1.1.13(4) inadequate street or car park lighting;
 - 2.1.1.13(5) inadequate road or parking space line markings;
 - 2.1.1.13(6) inadequate or damaged signage; and
 - 2.1.1.13(7) other hazards,

and ensuring that all identified issues are promptly rectified in accordance with the requirements of this Appendix 4B [Roads, Grounds and Landscape Maintenance Services];

2.1.1.14 providing and maintaining parking, which must be clearly signed and separately designated for each of the following categories:

2.1.1.14(1) visitors;

2.1.1.14(2) Province Person;

2.1.1.14(3) Persons with disabilities;

2.1.1.14(4) taxi parking/queuing;

2.1.1.14(5) drop off zones;

2.1.1.14(6) priority Province Persons;

2.1.1.14(7) bicycles and motorcycles; and

2.1.1.14(8) emergency vehicle.

2.2 Reporting

2.2.1 Project Co will prepare and maintain an electronic daily log and, upon request prepare and submit to the Province periodic monitoring reports with respect to the performance of the Roads, Grounds and Landscape Maintenance Services, showing applicable Site areas, materials used, activities carried out, date of each activity and such other information as the Province may reasonably request, all in accordance with the requirements of Schedule 14 [Records and Reports].

Table 1 – Service Standards

Maintained Element	Standard
General	<ul style="list-style-type: none"> ○ Maintain, Repair and refresh all Roads, Grounds or Landscape Maintained Elements from time to time, as required, in order to maintain compliance with the specifications and design criteria set out in Schedule 3 [Design and Construction Specifications] and the requirements of these Services Protocols and Specifications and so as to maintain the Site in accordance with all applicable Laws, Province Policies and Procedures and Good Industry Practice; and ○ ensure that access to all areas in which the Roads, Grounds and Landscape Maintenance Services are being performed is restricted to authorized personnel.
Site Improvements and Infrastructure	<ul style="list-style-type: none"> ○ Maintain the Site substantially free from litter (including cigarette ends and chewing gum), graffiti and vandalism. ○ ensure that the Site is accessible for elderly and disabled persons, including the visually and mobility impaired and wheelchair users; ○ ensure that all external furniture, and hard landscaping feature Maintained Elements are: <ul style="list-style-type: none"> - functional, safe, secure, operationally sound, of good appearance, substantially free from damage and otherwise in compliance with the specifications and design criteria set out in Schedule 3 [Design and Construction Specifications]; - free from moss, algae and interstitial weeds; and - substantially free from graffiti and/or vandalism; ○ empty waste bins as required so as to ensure that the waste bins are at all times less than 75% capacity and free from malodour; ○ ensure that all irrigation and exterior lighting systems are functional and maintained in accordance with the specifications and design criteria as set out in Schedule 3 [Design and Construction Specifications]; ○ maintain all gutters, drains and storm water systems substantially free from litter, leaves, weeds and extraneous material; ○ ensure that all fences, walls and gates remain: <ul style="list-style-type: none"> - intact, functional, safe, secure, operationally sound and of good appearance; - substantially free from graffiti, damage and/or vandalism; and ○ ensure that all locks are operational.

<p>External Sign Posting (including lighting)</p>	<ul style="list-style-type: none"> • All external signage and lighting Maintained Elements: <ul style="list-style-type: none"> ○ are functional, safe, secure, operationally sound, of good appearance, substantially free from damage and otherwise in compliance with the requirements of Schedule 3 [Design and Construction Specifications] and these Services Protocols and Specifications; ○ do not hinder visibility for drivers or pedestrians at junctions; ○ are appropriately located; ○ are highly visible, both day and night; ○ offer clear and concise information; and ○ are substantially free from graffiti and/or vandalism.
<p>Roads, Grounds and Landscape Maintenance</p>	<p>Trees, Shrubs and Hedges:</p> <ul style="list-style-type: none"> • All trees, shrubs and hedges are: <ul style="list-style-type: none"> ○ trimmed, pruned and/or cut to maintain healthy growth; ○ substantially free from dead or dying branches; ○ substantially free from litter; ○ substantially free from disease and/or infestation; • Project Co will replace trees, shrubs and hedges as and when necessary to maintain the appearance of the Facility; and • Hiding spaces are minimized and camera views are not obscured. <p>Grassed Areas:</p> <ul style="list-style-type: none"> • All grassed areas are: <ul style="list-style-type: none"> ○ of uniform appearance with no dead patches with all edges neatly trimmed; ○ substantially free from disease and/or infestation; ○ substantially free from fallen leaves, weeds, litter and excrement; and ○ a uniform length between 25 and 50 mm. <p>Flower Beds:</p> <ul style="list-style-type: none"> • All flower beds are: <ul style="list-style-type: none"> ○ fully stocked with an appropriate mix of annual, perennial and display plants to provide aesthetically pleasing beds throughout the year; ○ substantially free from fallen leaves, weeds, litter and excrement; and ○ substantially free from disease and/or infestation. <p>Roads and Parking Areas:</p> <ul style="list-style-type: none"> ○ Maintain all road and parking area Maintained Elements sound, safe, with even surfaces and with no potholes, sinking

	<p>or tripping hazards;</p> <ul style="list-style-type: none"> ○ ensure that all curb, paving stone and edging Maintained Elements are not loose and are otherwise sound; ○ maintain all road marking, signage and parking stripe Maintained Elements such that they are clear and complete; ○ maintain all road and parking area Maintained Elements swept and clear of debris and hazards and substantially free from graffiti and/or vandalism; ○ maintain Site circulation routes clear and accessible and provide good access for elderly and disabled persons, including the visually and mobility impaired and wheelchair users; and ○ protect all vehicles from chemical sprays. <p>External Recreation Areas:</p> <ul style="list-style-type: none"> ● All external recreation areas will remain: <ul style="list-style-type: none"> ○ functional, safe, secure and of good appearance; ○ accessible and easily observable by the Province's Persons; and ○ substantially free from graffiti and/or vandalism. <p>Snow and Ice Removal:</p> <ul style="list-style-type: none"> ● Project Co will: <ul style="list-style-type: none"> ○ apply and re-apply salt, sand and/or ice melting products as required to keep all paved and concrete areas, including roadways, emergency routes, parking areas and sidewalks free from ice; ○ commence snow ploughing and clearing within two hours of an accumulation of 5 cm (2 inches) in depth and continue to plough and clear on an on-going basis, as required, so as to reduce the risk of injury, accidents and so as to maintain access to the Facility at all times; ○ ensure that snow dumping and storage on-Site is limited to designated areas and does not impede fire lanes, pedestrian or vehicle traffic or restrict availability of visitor or staff parking; and ○ install winter fencing, if required to maintain access to the Facility at all times.
--	---

Appendix 4C

HANDBACK REQUIREMENTS

TABLE OF CONTENTS

PART 1.	FACILITY HANDBACK	2
1.1	Facility Condition	2
1.2	Remaining Useful Life	2
1.3	Handback Survey	3
1.4	Results of Survey	3
PART 2.	HANDBACK WORK	4
2.1	Performance of Handback Work	4
2.2	Obligation of Project Co.....	4
PART 3.	COMPLETION OF HANDBACK WORK	5
3.1	Further Inspection.....	5
3.2	Notice from the Province	5
3.3	Response from Project Co	6
3.4	Dispute.....	6

**APPENDIX 4C
HANDBACK REQUIREMENTS**

PART 1. FACILITY HANDBACK

1.1 Facility Condition

1.1.1 On the Expiry Date, the Facility and each element comprising the Facility will be in a condition which is:

1.1.1.1 consistent with the Facility and each of the elements of the Facility having been designed and constructed in accordance with the applicable Design Service Life requirements set out in Schedule 3 [Design and Construction Specifications];

1.1.1.2 consistent with Project Co having performed the Services and maintained the Facility in accordance with Schedule 4 [Services Protocols and Specifications]; and

1.1.1.3 in compliance with the requirements of Schedule 7 [Lands] and the terms and conditions of the Transfer of Administration and Control.

1.2 Remaining Useful Life

1.2.1 Without limiting Section 1.1 [Facility Condition] of this Appendix 4C [Handback Requirements], Project Co will perform the Services in such a manner that on the Expiry Date, the Remaining Useful Life of the following building components, as described as Schedule 3 [Design and Construction Specifications] shall be:

Facility Component	Minimum Remaining Useful Life
Structure	30 years
Building Envelope	10 years
Perimeter Fencing	10 years
Interior Finishes and Millwork	3 years

Electronic Safety and Security and Fence Detection Systems	5 years
Electrical Systems	5 years
Plumbing System	5 years
Fire Suppression System	5 years
Communication System	5 years
Heating Ventilation and Air Conditioning System	5 years
Conveying Equipment	5 years
Building Management System	5 years

1.3 Handback Survey

1.3.1 In conjunction with the preparation of the Annual Service Plan for the year commencing three years prior to the Expiry Date, Project Co and the Province will conduct a joint inspection and survey of the Facility (the "**Handback Survey**").

1.4 Results of Survey

1.4.1 If the Handback Survey indicates that any element of the Facility will not be in a condition consistent with the Handback Requirements upon Project Co implementing the Plans over the remainder of the Term, within 60 days of completion of the Handback Survey Project Co will deliver to the Province's Operating Period Representative in accordance with Sections 3.10 [Five-Year Maintenance Plan] and 3.11 [Life Cycle Plan] of Schedule 4 [Services Protocols and Specifications] Project Co's:

1.4.1.1 proposal as to the works (if any) (the "**Handback Works**") required to be carried out in respect of the Facility to satisfy the Handback Requirements as at the Expiry Date;

1.4.1.2 proposal for the carrying out of the Handback Works (the "**Handback Works Plan**") over the remainder of the Term as part of the Annual Service Plan,

Life Cycle Plan and the Five Year Maintenance Plan then in effect and describing the total works to be carried out as well as the method and schedule for carrying out such works. Failure to produce a Handback Works Plan will be deemed a High Service Failure; and

1.4.1.3 calculation of the Handback Amount.

1.4.2 The Province's Operating Period Representative may, within 20 Business Days after receipt of Project Co's proposal with regard to the Handback Works, Handback Works Plan, and the Handback Amount, review and comment on such submittals in accordance with Appendix 4I [Operating Period Review Procedure].

PART 2. HANDBACK WORK

2.1 Performance of Handback Work

2.1.1 By agreement between the parties, or determination in accordance with the Dispute Resolution Procedure, of the Handback Works, the Handback Works Plan and the Handback Amount, Project Co will:

2.1.1.1 within 10 Business Days of the agreement, or determination in accordance with the Dispute Resolution Procedure, deliver to the Province a performance bond or letter of credit:

2.1.1.1(1) issued by a financial institution listed on Schedule 1 of the *Bank Act (Canada)* or a surety company authorized to carry out business in British Columbia;

2.1.1.1(2) securing performance by Project Co of the Handback Works;

2.1.1.1(3) having a term which expires no sooner than two years after the Expiry Date; or

2.1.1.1(4) or other cash collateral acceptable to the Province, acting reasonably, in an amount equal to the Handback Amount (the "**Handback Holdback**"); and

2.1.1.2 at its own cost and expense, carry out the Handback Works in accordance with the Handback Works Plan and Good Industry Practice, notwithstanding that the actual cost of the Handback Works may be higher than the Handback Amount.

2.2 Obligation of Project Co

2.2.1 Notwithstanding:

2.2.1.1 the agreement of the Province's Operating Period Representative to any Handback Works, the Handback Works Plan or the Handback Amount;

2.2.1.2 the participation of the Province's Operating Period Representative in the Handback Survey; or

2.2.1.3 the complete or partial carrying out of the Handback Works,

Project Co will not be released from any obligation to conduct any other inspection or to perform any other works in accordance with this Agreement.

PART 3. COMPLETION OF HANDBACK WORK

3.1 Further Inspection

3.1.1 Not later than six months prior to the Expiry Date, Project Co and the Province will conduct a further joint inspection and survey of the Facility. Such inspection will confirm whether or not the condition of the Facility meets the Handback Requirements.

3.2 Notice from the Province

3.2.1 On, or within five Business Days after, the Expiry Date, the Province's Operating Period Representative will either:

3.2.1.1 issue to Project Co a handback certificate confirming completion of the Handback Works and compliance of the Facility with the Handback Requirements (the "**Handback Certificate**") and return the Handback Holdback to Project Co; or

3.2.1.2 notify Project Co of its decision not to issue the Handback Certificate:

3.2.1.2(1) stating the reasons for such decision;

3.2.1.2(2) setting out each respect in which the Handback Works have not been completed or the Facility does not comply with the Handback Requirements; and

3.2.1.2(3) stating the Province's Operating Period Representative's estimate of the cost of completing all work required for the Facility to comply in all respects with the Handback Requirements.

3.3 Response from Project Co

3.3.1 Project Co may, within 30 days after receipt of a notice given in accordance with Section 3.2.1.2 [Notice from the Province] of this Appendix by notice to the Province's Operating Period Representative, object to any matter set out in the Province's Operating Period Representative notice by:

3.3.1.1 giving details of the grounds of each such objection; and

3.3.1.2 setting out Project Co's proposals in respect of such matters.

3.4 Dispute

3.4.1 If it is agreed, or determined in accordance with the Dispute Resolution Procedure, that the Facility did not, at the Expiry Date, comply in all respects with the Handback Requirements, Project Co will:

3.4.1.1 complete any outstanding Handback Works and any other works required for the Facility to comply with the Handback Requirements within 60 days of the Expiry Date; and

3.4.1.2 pay to the Province no later than 60 days after the Expiry Date an amount, if any, equal to the estimated cost of completing any outstanding Handback Works and any other Handback Works and any other works required for the Facility to comply with the Handback Requirements (based on the cost estimate provided by the Province's Operating Period Representative in accordance with Section 3.2.1.2(3) [Notice from the Province] of this Appendix, unless otherwise agreed or determined in accordance with the Dispute Resolution Procedure), so that the Facility is in a condition which complies with the Handback Requirements. Upon payment being received in full by the Province, the Province will issue the Handback Certificate and return the Handback Holdback to Project Co and if such payment is not received from Project Co when due, the Province may draw any unpaid amounts against the Handback Holdback and release the balance of the Handback Holdback to Project Co.

Appendix 4D

PLANT SERVICES

TABLE OF CONTENTS

PART 1. GENERAL REQUIREMENTS..... 1

PART 2. SCOPE OF SERVICE 1

PART 3. STATUTORY TESTING AND..... 2

PART 4. BUILDING AND EQUIPMENT MAINTENANCE 2

PART 5. LIFE CYCLE REPLACEMENT AND REFURBISHMENT..... 3

PART 6. INTERNAL AND EXTERNAL SITE AND FACILITY CONDITION/ENVIRONMENT..... 4

PART 7. BUILDING MANAGEMENT SYSTEM (BMS) REPORTING REQUIREMENTS..... 5

PART 8. ELEVATORS AND VERTICAL TRANSPORTATION SERVICES 6

PART 9. PLANT SERVICES INFORMATION MANAGEMENT 6

PART 10. ESCS AND COMMUNICATIONS SYSTEMS MAINTENANCE AND SUPPORT 8

PART 11. CUSTODIAL AND HOUSEKEEPING..... 10

PART 12. PAINTING SERVICES 13

PART 13. WASTE MANAGEMENT AND RECYCLING SERVICES..... 15

PART 14. PEST CONTROL 17

PART 15. VIDEO VISITATION SYSTEM 19

PART 16. FOOD AND LAUNDRY SERVICE EQUIPMENT 20

PART 17. SERVICE STANDARDS 20

**APPENDIX 4D
PLANT SERVICES**

PART 1. GENERAL REQUIREMENTS

1.1 Project Co will perform the Plant Services in compliance with this Appendix and all other requirements of this Agreement.

PART 2. SCOPE OF SERVICE

2.1 For convenience of reference, the Plant Services are separated into the following elements, as further described in the parts below:

- 2.1.1 Statutory Testing – Part 3;
- 2.1.2 Building and Equipment Maintenance – Part 4;
- 2.1.3 Life Cycle Replacement and Refurbishment – Part 5;
- 2.1.4 Internal and External Site and Facility Condition/Environment – Part 6;
- 2.1.5 Building Management System Reporting Requirements – Part 7;
- 2.1.6 Elevators and Vertical Transportation Services – Part 8;
- 2.1.7 Plant Services Information Management – Part 9;
- 2.1.8 Communications and ESCS Maintenance and Support – Part 10;
- 2.1.9 Custodial and Housekeeping – Part 11;
- 2.1.10 Painting Services – Part 12;
- 2.1.11 Waste Management and Recycling Services – Part 13;
- 2.1.12 Pest Control Services – Part 14; and
- 2.1.13 Video Visitation System – Part 16.

PART 3. STATUTORY TESTING

3.1 Project Co will:

- 3.1.1 attend upon and undertake insurance, statutory and regulatory tests which may be required by applicable Laws, the Province Policy and Procedure or the Province's insurers as outlined in the then current Annual Service Plan;
- 3.1.2 maintain records of all such statutory and regulatory tests;
- 3.1.3 commission all new plant operations, systems and equipment, installed or provided by Project Co, including those replaced under the Life Cycle Requirements, subject to prior review of all commissioning procedures by the Province; and
- 3.1.4 conduct an annual review of maintenance manuals and concurrently update any changes or notifications by manufacturers/suppliers and report to the Province on such changes annually.

PART 4. BUILDING AND EQUIPMENT MAINTENANCE

4.1 Project Co will:

- 4.1.1 carry out predictive, preventive and corrective Maintenance, including maintenance, repair, and updating where appropriate, of the Maintained Elements, such that they remain functional, safe, operationally sound and of good appearance at all times, and perform such replacement as required, using elements meeting or exceeding the standards set out in Schedule 3 [Design and Construction Specifications] and Good Industry Practice;
- 4.1.2 provide comprehensive and effective Maintenance Services on a day-to-day basis and in response to Demand Requisitions;
- 4.1.3 establish and maintain suitable systems and procedures to ensure that all fire prevention and detection equipment is examined and tested and that accurate records of all tests, including the dates thereof, are maintained in sufficient detail to permit verification by the Province;
- 4.1.4 establish and maintain suitable systems and procedures to ensure that all predictive, preventive and corrective Maintenance is carried out at such times and in such a manner

that these Service Protocols and Specifications and all regulatory requirements are met in relation to the Facility and all Building Systems and Maintained Elements;

4.1.5 cooperate and reasonably assist the Province with any capital development works undertaken by the Province at the Facility; and

4.1.6 Maintain appropriate CMMS records, equipment histories and reports relative to predictive, preventive and corrective Maintenance and make available for review by the Province at all times.

PART 5. LIFE CYCLE REPLACEMENT AND REFURBISHMENT

5.1 Project Co will ensure the long-term integrity and ongoing operational serviceability of the Facility by complying with the Life Cycle Requirements, which define design life, specific replacement/refurbishment strategies, key assumptions, and annual cost provisions for all types of plant and equipment for which Project Co is responsible. The Life Cycle Requirements are categorized by major elements such as substructure, structure, enclosure, interior dividing, vertical, finishes, fittings and equipment, mechanical, electrical, life safety, communications and Site. Project Co will renew the Facility, as required, such that, on the Expiry Date the Facility is fully functional to the standard specified in Appendix 4C [Handback Requirements].

5.2 Project Co will:

5.2.1 perform the Life Cycle Plan as described in Section 3.11 [Life Cycle Plan] of Schedule 4 [Services Protocols and Specifications];

5.2.2 upon request, provide advice, guidance and recommendations to the Province with respect to the impact that replacement or refurbishment of, or additions or other modifications to, elements of Facility which are not Maintained Elements, may have on: (i) the Maintained Elements; (ii) the performance of the Services, including the Life Cycle Requirements; and (iii) the operation of the Facility, if any;

5.2.3 comply with the reporting and quality monitoring requirements of this Appendix and with all other reporting and quality monitoring requirements of this Agreement; and

5.2.4 report on, and monitor, the operation and performance of the Communications and ESCS by component, including preparation and delivery of a report, at least once each calendar year, detailing the Remaining Useful Life of the Communications and ESCS and updating the schedule for updating, refurbishing or replacing the Communications and ESCS;

5.2.4.1 Replacement of elements, Equipment and systems by Project Co must be consistent with the following principles:

5.2.4.1(1) on the Expiry Date, each element of the Facility, the listed assets and the Site will have a Useful Remaining Life consistent with the Handback Requirements;

5.2.4.1(2) the standard of replacement or refurbishment of specific elements in accordance with the Life Cycle Requirements will meet or exceed the requirements of this Appendix and all other requirements of this Agreement. Where elements are no longer available or those elements cannot be reproduced then elements may be replaced with elements of similar or equivalent form, substance and quality that meet or exceed the requirements of this Appendix and all other requirements of this Agreement;

5.2.4.1(3) where new or alternative building and site equipment or systems are provided by the Province, life cycle replacement will be the responsibility of the Province.;

5.2.4.1(4) where new or alternative building and site equipment or systems are provided by the Province, Project Co will report on the impact of such additions or alternatives on existing systems or operational costs; and

5.2.4.1(5) Project Co shall make available to the Province a full audit trail of life cycle activity and adherence to agreed standards.

PART 6. INTERNAL AND EXTERNAL SITE AND FACILITY CONDITION/ENVIRONMENT

6.1 Project Co will:

6.1.1 ensure the heating, air conditioning, humidity and mechanical ventilation systems (including local ventilation systems) function as required by Schedule 3 [Design and Construction Specifications] with the correct circulation rates and air filters installed and maintained as set out in Schedule 3 [Design and Construction Specifications] and the final commissioning report;

- 6.1.2 comply with, or exceed, the baseline measurements for the number of air exchanges required to be maintained in each room as per Schedule 3 [Design and Construction Specifications];
- 6.1.3 keep the Functional Units at the temperatures as per Schedule 3 [Design and Construction Specifications];
- 6.1.4 meet the standards for heating, ventilation, air conditioning, lighting, pressurization, sound and vibration as described in Schedule 3 [Design and Construction Specifications];
- 6.1.5 ensure all lighting systems remain fully functional, safe, and are maintained to provide illumination levels consistent with the benchmark levels established at Service Commencement and set out in Schedule 3 [Design and Construction Specifications];
- 6.1.6 ensure the public address system operates as designed; and
- 6.1.7 where and as applicable, ensure all work carried out in the performance of the Services is carried out in compliance with the latest revision of CSA Standard 317.13 titled "Infection Control of Health Facilities".

PART 7. BUILDING MANAGEMENT SYSTEM (BMS) REPORTING REQUIREMENTS

7.1 Project Co will:

- 7.1.1 maintain the BMS and ensure the BMS is functional and available as specified in Schedule 3 [Design and Construction Specifications];
- 7.1.2 ensure that upon the occurrence of any event below or any other event identified by the Province, the BMS will automatically and immediately notify the nominated Province Persons of the incident particulars, including:
 - 7.1.2.1 changes in the temperature of a pharmacy fridge;
 - 7.1.2.2 where an alarm is triggered in accordance with an event covered by the fire system; and
 - 7.1.2.3 other installed alarms as required by the Province from time-to-time including food freezers, fridges, and server rooms;
- 7.1.3 link the occurrence of a nominated event to the ESCS at the SSP; and

- 7.1.4 without limiting any requirement of Schedule 3 [Design and Construction Specifications], connect all Equipment to the BMS that can be reasonably be connected.

PART 8. ELEVATORS AND VERTICAL TRANSPORTATION SERVICES

8.1 Project Co will:

- 8.1.1 develop and implement appropriate Operational Policies and Procedures, relative to elevators and vertical transportation services, including with respect to:

8.1.1.1 passenger and service elevators;

8.1.1.2 associated elevators motor rooms;

8.1.1.3 dumbwaiters; and

8.1.1.4 escalators (if any); and

- 8.1.2 maintain each elevator so as to comply with the requirements of this Appendix including as to Elevator Availability and to comply with all other requirements of this Agreement, including Schedule 3 [Design and Construction Specifications].

PART 9. PLANT SERVICES INFORMATION MANAGEMENT

9.1 Project Co will:

- 9.1.1 develop and implement appropriate operational policies, procedures and practices, relative to Plant Services Information Management, including with respect to the sections that follow;

- 9.1.2 collect, manage and update all Plant Services records and information on behalf of the Province, including:

9.1.2.1 the physical characteristics of the plant and Equipment, including:

9.1.2.1(1) the description and address of the Facility;

9.1.2.1(2) all area and buildings volume data;

9.1.2.1(3) condition surveys;

9.1.2.1(4) all location plans, boundaries and titles relating to the Site; and

- 9.1.2.1(5) up-to-date CAD drawings for both the Site and Facility and the Services, which are to be, linked to the Province systems to current CAD standards. Project Co will ensure that all systems provided are compatible with the Province's systems and allow for access to information by the Province;
- 9.1.3 ensure all CAD drawings and CAD "as-built" drawings are kept up to date and a new set of drawings is provided to the Province every six months in a format acceptable to the Province, where changes have occurred. Otherwise, Project Co will advise the Province that no changes have occurred and that the drawings remain current for the forthcoming period;
- 9.1.4 maintain records and details of specific license requirements where Project Co is responsible for obtaining any licenses. Where the Province is responsible for obtaining such licenses, Project Co will only be obliged to maintain records that have been provided to it by the Province;
- 9.1.5 ensure test certificates and appropriate documentation and records (in particular those relating to any aspects of safety or statutory compliance) are maintained accurately and are updated appropriately and are available for inspection by the Province or any other relevant party;
- 9.1.6 use data and communications systems, which are compatible with the Province's systems at all times;
- 9.1.7 ensure all information and records are complete, precise and clearly identifiable. Project Co will make all such information available for inspection at the reasonable request of the Province;
- 9.1.8 maintain hazard notices and safety signs including those issued by the Province and maintain a record of all deployments of such hazard notices and safety signs and put in place procedures to ensure such notices and signs are located and displayed correctly, and are fully serviceable; and
- 9.1.9 prepare and supply all information reasonably required by any Person, to whom the Province is obliged to present information at any time in relation to the performance of the Plant Services.

PART 10. COMMUNICATIONS SYSTEMS AND ESCS MAINTENANCE AND SUPPORT

10.1 Project Co will maintain and provide support for the Communications and ESCS such that the Communications and ESCS will continuously meet the applicable design and performance requirements specified in Sections 9.7 [Communications] and 9.8 [Electronic Safety & Security] of Schedule 3 [Design and Construction Specifications]. Without limiting the preceding sentence, Project Co will:

10.1.1 maintain the operability of the Communications and ESCS so as to, at all times, meet or improve upon the applicable baseline measurements established through the applicable commissioning procedures at Service Commencement;

10.1.2 maintain continuous communications with all control points throughout the Facility;

10.1.3 respond to and correct false alarms;

10.1.4 respond to and rectify all ESCS failures in accordance with the applicable Response Times and Rectification Periods; and

10.1.5 without limiting the Life Cycle Requirements, carry out Communications and ESCS upgrades, including patches and other improvements, as and when required to ensure that the Communications and ESCS, including all ESCS Software and other software, hardware, firmware, applications and other components: (i) remain at all times manufacturer supported, manufacturer supportable and otherwise compliant with the requirements of the Design and Construction Protocols, the Design and Construction Specifications and the Services Protocols and Specifications; and (ii) all ESCS Software and other software, hardware, firmware, applications and other components that interface with the Province's systems remain compatible with the applicable Province systems, provided that any changes required and resulting solely from an upgrade to, or change by, the Province to such Province systems will be treated as a Change and paid for in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals]. Whenever, pursuant to the Life Cycle Requirements or any other requirement of this Agreement, Project Co is required to upgrade or replace any component of the Communications and ESCS, including any ESCS Software or other software, hardware, firmware, application or other component, such upgrades or replacements shall be made using the latest proven technology; and

10.1.6 provide training, as reasonably required by the Province, to designated Province Persons with respect to the use and operation of the Communications and ESCS.

10.2 Project Co will, upon request, provide the following to the Province with respect to the Communications and ESCS:

10.2.1 a list of all critical incidents;

10.2.2 daily, weekly and periodic status reports;

10.2.3 exception reports by element status;

10.2.4 for all Communications and ESCS alarms, time of occurrence, Response, and Rectification of the Communications and ESCS alarm; and

10.2.5 any other report required to demonstrate that all systems are functioning effectively.

10.3 The Province will provide a Province data network that utilizes the Structured Cabling System as described in Section 9.7 [Communications] of Schedule 3 [Design and Construction Specifications].

10.3.1 The Province will be responsible for all maintenance, repair and replacement of the Province data network devices.

10.3.2 Project Co will be responsible for maintaining the Structured Cabling System for data services to be supported as described in Schedule 3 [Design and Construction Specifications] and maintained at all times including all copper and fibre work area and patch cords.

10.4 The Province will provide a telephone system for use by Inmates, and will maintain, repair and replace the telephone devices and associated switch gear, as necessary. Project Co will:

10.4.1 maintain the Inmate telephone system infrastructure and utility ensuring that all physical connections and structured cabling for telephone and data services are provided and maintained at all times. The Province is responsible for the Inmate telephone system from the front end equipment to the devices; and

10.4.2 operate and maintain telecommunications and data devices, including the Inmate telephone systems

10.5 Project Co will perform Maintenance to ensure that all physical connections and structured cabling for all telephone and data services are provided and maintained at all times.

PART 11. CUSTODIAL AND HOUSEKEEPING

11.1 Project Co will perform all custodial and Housekeeping Functions:

11.1.1 in all public areas of the Facility, all staff offices and work stations, and all other areas, including washrooms, conference rooms, corridors and hallways, falling outside the SLC-Secure areas of the Facility; and

11.1.2 in the SLC-Secure areas of the Facility (except to the extent provided by Inmate workers in accordance with Part 11 [Custodial and Housekeeping Functions] of this Appendix), including:

11.1.2.1 staff work areas, including staff work stations;

11.1.2.2 treatment areas;

11.1.2.3 staff washrooms;

11.1.2.4 staff showers;

11.1.2.5 staff dining and break rooms;

11.1.2.6 wall and ceiling surfaces above the eight foot height level; and

11.1.2.7 ceiling fixtures and vents above the eight foot height level.

11.1.3 The Province will perform all custodial and Housekeeping Functions, using Inmate workers, within the following areas to a height of eight feet:

11.1.3.1 Inmate Cells;

11.1.3.2 Inmate Dayrooms;

11.1.3.3 Inmate dining areas;

11.1.3.4 Outdoor Recreation Courtyard;

11.1.3.5 Inmate industry work areas and surfaces;

- 11.1.3.6 Inmate washrooms;
 - 11.1.3.7 Inmate showers;
 - 11.1.3.8 Laundry Services; and
 - 11.1.3.9 SLC-Secure common areas, corridors, multi-purpose rooms and other Inmate occupied areas.
- 11.1.4 Project Co will provide oversight, technical direction and guidance to, but not the direct custodial supervision of, Inmate workers who (under the custodial supervision of the Province's custodial personnel) will perform custodial and Housekeeping Functions within the areas specified in Part 11 [Custodial and Housekeeping Functions] of this Appendix.
- 11.1.5 For the purpose of this Part 11 [Custodial and Housekeeping Functions] of this Appendix, custodial and Housekeeping Functions include:
- 11.1.5.1 washing and waxing (and stripping as necessary) solid floor surfaces;
 - 11.1.5.2 vacuuming of carpeted surfaces;
 - 11.1.5.3 washing and dusting wall surfaces and wall vents;
 - 11.1.5.4 cleaning door surfaces and adjacent jams;
 - 11.1.5.5 dusting and cleaning ceiling surfaces and ceiling vents;
 - 11.1.5.6 cleaning light fixtures;
 - 11.1.5.7 cleaning windows and glass enclosures;
 - 11.1.5.8 cleaning and dusting counters, desks and work surfaces;
 - 11.1.5.9 cleaning lavatory sinks and counters;
 - 11.1.5.10 cleaning mirrors and polished surfaces;
 - 11.1.5.11 cleaning toilets, urinals and toilet enclosures; and
 - 11.1.5.12 stocking of:
 - 11.1.5.12(1) paper towel dispensers;

11.1.5.12(2) soap dispensers;

11.1.5.12(3) toilet paper dispensers; and

11.1.5.12(4) sanitary napkin dispensers.

11.1.6 The Province will be responsible for acquisition of all materials and supplies for, and preparation and service of, all Inmate meals; however, Project Co will be responsible for all Maintenance of Maintained Elements required in connection with the provision of food services by the Province. Project Co shall be responsible for performance of all Services, including all custodial and housekeeping functions, within the Food Services Area, except for the following which will be performed by the Province's food services provider:

11.1.6.1 general daily cleaning, including keeping work surfaces and equipment in a clean and hygienic condition;

11.1.6.2 keeping floor surfaces clear of spills and food products;

11.1.6.3 the removal of waste products; and

11.1.6.4 general cleaning in accordance with Good Industry Practice, as it relates to the operation of a production kitchen.

11.1.7 The Province will supply and perform inventory control with respect to all paper towels, soap for soap dispensers, toilet paper and sanitary napkins required for use in the Facility. Within the areas described in Section 11.1.3 [Custodial and Housekeeping] of this Appendix 4D [Plant Services], the Province will be responsible for storing and dispensing such supplies as required for the performance of the custodial or Housekeeping Functions by Inmate workers. In all other areas of the Facility, Project Co will be responsible for storing and dispensing such supplies as required for proper performance of the Services.

11.1.8 Project Co will provide all necessary equipment, perform inventory control and provide storage of equipment, required for custodial and Housekeeping Functions performed by Inmates and Project Co Persons and inventory all such equipment before and after performance of any custodial or Housekeeping Functions by Inmates or Project Co Persons and promptly report any unexpected deviations to the Province.

11.1.9 Project Co will maintain ultimate responsibility for ensuring the overall cleanliness of the Facility in accordance with these Services Protocols and Specifications, notwithstanding the performance of any such services by Inmate workers.

PART 12. PAINTING SERVICES

12.1 Project Co will perform all of the following painting functions:

12.1.1 in all public areas of the Facility, all staff offices and work stations, and all other areas, including washrooms, conference rooms, corridors and hallways, falling outside the SLC-Secure areas of the Facility;

12.1.2 in the SLC-Secure areas of the Facility (except to the extent provided by Inmate workers in accordance with Part 12 [Painting Services] of this Appendix), including:

12.1.2.1 staff work areas, including security officer work stations;

12.1.2.2 medical treatment areas;

12.1.2.3 staff washrooms;

12.1.2.4 staff dining and break rooms;

12.1.2.5 wall and ceiling surfaces above the eight foot height level; and

12.1.2.6 ceiling fixtures and vents above the eight foot height level.

12.2 The Province will perform all painting functions, using Inmate workers, within the following areas up to a height of eight feet:

12.2.1 Inmate Cells;

12.2.2 Inmate Dayrooms;

12.2.3 Inmate dining areas;

12.2.4 Outdoor Recreation Courtyard;

12.2.5 Inmate industry work areas and surfaces;

12.2.6 Inmate washrooms;

12.2.7 Inmate showers;

12.2.8 Laundry Services; and

12.2.9 SLC-Secure common areas, corridors, multi-purpose rooms and other Inmate occupied areas.

12.3 Project Co will provide oversight, technical direction and guidance to, but not the direct custodial supervision of, Inmate workers who (under the custodial supervision of the Province's custodial personnel) will perform painting functions within the areas specified in this Part.

12.4 Project Co will purchase, requisition, dispense and dispose of all painting supplies and materials required for its own use and for use by Inmate workers pursuant to Section 12.2 [Painting Services] of this Appendix.

12.5 Project Co will include a detailed painting schedule for the Facility, including all areas, whether or not included in the Inmate painting program, in each Five Year Maintenance Plan.

12.6 Project Co will ensure that all painting of administration areas, kitchens and offices is performed after normal working hours for the Facility.

12.7 Project Co will provide all necessary supplies and equipment, perform inventory control and provide storage of equipment and supplies required for painting performed by Inmates and Project Co Persons. Project Co shall inventory all supplies and equipment before and after performance of any painting activities by Inmates or Project Co Persons and promptly report any unexpected deviations to the Province.

12.8 Project Co will ensure that, for each relevant Maintained Element, the maximum time interval between each painting cycle within the following areas does not exceed three-years:

12.8.1 Kitchen, including ceilings, provided that if ceilings are tile then Project Co will maintain them according to Good Industry Practice, i.e. replaced or cleaned when necessary;

12.8.2 Health Services holding Cells;

12.8.3 Segregation and Observation Unit; and

12.8.4 Admission & Discharge holding areas.

12.9 Project Co will maintain ultimate responsibility for ensuring the quality and performance of all painting services throughout the Facility in accordance with these Services and Protocols Specifications, notwithstanding the performance of any such services by Inmate workers.

PART 13. WASTE MANAGEMENT AND RECYCLING SERVICES

13.1 Project Co will:

13.1.1 be responsible for the removal of all waste, including bio-waste, recyclable and compostable materials from the Facility, including engaging all required third party contractors and managing applicable waste removal contracts;

13.1.1A ensure that all waste is disposed of only at recognized waste disposal facilities in Canada that, to Project Co's knowledge, after exercising due diligence, are: (i) authorized to accept the waste for disposal; and (ii) have all required environmental Permits, and be responsible for the management of Hazardous Substances and Hazardous Substances disposal, including the registration of any Hazardous Substances. Management of Hazardous Substances disposal shall include ensuring all such Hazardous Substances are handled, transported and disposed of in Canada by, and at a, recognized and licensed Hazardous Substances transporter, handler, contractor or site in Canada that has the required permits and licenses to handle and dispose of the particular Hazardous Substances. Any and all such Hazardous Substances requiring governmental approval or registration shall be recorded or manifested as Hazardous Substances generated by Project Co. Project Co shall ensure that all Hazardous Substances are properly registered prior to disposal, according to all applicable Laws;

13.1.2 track Hazardous Substances streams and provide related reporting, in compliance with the Environmental Management Plan, the Environmental Management System and all requirements under applicable Laws;

13.1.3 conduct periodic Hazardous Substances audits and recommend improvements and cost reduction strategies to the Province;

13.1.4 participate in any Facility waste audits undertaken by the Province;

13.1.5 implement security procedures to ensure that confidential waste is disposed of in accordance with the Province Policies and Procedures and applicable Law;

13.1.6 implement an off-Site composting program for food waste;

- 13.1.7 monitor waste streams and work with the Province to ensure that appropriate segregation is taking place at source or in the central waste area, as appropriate;
- 13.1.8 maintain facilities for recycling of glass, cardboard, plastics, metal and paper along with a separate space for disposal of medical bio-waste in accordance with local health authority requirements; and
- 13.1.9 work with the Province to ensure that waste storage areas, both internal and external are kept:
 - 13.1.9.1 clean and free from litter, malodour, spillages and debris;
 - 13.1.9.2 free from pests and vermin;
 - 13.1.9.3 secure, with access restricted to authorized personnel; and
 - 13.1.9.4 free of fire hazards.

13.2 The Province will provide Inmate workers to assist in the collection and segregation of waste as follows:

- 13.2.1 the Province will provide custodial supervision of Inmates in the collection and segregation of waste, recyclable and compostable materials into appropriate containers supplied by Project Co;
- 13.2.2 Project Co will provide the oversight, technical direction and guidance (but not direct custodial supervision), during the execution of Inmate performed waste collection and segregation and movement to designated areas in the central waste area including ensuring the continued operation of refrigerated storage for compostable food waste; and
- 13.2.3 Project Co will maintain waste compactors as required.

13.3 Project Co will have ultimate responsibility for the collection and segregation of waste, recyclable and other materials within the Facility, notwithstanding the performance of any such Services by Inmate workers.

13.4 Project Co will provide all necessary supplies and equipment, perform inventory control and provide storage of equipment and supplies required for performance of waste management functions by Inmates and Project Co Persons. Project Co shall inventory all supplies and equipment before and after

performance of any waste management functions by Inmates or Project Co Persons and promptly report any unexpected deviations to the Province.

PART 14. PEST CONTROL

14.1 General Requirements

14.1.1 Project Co will provide integrated vermin and Pest Control Services in compliance with the Province Policies and Procedures, Operational Policies and Procedures, and applicable Laws. For the purpose of this Appendix, “pests” include insects, rodents and birds.

14.1.2 In carrying out the Pest Control Services, Project Co will:

- 14.1.2.1 provide effective and efficient management of the environment, in accordance with the requirements of Appendix 4H [Environmental and Sustainability Services];
- 14.1.2.2 ensure collaborative working relationships with contractors and with Province Persons; and
- 14.1.2.3 purchase, store, requisition, dispense and dispose of all pest control consumables.

14.2 Service Requirements

14.2.1 Project Co will:

- 14.2.1.1 provide comprehensive preventive, and reactive Pest Control Services, using personnel who are fully trained, qualified and able to provide high quality professional and practical advice and service;
- 14.2.1.2 provide emergency pest control advice and services on an on-call basis for dealing with Demand Requisitions related to pest control;
- 14.2.1.3 undertake all Pest Control Services in a safe and cost effective manner which maximizes availability of Province resources and reduces, to an absolute minimum, the risks associated with pest infestation, including safety, food hygiene, infection control, damage to the Facility and Site and

interference with Facility operations, Province Activities and the Province FM Services;

- 14.2.1.4 provide safe and efficient methods of catching, destroying and disposing of pests (adopting safe and humane procedures in all instances);
 - 14.2.1.5 ensure all pest control systems are tamper resistant;
 - 14.2.1.6 use chemical treatment (including pesticides) only with prior Province approval and only in circumstances where other forms of prevention are ineffective in controlling pests;
 - 14.2.1.7 ensure that the use of chemicals is strictly controlled and monitored and fully compliant with the requirements of all applicable Governmental Authorities;
 - 14.2.1.8 ensure that records of all chemical use for pest control are available for inspection by the Province and other authorized organizations/personnel; and
 - 14.2.1.9 advise the Province's Operating Period Representative at least once every 12 months (or as the need arises if new chemicals are intended for use) of all chemicals Project Co is using or that it intends to use.
- 14.2.2 If Project Co wishes to use any form of chemical product that has not been formally authorized by the Province in writing, it must obtain written permission from the Province prior to use. Project Co will ensure that under no circumstances will any chemicals used in connection with the pest control Services come into contact with any persons present in the Facility or otherwise on the Site.
- 14.2.3 Project Co will maintain all Material Safety Data Sheets (MSDS) current and available at the Facility and will at all times comply with the applicable requirements of the Workplace Hazardous Materials Information System (WHMIS).
- 14.2.4 Project Co will provide to the Province's Operating Period Representative, on an agreed date during each Payment Period, a Pest Control Services report detailing all pest control activity within the Facility and on the Site during the immediately preceding Payment Period and identifying future action that Project Co intends to take.

14.2.5 Project Co will provide prompt notice to the Province's Operating Period Representative of any pest infestations, and will in each case:

14.2.5.1 provide signed and dated reports detailing the locations and areas of the Facility and Site inspected and treated and the product names and product numbers of the chemicals used, if applicable;

14.2.5.2 measure, record and report the number, type and location of infestations; and

14.2.5.3 measure, record and report any evidence of pests and any belief that an infestation is associated with any other premises, whether Province owned or otherwise, that may affect the Facility or the Site.

14.2.6 Project Co will recommend and implement preventive measures to minimize re-infestation.

PART 15. VIDEO VISITATION SYSTEM

15.1 Project Co will maintain and provide support for the Video Visitation System such that the Video Visitation System will continuously meet the applicable design and performance requirements specified in Part 9 [Services] of Schedule 3 [Design and Construction Specifications]. Without limiting the preceding sentence, Project Co will:

15.1.1 maintain the operability of the Video Visitation System so as to, at all times, meet or improve upon the applicable baseline measurements established through the applicable commissioning procedures at Service Commencement;

15.1.2 respond to and rectify all Video Visitation System failures in accordance with the applicable Response Times and Rectification Periods;

15.1.3 reprogram the Video Visitation System from time to time, as required by the Province, which will include adding stations, changing visit durations, and deleting stations;

15.1.4 without limiting the Life Cycle Requirements, carry out Video Visitation System upgrades, including patches and other improvements, as and when required to ensure that the Video Visitation System, including all software, hardware, firmware, applications and other components remain at all times supported, supportable and otherwise compliant with the requirements of the Design and Construction Protocols, the Design and Construction Specifications and the Services Protocols and Specifications; and

- 15.1.5 provide training, as reasonably required by the Province, to designated Province Persons with respect to the use and operation of the Video Visitation System.

PART 16. FOOD AND LAUNDRY SERVICE EQUIPMENT

16.1 Project Co will:

- 16.1.1 maintain and support the equipment in the Laundry and Food Service Areas (including exhaust systems, hot water distribution, refrigeration, washers, dryers and fire suppression systems) function as required by Schedule 3 [Design and Construction Specifications] with the correct equipment performance, exhaust rates, and water temperatures installed and maintained as set out in Schedule 3 [Design and Construction Specifications], Province Policies and Procedures, Operational Policies and Procedures, applicable Laws and the final commissioning report.
- 16.1.2 clean and service food and laundry service support equipment (including grease traps, lint traps, drains, clean outs) so that the equipment function as required by Schedule 3 [Design and Construction Specifications], Province Policies and Procedures, Operational Policies and Procedures, applicable Laws and the final commissioning report; and
- 16.1.3 maintain and service equipment in a manner that the resulting service maintains security in accordance with the Province Policies and Procedures.

PART 17. SERVICE STANDARDS

17.1 The Service Standards for Plant Services are described in the tables below.

Table 1: Service Standards – Building and Equipment

Maintained Element	Standard
General	<ul style="list-style-type: none"> • In general, all elements of building fabric, fixtures and fittings, floor and floor coverings, and furniture and equipment will at all times be functional, operational and satisfy the design and performance requirements as required for Service Commencement. • All Maintained Elements are to be maintained, repaired and refreshed as required to meet the performance specifications and the design criteria as set out in Schedule 3 [Design and Construction Specifications] and consistent with a building maintained in accordance with all applicable Laws, Province Policies and Procedures and Good Industry Practices. • Access to all mechanical & electrical equipment rooms and service areas will be restricted to authorized personnel.

Maintained Element	Standard
	<ul style="list-style-type: none"> • All Maintained Elements will be subject to Availability Conditions.
Building Fabric, External	<ul style="list-style-type: none"> • Functional, safe, operationally sound, of good appearance and, where appropriate, weatherproof. • Substantially free from damp penetration, cracking, spalling, peeling and lifting. • Substantially free from stains, graffiti and other cosmetic faults. • Substantially free from debris, algae, moss growth and bird droppings. • Exterior window surfaces cleaned periodically to maintain a good appearance in accordance with Good Industry Practice. • Claddings, copings and parapets, soffits/fascia are structurally sound and secure. • Free from vermin and/or pests. • Chimney stacks/flues are structurally sound and secure, flues free from blockages/excess soot. • Free from asbestos and other Hazardous Substances. • Thermographic scans (and cut samples, if necessary) to confirm roof system is watertight. These will be repeated every 3 years, or more frequently as deemed necessary by Project Co, with appropriate repairs made based on the results.
Building Fabric, Internal	<ul style="list-style-type: none"> • Will function and operate as intended without fault. • Substantially free from structural cracks, deflection and other defects. • Substantially free from damp penetration, cracking, spalling, peeling and lifting. • Substantially free from stains, graffiti and other cosmetic faults. • Substantially free from damage including scratches or blemishes, whether or not hampering operations. • Finishes are complete, free from surface degradation and maintained within an acceptable level of normal wear and tear. • Free from vermin and/or pests. • Free from asbestos and other Hazardous Substances. • Free from volatile off-gassing. • Maintain fire and security rating. • Maintain security integrity as required by Schedule 3 [Design and Construction Specifications] and the initial Design.
Fixtures and Fittings	<ul style="list-style-type: none"> • Operate as intended, in a safe way, without making undue noise, without observable stains on hinges, locks, catches and handles, and without binding, rubbing or catching in any way. Reset after tripping, if required. • Will function as intended, and will be substantially free from all but minor surface blemishes and wear and tear. • Signs, notices and warning signs are illuminated, intact and legible. • Free from corrosion.

Maintained Element	Standard
Floor and Floor Coverings	<ul style="list-style-type: none"> • The floor coverings are complete, in accordance with these Service Protocols and Specifications. • The floor coverings are fully fixed to the floor so as not to cause health and safety hazard. • The floor/floor coverings are free from tears, scoring, cracks or any other damage that is unsightly and/or could cause a health and safety hazard. • Floor coverings/surfaces will be maintained in such a way as to provide a suitable uniform surface, with minimal resistance, for wheeled beds, trolleys, wheel chairs and any other wheeled vehicle in use in the Facility. • Allow adequate drainage where necessary. • Free from vermin and/or pests.
Decorative Finishes	<ul style="list-style-type: none"> • Decorative finishes are complete according to their specification. • Substantially free from all but minor surface blemishes or undue wear and tear. • Free from cracks, or any other surface degradation inconsistent with a building maintained in accordance with Good Industry Practice.
Equipment & Furniture	<ul style="list-style-type: none"> • Free from splits, cracks, and other defects (including squeaks) and free from all but minor surface blemishes or undue wear and tear. • Maintained in accordance with applicable Laws. • Maintained in accordance with manufacturer's requirements.
Video Visitation System:	<ul style="list-style-type: none"> • Maintain in accordance with all applicable Laws, codes and standards. Systems will remain operational continuously, unless approved for interruption by the Province. • Integrated with ESCS • Operate in accordance with the applicable Services Protocols and Specifications. • Fully operational within manufacturer's recommendations. • Function as intended.
Locking and Glazing Systems	<ul style="list-style-type: none"> • Maintain in accordance with all applicable Laws, codes and standards, • Systems operational continuously, unless approved for interruption by the Province. • Operate in accordance with the applicable Services Protocols and Specifications and Schedule 3 [Design and Construction Specifications]. • Fully operational within manufacturer's recommendations. • Function as intended.
Food, Laundry and Medical Service Equipment	<ul style="list-style-type: none"> • Maintain in accordance with all applicable Laws, codes and standards. • Systems operational continuously, unless approved for interruption by the Province. • Fully operational within manufacturer's specifications. • Function as intended.

Table 2: Service Standards – Systems

Maintained Element	Standard
General	<ul style="list-style-type: none"> • In general, all elements of Building Systems, including the elements outlined below, will at all times be functional, operational and satisfy these Services Protocols and Specifications. • All Building Systems will be maintained in compliance with the manufacturer's maintenance instructions.
Emergency Power Supply System	<ul style="list-style-type: none"> • Standby power supply will be operational, secure and tested regularly in compliance with CSA C282 and free from dust. • Batteries will be adequately ventilated, free from acid leakage and batteries will be topped up and fully charged. • All generators will be tested to ensure reliability during power interruptions at full load in accordance with Good Industry Practice.
LV Distribution System	<ul style="list-style-type: none"> • Ratings will be clearly marked. • Secure to authorized access only. • Recording instruments operational. • Provide lock out procedure. • Thermographic scans (utilizing thermal imaging cameras) as required in accordance with Good Industry Practice. • Do injection testing as required in accordance with Good Industry Practice. • Test all alarm functions.
Electrical Distribution System	<ul style="list-style-type: none"> • Ratings will be clearly marked. • Secured to authorized access only. • Recording instruments operational where necessary. • Provide lock out procedure. • Provide coordination study and Arc Flash Hazard Analysis as required in accordance with Good Industry Practice or at minimum every 10 years. • Identify all current transformer and potential transformer ratios. • Thermographic scans (utilizing thermal imaging cameras) as required in accordance with Good Industry Practice.
Hot & Cold Domestic Water System (Plumbing System)	<ul style="list-style-type: none"> • Deliver water at the temperatures (43°C – 48°C for Inmate / public use outlets and 43°C – 60°C for general use outlets) and flow rates as required to serve the Facility needs without undue noise or vibration. • Taps, valves and other related fittings and fixtures function as intended. • Pipe work and fittings will be fastened securely to their intended points of anchorage. • There will be no drips or leaks of water from pipes, taps, valves and/or fittings • Water service will be maintained in such condition as to provide average, maximum and peak demand plus fire flow as prescribed by the local government design criteria. In the absence of such design criteria, the water

Maintained Element	Standard
	<p>system will provide a minimum of 40 psi for the average day demand and a minimum of 20 psi for maximum day demand, plus fire flow demand.</p> <ul style="list-style-type: none"> • Normal operating pressures on Site will be maintained to be between 50 and 100 psi.
Conveying Systems	<ul style="list-style-type: none"> • Pneumatic tube system operates to the manufacturer's specifications. • Dumbwaiters operate to manufacturer's specifications, the Design and Construction Specifications and these Services Protocols and Specifications. • Disinfection following spills in the conveying systems will be undertaken when a canister carrying any biological agent is believed to have opened in the tube system.
Sanitary and Other Drainage Systems	<ul style="list-style-type: none"> • Will function as intended, without undue noise or vibration. • Will ensure the storm water management system is maintained to provide the required quality of water entering adjoining streams and municipal drainage systems. • All pipe work and fittings fastened securely to their intended points of anchorage. • There will be no leakage of waste and/or foul water and/or rainwater. • Dual mancerator systems, installed in parallel, will be maintained in a continuously operable condition.
Life Safety and Fire Management Systems	<ul style="list-style-type: none"> • Life safety, fire extinguishers and other firefighting equipment will be maintained in accordance with relevant Laws, codes and standards (e.g. CSA Standards).
Electronic Security & Communications Systems	<ul style="list-style-type: none"> • Security Systems will be maintained in accordance with all applicable Laws, codes and standards. Systems will remain operational continuously, unless approved for interruption by the Province. • Locking controls and monitoring to remain operational in accordance with the applicable Services Protocols and Specifications. • Fence Detection Systems to remain operational in accordance with the applicable Services Protocols and Specifications. • Integrated systems operate as intended on a continuous basis. • ESCS operate in accordance with the applicable Services Protocols and Specifications. • Fully operational within manufacturer's recommendations. • Function as intended. • Alarms that occur more than two times in 24 hour period will be reported to the Province as to the reason for the reoccurrence of the alarms and implementation of the recommended solution.
Communications Systems	<ul style="list-style-type: none"> • All electrical communications and data transmission installations to comply with all applicable Laws, codes and standards (e.g., CSA Standards).

VAN01: 3149223:v7

Maintained Element	Standard
	<ul style="list-style-type: none"> • Cabling remains operational continuously. • Must meet EIA/TIA performance requirements at all times.
Utility Connections and Services	<ul style="list-style-type: none"> • Secure, safe, maintained and serviced in accordance with the Annual Service Plan and the applicable Utility Company's requirements.
Conveyance Equipment	<ul style="list-style-type: none"> • All components to be fully functional, safe, secure, operationally sound and of good appearance, in accordance with the design criteria as set out in Schedule 3 [Design and Construction Specifications].
Mechanical and Plumbing Systems	<ul style="list-style-type: none"> • All mechanical and plumbing systems will function as intended without unreasonable noise, vibration or leaks. • All elements and components are functional, safe, secure, operationally sound and of good appearance. • Free from dust and corrosion which has a negative impact on health or safety. • Substantially free from dust and corrosion which could have a negative impact on performance or which do not have a reasonable appearance. • Substantially free from erosion and organic growth. • Mechanical ventilation and exhaust systems, units, ductwork and diffusers maintained and cleaned regularly per applicable Laws, codes and Good Industry Practice. • Maintained and tested in accordance with the Annual Service Plan. • Maintained to deliver to the design performance criteria and parameters as set out in Schedule 3 [Design and Construction Specifications]. • All life safety and firefighting equipment will be maintained in accordance with all applicable Laws, codes and standards.
Electrical Systems	<ul style="list-style-type: none"> • All normal and emergency power systems and associated gear will be operational, secure and tested in accordance with the Annual Service Plan and CSA requirements. • All panels, wiring, fittings, fixtures, controls and life safety systems and equipment will be properly housed, fastened securely and labelled. • All alarms, electrical communications, data transmission installations, cabling and associated equipment will be fully functional, operational and maintained in accordance with the Annual Service Plan. • All controls and Building Management Systems must be fully functional. • All lighting systems must be fully functional, safe and remain in accordance with the requirements of Section 9.6.6 [Electrical] of Schedule 3 [Design and Construction Specifications].

Table 3: Service Standards – Heating, Ventilation and Air Conditioning

Maintained Element	Standard
General	<ul style="list-style-type: none"> • All ventilation systems will function as intended without undue noise or vibration. • Air changes and ventilation levels in accordance with baseline levels established through the applicable commissioning procedures at Service Commencement. • Ductwork, fittings and pipe work will be securely fastened to their intended points of anchorage. • There will be no leakages of water (or other heating/cooling medium) or air from ventilation systems. • Ductwork will be maintained so as to ensure efficient flow of air through the HVAC system. Project Co will submit details of its plan for verification of ductwork cleanliness and performance, including method and frequency of verification, to the Province concurrently with the first Annual Service Plan. • Secured to authorized access only. • Free from corrosion, erosion and organic growth.
Temperature Control:	<ul style="list-style-type: none"> • Design Temperature within the applicable temperature range set out in Schedule 3 [Design and Construction Specifications] • Maintained to indoor Design Temperature set point, subject to the applicable control tolerances stipulated in Schedule 3 [Design and Construction Specifications]. • Selection of representative rooms to be logged is to be changed every reporting period and to be on continuous rollover assignment.
Humidity Control:	<ul style="list-style-type: none"> • Return air humidity (or space humidity where applicable) maintained to set point within control tolerance as per Schedule 3 [Design and Construction Specifications] and confirmed through trend logging.
Supply and Return Air Volumes:	<ul style="list-style-type: none"> • Maintained to design airflow quantities, as set out in Schedule 3 [Design and Construction Specifications]. • Demonstrate that airflow quantities are maintained through periodic reporting using physical flow hood measurement.
Relative Pressurization:	<ul style="list-style-type: none"> • For rooms with critical relative pressurization requirements, maintain differential pressure within range as per design criteria and provide continuous monitoring and trend logging. • For all other spaces, maintenance of Positive (P), Negative (N) or Equal (E) relative pressurization requirements will be established by demonstrating that supply and return/exhaust air volumes are being maintained, and by annual visual smoke tests where required in accordance with Good Industry Practice.

Appendix 4E

PERFORMANCE INDICATORS

See attached table.

The Performance Indicators include all provisions of the relevant sections of this Schedule referenced in the table and all other Services required or reasonably inferred to be required to perform the relevant Performance Indicator. The Performance Indicators identified will not limit the scope of the Services to be performed.

The Response Times and Rectification Periods set out in this Appendix 4E shall apply to all Events, except to the extent a different response time and rectification period has been expressly specified for such Event in this Agreement.

Table from Appendix 8D - referenced here for convenience		
Response Time and Rectification Period requirements in respect of Service Failures		
Service Failure Designation (pursuant to Schedule 4)	Response Time	Rectification Period (Hours)
High	15 minutes	4
Medium	30 minutes	24
Low	2 hours	168

Recording Frequency	Recording Frequency	Recording Frequency
PR = Per Request PO = Per Occurrence D = Daily	W = Weekly M = Monthly Q = Quarterly S = Twice per year	A = Annually R = Randomly, at any moment

Performance Indicators					
Number	Schedule Reference	Section Reference	Parameter	Service Failure Category	Recording Frequency
1.			All failures to comply with the Plans, Operational Policies and Procedures or any other obligation that are not listed in the balance of this Appendix.	Low	PO

Performance Indicators					
Number	Schedule Reference	Section Reference	Parameter	Service Failure Category	Recording Frequency
2.	Schedule 4	Failure to comply with Section 1.7.2.6(3) for each Project Co Person	Failure for each Project Co Person engaged in the delivery of the Services at all times to comply with all applicable Laws, Province Policies and Procedures, Operational Policies and Procedures and other requirements of this Agreement, including those related to security clearances; personal identification and Facility access control; physical and other searches of persons and property; control and detection of contraband; immunization and infection control; and tool control.	High	PO
3.	Schedule 4	Failure to comply with Sections 4D - 1.7.2.9(4)(b), 4D - 1.7.2.9(6), 4D - 1.7.3, 3.9.1.2(3)(g), 3.9.1.2(4), 3.9.11.1(6),	Failure of Project Co to provide the training for each Project Co Person engaged in the delivery of the Services, with regard to all relevant health and safety standards associated with the Services to be performed and the rules, policies and procedures established by Project Co concerning health and safety at work; all applicable fire precautions, procedures and contingency plans; and handling and usage of chemicals, including pesticides, herbicides and fertilizers, and other Hazardous Substances applicable to the Services to be performed.	High	PO
4.	Schedule 4	1.7 Staffing	Failure of each Project Co Person engaged in the delivery of the Services to wear appropriate work wear including Personal Protective Equipment.	High	PO

Performance Indicators					
Number	Schedule Reference	Section Reference	Parameter	Service Failure Category	Recording Frequency
5.	Schedule 4	Failure to comply with Section 1.7.2.6(4)	Failure of Project Co to carry out all occupational, health and safety and risk management responsibilities with respect to the Services, including administering and managing Project Co's compliance with its health and safety obligations insofar as they relate to the provision of the Services; and have received all immunizations required by applicable Law, Province Policies and Procedures, Operational Policies, and this Agreement, at no cost to the individual, and that Project Co retains records of such immunizations in accordance with Schedule 14 [Records and Reports].	High	PO
6.	Schedule 4	Part 5. Performance Monitoring and Reporting	Failure to provide the Performance Monitoring Report with the form and content set out in the Agreement.	Medium	M
7.	Schedule 4	5.11 Province Satisfaction Assessments	Failure to conduct a Province Satisfaction Survey annually as set out in the Agreement.	High	A
8.	Schedule 4	5.11 Province Satisfaction Assessments	Failure to achieve a satisfaction rating of more than 65% in the Province Satisfaction survey.	Medium	A
9.	Schedule 4	5.11 Province Satisfaction Assessments	Failure to achieve a satisfaction rating of 85% or greater in respect of a Surveyed Element for which Project Co received a satisfaction rating between 65% and 84.9% during the previous survey.	Medium	A
10.	Schedule 4	3.9 Annual Service Plans	Failure to comply with the content of the REVIEWED Annual Service Plan.	High	PO

Performance Indicators					
Number	Schedule Reference	Section Reference	Parameter	Service Failure Category	Recording Frequency
11.	Schedule 4 and Schedule 14		Failure to meet all of the required reporting and quality monitoring requirements as described in Schedule 4 [Services Protocols and Specifications] and Schedule 14 [Records and Reports]. This includes, but is not limited to, maintaining appropriate records in relation to all permits, licenses, test certificates and approvals.	Medium	PO
12.	4B - Roads, Grounds and Landscape Maintenance Services	Table 1 Service Standards	Failure to ensure camera views are not obscured by trees, shrubs or hedges.	High	PO
13.	4B - Roads, Grounds and Landscape Maintenance Services	Table 1	Failure to keep roads clear of any obstruction that inhibits emergency vehicle access.	High	PO
14.	4B - Roads, Grounds and Landscape Maintenance Services	2.1.1.9	Failure to comply with the snow and ice removal standards.	High	PO

Performance Indicators					
Number	Schedule Reference	Section Reference	Parameter	Service Failure Category	Recording Frequency
15.	4D - Plant Services	4. Building and Equipment Maintenance	Failure to complete a minimum of 85% of Scheduled Maintenance within the planned month and any deferred Scheduled Maintenance is completed within the following month and associated CMMS records are provided to the Province.	High	M
16.	4D - Plant Services	8. Elevators and Vertical Transportation Services	Failure to achieve a minimum of 95% Elevator Availability.	High	M
17.	4F - Help Desk Services	1.2.1.6	Failure to respond within 30 seconds for at least 90% of calls and within 60 seconds for 100% of calls.	Medium	M
18.	4F - Help Desk Services	1.2.1.11(3)	Failure to release a trapped occupant within the rectification period specified in this section.	High	PE
19.	4F - Help Desk Services	1.2.1.11(4)	Failure to provide training twice per year to Province Persons to release elevator occupants from the elevator when necessary.	High	S
20.	4G - Utility Management Services		Where redundant utility systems are specified in Schedule 3, a failure to make these systems available at all times.	High	PO
21.	4G - Utility Management Services	1.2 Management and Administration	Provide notice to the Province of any scheduled utility interruptions of which Project Co has notice.	Medium	PO
22.	2D Energy	9.6.3.1(2)(e)	Following testing and during normal operations, failure to provide 96 hours of capacity in the Diesel Generator System.	High	PO
23.	Schedule 3	9.4.1.2(8)	Failure to use between 195 tons and 205 tons of geothermal energy on average over a single Payment Period.	High	M

Performance Indicators					
Number	Schedule Reference	Section Reference	Parameter	Service Failure Category	Recording Frequency
24.	Schedule 3	9.4.1.2(8)	Failure to maintain an instantaneous geothermal energy use of between 180 tons and 220 tons, with the exception of instances where the instantaneous total Facility energy use falls below 200 tons.	High	PO
25.	Schedule 6	2.2	Failure to provide the Minor Works in accordance with the 'Direction for Minor Works' section of Schedule 6.	Medium	PO
26.	Schedule 8	3.12	Failure to comply with Law while carrying out Rectification or works of Temporary Repair.	High	PO
27.	Schedule 8	3.12	Failure to comply with Good Industry Practice while carrying out Rectification or works of Temporary Repair.	Low	PO

Appendix 4F

HELP DESK SERVICES

TABLE OF CONTENTS

PART 1. HELP DESK SERVICES..... 1

1.1 General Requirements 1

1.2 Help Desk Services 1

APPENDIX 4F HELP DESK SERVICES

PART 1. HELP DESK SERVICES

1.1 General Requirements

1.1.1 Project Co will perform the Help Desk Services in compliance with this Appendix and all other requirements of this Agreement.

1.1.2 Project Co will continuously perform the Help Desk Services throughout the Operating Period 24-hours per day 365 (366) days per year, and will provide for back-up when unable to perform these Services.

1.2 Help Desk Services

1.2.1 Project Co will:

1.2.1.1 provide the Help Desk Services, which will form the day-to-day notification interface between the Province and Project Co, in relation to the following matters:

1.2.1.1(1) all enquiries and Demand Requisitions relating to the Services;

1.2.1.1(2) the notification of Events and complaints or compliments from any of the Province Persons relating to the Services;

1.2.1.1(3) transition and successful implementation of a Change;

1.2.1.1(4) monitoring of BMS system, equipment alarms and security;

1.2.1.1(5) notification of accidents;

1.2.1.1(6) all requests for information relating to the operation of the Help Desk Services;

1.2.1.1(7) all updates of progress regarding any Events notified to the Help Desk; and

1.2.1.1(8) accurate CMMS data entry and reporting as referenced in Schedule 4 [Services Protocols and Specifications].

- 1.2.1.2 make the initial determination and categorization of each and every Demand Requisition and Event using the classification (priority) protocol outlined in Appendix 8D [Response Time and Rectification Period Requirements] of Schedule 8 [Payments];
- 1.2.1.3 maintain as part of the Help Desk Services a daily electronic log of all Demand Requisitions and calls reporting Events. The Help Desk will record into the electronic log all relevant details, including the following information:
 - 1.2.1.3(1) Help Desk operator's name;
 - 1.2.1.3(2) requester's name;
 - 1.2.1.3(3) date and time;
 - 1.2.1.3(4) location;
 - 1.2.1.3(5) nature of the Demand Requisition or Event,
 - 1.2.1.3(6) Service required;
 - 1.2.1.3(7) classification (priority);
 - 1.2.1.3(8) unique request reference identifier;
 - 1.2.1.3(9) service provider and contact name to which the request was passed;
 - 1.2.1.3(10) date and time the Demand Requisition was passed to the relevant Sub-Contractor;
 - 1.2.1.3(11) action taken and by whom; and
 - 1.2.1.3(12) applicable and achieved Response Time and time of Rectification;
- 1.2.1.4 not delete or alter any details recorded by the Help Desk unless approved by the Province and preserve the following information as recorded:
 - 1.2.1.4(1) the exact nature and impact of the amendment;

- 1.2.1.4(2) the reason for the amendment; and
- 1.2.1.4(3) by whom the amendment was authorized;
- 1.2.1.5 ensure that in the event of emergencies, at all times, the Help Desk will assist in raising the alarm, reporting the incident to internal and external authorities, coordinating the Response Time and logging the details;
- 1.2.1.6 ensure the Help Desk system answers all telephone calls with a live English-speaking operator. Response will be within 30 seconds for at least 90% of calls and within 60 seconds for 100% of calls, Users will not be kept on hold for longer than 90 seconds. For enquiries made by electronic mail, a response will be given within 30 minutes of receipt at the Help Desk;
- 1.2.1.7 keep records of telephone and electronic response times, number of calls on hold, length of calls on hold and number of calls abandoned;
- 1.2.1.8 ensure that all Demand Requisitions are properly entered into the CMMS;
- 1.2.1.9 ensure the Help Desk Services will maintain confidentiality consistent with the requirements of this Agreement;
- 1.2.1.10 at all times adhere to update and maintain as current the "REVIEWED" Operational Policies and Procedures; and
- 1.2.1.11 ensure the following specific responses to elevator faults, failures or alarms:
 - 1.2.1.11(1) immediately respond (within 5 minutes) to all elevator alarms or telephone calls from an elevator and initiate the required action to Rectify faults and release occupants;
 - 1.2.1.11(2) have personnel on Site to immediately attend to minor elevator faults;
 - 1.2.1.11(3) in the event of mechanical failure, ensure that elevator occupants are released from the elevator within 30 minutes of calling for assistance;

1.2.1.11(4) provide training twice per year for designated Province Persons to understand the tools and protocols necessary to release elevator occupants from the elevator when necessary.

Appendix 4G

UTILITY MANAGEMENT SERVICES

TABLE OF CONTENTS

PART 1. UTILITIES MANAGEMENT SERVICES 1

1.1 General Requirements 1

1.2 Management and Administration..... 1

1.3 Energy Supply and Payment..... 3

**APPENDIX 4G
UTILITY MANAGEMENT SERVICES**

PART 1. UTILITIES MANAGEMENT SERVICES

1.1 General Requirements

1.1.1 Project Co will:

1.1.1.1 perform the Utility Management Services in compliance with this Appendix and all other requirements of this Agreement; and

1.1.1.2 continuously perform the Utility Management Services throughout the Operating Period in a manner that will promote the provision of an adequate continuous supply of all Utilities to all applicable Facility locations 24 hours a day, 365 (366) days per year.

1.2 Management and Administration

1.2.1 The Province will from time to time as required enter into contracts with Utility Companies for the supply of Utilities, and will be responsible for all payments related to such contracts.

1.2.2 Project Co will:

1.2.2.1 provide such reasonable assistance related to such contracts with Utility Companies as may be requested by the Province, and manage all of the following Utilities within the Facility:

1.2.2.1(1) electricity;

1.2.2.1(2) water and sewage;

1.2.2.1(3) geothermal

1.2.2.1(4) telephone and data cabling;

1.2.2.1(5) natural gas/fuel oil;

1.2.2.1(6) cable/satellite television; and

1.2.2.1(7) Emergency Generator fuel.

- 1.2.2.2 ensure the Utility Management Services are cost effective, comprehensive in nature and address the technical, managerial, and operational issues, and maintain the integrity of supply of Utilities as set out in this Appendix. The Utility Management Services shall include:
- 1.2.2.2(1) administer hazard and safety notices, recording, distributing and evaluating such notices and ensuring that all required notification procedures regarding any equipment or plant failure are complied with;
 - 1.2.2.2(2) advise on Utilities consumption and cost implications throughout the Operating Period for plant upgrading/modernization schemes and new developments;
 - 1.2.2.2(3) provide, managing and operating an effective Building Management System;
 - 1.2.2.2(4) work with the Province to establish a Utilities conservation policy that sets consumption reduction targets; and
 - 1.2.2.2(5) ensure that Project Co Persons, including Project Contractor employees and Sub-Contractor employees are made aware of the aims of the energy policy and are given guidance on its implementation;
- 1.2.2.3 ensure all physical connections for telephone and data services are provided and maintained at all times;
- 1.2.2.4 be responsible for securing and maintaining connections to Utility Company and/or Province central Plant Services of appropriate specifications and adequate capacity to supply the requirements of the Facility under all operating conditions anticipated as at the Effective Date (including standby provisions in the event of an earthquake or other catastrophic event);
- 1.2.2.5 review and provide comment to the Province on the Utility supply specifications and provide technical support, advice and assistance in the negotiation of tariffs;
- 1.2.2.6 inform the Province Operating Period Representative of all scheduled interruptions of which Project Co is aware to any Utility supply that may affect the

Province Activities and/or Project Co's operations and cooperate and participate in scheduled Site-wide testing, maintenance and seasonal change over routines initiated and coordinated by the Province;

1.2.2.7 maintain appropriate records in relation to all Permits, including:

1.2.2.7(1) ensuring all test certificates and appropriate documentation and records (in particular those relating to any aspects of safety or statutory compliance) are maintained accurately and updated appropriately and are available for inspection by the Province or any other relevant party;

1.2.2.7(2) ensuring all information and records are up to date, precise and accurate and available for inspection by the Province or any other relevant party;

1.2.2.7(3) preparing and supplying all information reasonably required by any party, to whom the Province is obliged to present information at any time in relation to the performance of the Utility Management Services, plus all statistical records and reporting which may be required by provincial or federal Government Authorities;

1.2.2.7(4) maintaining records detailing any complaints made with respect to any of the Utility Management Services and action taken; and

1.2.2.7(5) maintaining records that have been provided to Project Co by the Province; and

1.2.2.8 provide technical support, advice and assistance, upon request, in connection with the Province's negotiation of Utility contracts, tariffs and bulk purchase agreements.

1.3 **Energy Supply and Payment**

During the Operating Period:

1.3.1 the Province will, from time to time, as required enter into contracts for the supply and delivery of Energy to the Facility;

1.3.2 as set out in Schedule 8 [Payments], the direct costs of diesel fuel will be a flow through to the Province and invoiced on a monthly basis, without mark up.

1.3.3 without limiting Project Co's obligations in Appendix 4G [Utility Management Services], Project Co will provide such other reasonable assistance related to the Province's Energy supply contracts as may be requested by the Province.

Appendix 4H

ENVIRONMENTAL AND SUSTAINABILITY SERVICES

TABLE OF CONTENTS

PART 1. ENVIRONMENTAL AND SUSTAINABILITY SERVICES 1

1.1 General Requirements 1

1.2 Scope of Services..... 1

**APPENDIX 4H
ENVIRONMENTAL AND SUSTAINABILITY SERVICES**

PART 1. ENVIRONMENTAL AND SUSTAINABILITY SERVICES

1.1 General Requirements

- 1.1.1 Perform the Environmental and Sustainability Services in compliance with the Province's Environmental Stewardship Policy, Environmental Management System and Environmental Management Plan.
- 1.1.2 Provide an annual compliance statement with respect to the Environmental Management Plan in accordance with Section 3.12.1 [Environmental Management Plan and System] of Schedule 4 [Services Protocols and Specifications].

1.2 Scope of Services

- 1.2.1 The general scope of the Environmental and Sustainability Services is:
 - 1.2.1.1 maintenance of a safe, compliant, working environment for the Facility through the use of processes, practices, materials, supplies and products that avoid or minimize the production of pollutants and waste thereby reducing the overall impact to human health systems, building components, life cycle and the environment;
 - 1.2.1.2 utilization of recognized risk assessment/management systems to ensure that standards are maintained in the performance of the Services, and that any adverse variance is recognized and corrected; and
 - 1.2.1.3 compliance with all obligations under any Permits obtained for Design and Construction of the Facility, including the CEA Report, the SARA Permit and the Wildlife Act Permit, that remain outstanding at the Service Commencement Date or that continue in effect after the Service Commencement Date.
- 1.2.2 Project Co will perform the Environmental and Sustainability Services on a scheduled and demand basis to ensure that performance of the Services does not cause or create any safety or environmental hazard to the environment and/or any person in the Facility or on the Site, and minimizes disruption to the Province Activities.

Appendix 4I

OPERATING PERIOD REVIEW PROCEDURE

TABLE OF CONTENTS

PART 1. OPERATING PERIOD SUBMITTAL SCHEDULE 1

PART 2. GENERAL REQUIREMENTS FOR OPERATING PERIOD SUBMITTALS 2

PART 3. OPERATING PERIOD PLAN REVIEW PROCEDURE..... 3

PART 4. OPERATING PERIOD SUBMITTAL MEETINGS AND EXPLANATIONS 7

PART 5. REVISIONS 7

PART 6. LIFE CYCLE SCHEDULE AND START-UP PLAN..... 8

PART 1. OPERATING PERIOD SUBMITTAL SCHEDULE

1.1 Project Co will prepare and submit to the Province not less than 90 days prior to the Target Service Commencement Date, a proposed Operating Period Submittal Schedule for the first year of the Operating Period.

1.2 Not less than 90 days in advance of each anniversary of the Service Commencement Date, Project Co will prepare and submit to the Province a proposed Operating Period Submittal Schedule for the ensuing year.

1.3 Project Co will submit each proposed Operating Period Submittal Schedule to the Province in accordance with this Appendix 4I [Operating Period Review Procedure], and once marked "REVIEWED", in accordance with Part 3 [Operating Period Plan Review Procedure] of this Appendix, the proposed Operating Period Submittal Schedule will be the "***Operating Period Submittal Schedule***".

1.4 The Operating Period Submittal Schedule may be amended by agreement of the parties in accordance with the terms of this Appendix 4I [Operating Period Review Procedure]. The Operating Period Submittal Schedule and any amendment to the Operating Period Submittal Schedule will provide for a progressive and orderly flow of Operating Period Submittals from Project Co to the Province as appropriate to allow sufficient time for review of each Operating Period Submittal by the Province, taking into account both the resources necessary to be available to the Province to conduct such review (as anticipated by or inferred from the then current Operating Period Submittal Schedule).

1.5 If the Operating Period Submittal Schedule indicates that a large number of Operating Period Submittals will be made at one time, the Province, acting reasonably, may request a longer period for review or a staggering of the Operating Period Submittals, and Project Co will revise the Operating Period Submittal Schedule accordingly, taking into account both the availability of resources required by the Province, acting reasonably, to conduct such review and whether delay in the review of the subject matter of the Operating Period Submittal will have a material impact on Project Co's ability to progress future anticipated Operating Period Submittals and the Services in accordance with this Agreement.

1.6 All amended Operating Period Submittal Schedules will be submitted in accordance with, and required to meet, all the requirements of this Appendix 4I [Operating Period Review Procedure].

1.7 Project Co will submit all Operating Period Submittals to the Province in accordance with the then current Operating Period Submittal Schedule.

1.8 Project Co will bear the risk of delays and additional costs caused as a result of the late submission of Operating Period Submittals to the Province, by Operating Period Submittals which are rejected or required to be corrected and re-submitted in accordance with the terms of this Appendix 4I

[Operating Period Review Procedure], or by changes in the anticipated performance of the Services, required as a result of comments made pursuant to this Appendix 4I [Operating Period Review Procedure].

PART 2. GENERAL REQUIREMENTS FOR OPERATING PERIOD SUBMITTALS

2.1 Except as expressly set out otherwise in this Agreement, the provisions of this Appendix 4I [Operating Period Review Procedure] will apply to any and all items, documents, plans, reports and anything else required or specified by this Agreement, in respect of the Services, to be developed, submitted to, reviewed, accepted or otherwise processed by, the Province, whether prior to Service Commencement or after Service Commencement, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Operating Period Submittal**” or “**Operating Period Submittals**” as applicable).

2.1A Unless a longer period is required by this Agreement or is otherwise reasonably required by the Province, the Province will have 20 Business Days for review of an Operating Period Submittal from the date the Province received the Operating Period Submittal. If the Submittal Schedule is inconsistent with the foregoing review period then it will be deemed to be amended to be consistent. If the Province receives an Operating Period Submittal after 12pm (Pacific time) on a Business Day, the 20 Business Day review period will commence on the next Business Day

2.2 Unless otherwise specified by the Province, Project Co will:

2.2.1 deliver one electronic copy of each Operating Period Submittal in a format acceptable to the Province; and

2.2.2 post an electronic copy of each Operating Period Submittal (in a format acceptable to the Province) on a secure internet based system that is established, implemented and maintained by Project Co for the Project and accessible to designated Province Persons.

2.3 All Operating Period Submittals will be in English.

2.4 All Operating Period Submittals required by this Agreement, applicable Law or Good Industry Practice to be signed or sealed by persons with professional designations will be so signed and, where applicable, sealed.

2.5 All Operating Period Submittals will refer to the relevant provisions of this Agreement, Design and Construction Specifications, and these Services Protocols and Specifications and to any matter that has previously been subject to review. All Operating Period Submittals (or covering documentation delivered with the Operating Period Submittals) will include a statement confirming that the Operating Period

Submittals comply with, or identifying any elements of the Operating Period Submittal that for any reason vary from, the requirements of this Agreement, including these Service Protocols and Specifications.

2.6 Each Operating Period Submittal will be clearly identified as an Operating Period Submittal and will be delivered with appropriate covering documentation, which will include:

- 2.6.1 a list of all attached Operating Period Submittal(s);
- 2.6.2 a description of:
 - 2.6.2.1 the purpose of the Operating Period Submittal(s); and
 - 2.6.2.2 the element of the Services that is subject to review by the Province; and
- 2.6.3 for each Operating Period Submittal:
 - 2.6.3.3 unique submittal tracking number;
 - 2.6.3.4 revision numbers (if applicable);
 - 2.6.3.5 document title(s);
 - 2.6.3.6 name of entity that prepared the Operating Period Submittal;
 - 2.6.3.7 the Operating Period Submittal history showing date and delivery information and/or log number of all previous submissions of that Operating Period Submittal; and
 - 2.6.3.8 identification of any previous Operating Period Submittal superseded by the current Operating Period Submittal.

2.7 Project Co will compile and maintain a real-time register of the date, contents and status of the submission of all Operating Period Submittals, including the date of receipt and content of all returned Operating Period Submittals and comments thereon.

PART 3. OPERATING PERIOD REVIEW PROCEDURE

3.1 The Province will review all Operating Period Submittals and may, but will not be obliged to, provide comments to Project Co within 20 Business Days of receipt proposing changes to such Operating Period Submittals that the Province considers desirable or necessary. Project Co will have due regard for any comments which the Province may have in relation to any of such Operating Period Submittals and

will attend such meetings as the Province or the Province's Operating Period Representative may reasonably require in order to discuss the Province's comments and proposals provided that:

- 3.1.1 it will remain Project Co's responsibility to ensure that its obligations in relation to the Facility and the Services are carried out in accordance with this Agreement; and
 - 3.1.2 no comments or lack of comments will impose any liability on the Province or in any way relieve Project Co of its obligations under this Agreement.
- 3.2 The following will apply to the changes to Operating Period Submittals proposed by the Province:
- 3.2.1 comments provided by the Province proposing changes to Plans submitted to it by Project Co, are not Changes and will be completed at Project Co's cost (except that to the extent that any such requested change would constitute a material change to this Agreement, the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply and such change will not be implemented except under a Change Certificate issued by the Province); and
 - 3.2.2 if and to the extent the Province requires an amendment to any of the Operating Period Submittals that it has previously reviewed and commented on (other than an amendment required to bring the Services into conformity with this Agreement) then such amendment will be a Change and the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.
- 3.3 The Province will review Operating Period Submittals submitted by Project Co and assign one of the following comments:
- 3.3.1 "REVIEWED";
 - 3.3.2 "REVISE AND RESUBMIT"; or
 - 3.3.3 "NOT REVIEWED"
- 3.4 The comment "REVIEWED" will be assigned to those Operating Period Submittals that, in the opinion of the Province, acting reasonably, appear to conform to the requirements of this Agreement.
- 3.5 The comment "REVISE AND RESUBMIT" will be assigned to those Operating Period Submittals that, in the opinion of the Province, acting reasonably, appear to contain deficiencies. Project Co will, to the extent necessary, correct these Operating Period Submittals and resubmit such Operating Period Submittals to the Province in accordance with this Appendix 4I [Operating Period Review Procedure].

3.6 The comment "NOT REVIEWED" may be assigned to those Operating Period Submittals that have not been reviewed by the Province in detail because, in the opinion of the Province, acting reasonably, the Operating Period Submittals do not comply with the requirements of this Agreement, are incomplete or otherwise insufficient for the purposes of review, or are received by the Province before the date scheduled in the Operating Period Submittal Schedule. Project Co will correct and re-submit these Submittals within 15 Business Days, or if a later date is set out on the Operating Period Submittal Schedule, by such later date. Project Co will correct, revise and resubmit Operating Period Submittals as often as may be required to obtain a comment that permits Project Co to proceed. Project Co will not proceed with any Services to which such Operating Period Submittals receiving the comment "NOT REVIEWED" relate until Project Co obtains a comment that permits Project Co to proceed.

3.7 Where the Services are required to be performed in accordance with the requirements of a particular Operating Period Submittal, except with the written consent of the Province, Project Co will not proceed with performance of such Services until Project Co submits the relevant Operating Period Submittal and receives the comment "REVIEWED".

3.8 The Province may request additional time for the review of any Submittal, including where the Submittal is voluminous or requires extensive review by representatives (including consultants) of the Province, and Project Co will, in consultation with the Province, extend such time for any reasonable requests by the Province.

3.9 If the Province does not respond to an Operating Period Submittal within the applicable time period for that Operating Period Submittal, as determined in accordance with Section 2.1A [General Requirements for Operating Period Submittals] of this Appendix, then the Operating Period Submittal will be deemed "REVIEWED" and, where the Services are required to be performed in accordance with the requirements of the particular Operating Period Submittal then, notwithstanding Section 3.7 [Operating Period Review Procedure] of this Appendix 4I [Operating Period Review Procedure], Project Co may proceed with the Services on the basis set forth in the applicable Operating Period Submittal without any further action or documentation required.

3.10 Where the Province issues the comment "REVISE AND RESUBMIT" or "NOT REVIEWED", the Province will provide reasons for the comment, referencing particulars of the section(s) of this Agreement (including the Services Protocols and Specifications) that the Submittal fails to satisfy, and if requested by Project Co, the Province will meet with Project Co to discuss the reasons for the comment.

3.11 If at any time after assigning any comment to an Operating Period Submittal, or where Section 3.9 [Operating Period Plan Review Procedure] of this Appendix 4I [Operating Period Review Procedure] has applied, the Province or Project Co discovers deficiencies or any failure to conform to the requirements of this Agreement, the Province or Project Co, as the case may be, will promptly notify the

VAN01: 3149223:v7

other party of such deficiencies or non-conformance and the Province may revise the comment assigned to any Operating Period Submittal. If the parties agree or it is determined in accordance with the Dispute Resolution Procedure that the revised comment is correct, Project Co will make all such corrections to the Operating Period Submittals and the where practicable, the Services.

3.12 For the purpose of facilitating and expediting the review and correction of Operating Period Submittals, the Province and Project Co's Operating Period Representative will meet as may be mutually agreed to discuss and review any outstanding Operating Period Submittals and any comments thereon.

3.13 Where an individual Operating Period Submittal item is voluminous the Province's Operating Period Representative, at its discretion, may elect to stamp only the cover page or first sheet of the Operating Period Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages not returned without such an explanation as to their status will be deemed to be "REVIEWED" by the Province.

3.14 In lieu of returning an Operating Period Submittal, the Province may by letter notify Project Co of the comment assigned to the Operating Period Submittal and if such comment is "REVISE AND RESUBMIT" or "NOT REVIEWED" the letter will contain comments in sufficient detail, including referencing applicable section(s) of the Agreement, for Project Co to identify the correction sought.

3.15 Disputes

3.15.1 If Project Co disputes any comment issued by the Province in respect of an Operating Period Submittal made under Part 3 [Operating Period Plan Review Procedure], Project Co will promptly notify the Province of the details of such Dispute and will submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Province will review the Operating Period Submittal, the reasons and supporting documentation and within 7 Business Days after receipt thereof will either confirm the original comment or notify Project Co of a revised comment. Nothing in this Part will limit either party's right to refer a Dispute to the Dispute Resolution Procedure.

3.16 Changes

3.16.1 If Project Co considers that compliance with any comment raised by the Province in respect of an Operating Period Submittal made under Part 3 [Review Procedure] of this Appendix would lead to a Change, Project Co will, before taking into account such comment, notify the Province. If it is agreed by the Province that such comment would

lead to a Change then the procedure set out in Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply. If the parties are unable to reach agreement, then either party may refer the matter directly to the Referee in accordance with Schedule 13 [Dispute Resolution Procedure].

3.16.2 In all cases, the parties will cooperate to identify potential alternative solutions to any comments raised that would not lead to a Change.

3.17 Effect of Review

3.17.1 Any review of and comment by the Province of any Operating Period Submittals are for general conformity to the obligations and requirements of this Agreement, and any such review and comment will not relieve Project Co of the risk and responsibility for the Services and for meeting all of its obligations and requirements of this Agreement, and will not create any new or additional obligations or liabilities for the Province. Without limiting the generality of the foregoing any and all errors or omissions in Operating Period Submittals or of any review and comment will not exclude or limit Project Co's obligations or liabilities in respect of the Services under this Agreement or exclude or limit the Province's rights in respect of the Services under this Agreement.

PART 4. OPERATING PERIOD SUBMITTAL MEETINGS AND EXPLANATIONS

4.1 At any time, the Province may, acting reasonably, require Project Co, including Project Co's consultants, Sub-Contractors, and any other relevant personnel, at no additional cost to the Province, to meet with representatives of the Province and its advisors to answer questions regarding Project Co's Operating Period Submittals or to explain to the Province and the Province's advisors the intent of Project Co's Operating Period Submittals, including details of its satisfaction of the requirements of this Agreement, (including the Services Protocols and Specifications). Project Co will, and will cause its consultants, Sub-Contractors, and any other relevant personnel to, attend all meetings requested by the Province and answer all questions asked by the Province in accordance with this Section as soon as practicable, and in any event no later than 5 Business Days from the date it received the Province's questions, or such longer period as agreed by the parties.

PART 5. REVISIONS

5.1 Project Co will ensure that:

5.1.1 all Operating Period Submittals keep the same, unique reference number throughout the review process, and that all subsequent revisions of the same Operating Period Submittal are identified by the same unique reference number, modified by a sequential revision

number. Correspondence related to such Operating Period Submittal will reference the reference number and revision number;

- 5.1.2 any re-submittal of an Operating Period Submittal clearly shows all revisions from the previous Operating Period Submittal. Bound documents, including reports and manuals, will contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents will be used (e.g. deletions struck out and additions underscored). Revised portions of drawings will be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision will be included on the drawing;
- 5.1.3 all revisions on print media will be initialled by hand by the individual responsible for the submittal and will identify the person who initialled the Operating Period Submittal. Electronic versions of an Operating Period Submittal will identify the persons who initialled the revisions to the printed version of the Operating Period Submittal; and
- 5.1.4 all "REVIEWED" Operating Period Submittals are kept current. If any "REVIEWED" Operating Period Submittals are revised, all other "REVIEWED" Operating Period Submittals relying on or based on that "REVIEWED" Operating Period Submittal will also be revised accordingly. All such revised "REVIEWED" Operating Period Submittals will also be submitted with the Operating Period Submittal to which it relates.

PART 6. LIFE CYCLE SCHEDULE AND START-UP PLAN

6.1 Each of the Life Cycle Schedule and Start-up Plan must be reasonable having regard to the requirements of this Agreement and will be developed and finalized as follows:

- 6.1.1 the Province will, acting reasonably, make itself available to consult with Project Co, the Service Provider and the Design-Builder in connection with the development of the Life Cycle Schedule and the Start-up Plan;
- 6.1.2 Project Co will deliver preliminary drafts of the Start-up Plan and the Life Cycle Schedule to the Province not less than 180 days before the Target Service Commencement Date, failing which the Province will be entitled to make a Deduction of:
 - 6.1.2.1 \$2,500 for each week, or part thereof after, from the date falling 179 days before the Target Service Commencement Date until Project Co has delivered to the Province a preliminary draft of the Life Cycle Schedule; and

- 6.1.2.2 \$2,500 for each week, or part thereof, from the date falling 179 days before the Target Service Commencement Date until Project Co has delivered to the Province a preliminary draft of the Start-up Plan,
- 6.1.2.3 provided that if Project Co has not delivered to the Province a preliminary draft of the Life Cycle Schedule or the Start-up Plan, as the case may be, by the date falling 150 days before the Target Service Commencement Date, the Deduction applicable under this Section will increase to \$5000 per week;
- 6.1.3 Project Co will deliver revised drafts of each of the Life Cycle Schedule and the Start-up Plan to the Province no more than 60 days after receiving the Province's comments on the preliminary drafts of such Plans, failing which, the Province will be entitled to make a deduction of:
- 6.1.3.4 \$5,000 for each week, or part thereof, after the date falling 60 days after the Province delivered its comments on the preliminary draft of the Life Cycle Schedule; and
- 6.1.3.5 \$5,000 for each week, or part thereof, after the date falling 60 days after the Province delivered its comments on the preliminary draft of the Start-up Plan;
- 6.1.4 if the Province has not returned marked "REVIEWED" one or both of the Life Cycle Schedule and Start-up Plan by the date that is 90 days before the Target Service Commencement Date, Project Co may refer the dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Life Cycle Schedule or Start-up Plan, as the case may be, meets prescribed requirements;
- 6.1.5 if the Province has not accepted one or both of the Life Cycle Schedule and and Start-up Plan by the Target Service Commencement Date, unless such plans have been determined to meet prescribed requirements under the Dispute Resolution Procedure, the Province will be entitled to make a Deduction of:
- 6.1.5.6 \$6,000 for each week, or part thereof, after the Service Commencement Date until the Life Cycle Schedule has been accepted by the Province or it is determined through the Dispute Resolution Procedure that Project Co's proposed Life Cycle Schedule is deemed to meet prescribed requirements; and
- 6.1.5.7 \$6,000 for each week, or part thereof, after the Service Commencement Date until the Start-up Plan has been accepted by the Province or it is determined

through the Dispute Resolution Procedure that Project Co's proposed Start-up Plan is deemed to meet prescribed requirements;

- 6.1.6 any Deduction the Province is entitled to make pursuant to this Section will be made from the first Periodic Payment, or subsequent Periodic Payments with respect to Deductions arising from Section 6.1.5 [Life Cycle Schedule and Start-up Plan] of this Appendix, payable to Project Co; and
- 6.1.7 deductions made pursuant to this section will not be counted for the purposes of Sections 11.1 [Province Step-in Rights] or 12.1(h) [Project Co Events of Default] or 5.8 [Increased Monitoring] or 5.9 [Replacement of Non-Performing Service Provider or Sub-Contractor] of this Schedule.

SCHEDULE 5
INSURANCE REQUIREMENTS
TABLE OF CONTENTS

1.	CONSTRUCTION-RELATED INSURANCE REQUIREMENTS.....	1
1.1	Wrap-Up Liability Insurance	1
1.2	Course of Construction Coverage	2
1.3	Other Construction Period Coverage	5
2.	OPERATION AND MAINTENANCE-RELATED INSURANCE REQUIREMENTS.....	7
2.1	Project Co Commercial Liability Policy	7
2.2	Other Operating Period Coverage.....	8
3.	GENERAL INSURANCE PROVISIONS	8
3.1	Insurance Representative.....	8
3.2	Insurers and Terms of Policies	8
3.3	Additional Insurance	9
3.4	Particular Requirements of Policies	9
3.5	Evidence of Insurance	10
3.6	Claims.....	10
3.7	Project Co Deductibles	11
3.8	Province Deductibles	11
3.9	No Indemnification for Insured Claims	11
3.10	Compliance.....	11
3.11	Failure to Insure.....	12
3.12	Increase in Amount of Coverage.....	12
3.13	Project Co Contractors and Sub-Contractors.....	12
4.	INSURANCE PAYMENT.....	13
4.1	Project Co Premiums.....	13
4.2	Province Premiums	13
4.3	Increases in Premiums	13

APPENDIX 5A LENDER ENDORSEMENTS

APPENDIX 5B INSURANCE TRUST AGREEMENT

SCHEDULE 5

INSURANCE REQUIREMENTS

1. CONSTRUCTION-RELATED INSURANCE REQUIREMENTS

1.1 Wrap-Up Liability Insurance

During the Construction Period, the Province will take out, maintain in force, and extend or will cause to be taken out, maintained and extended, commercial general liability insurance on a wrap-up basis (the "**Construction CGL Policy**") which will include the following terms:

- (a) coverage in an amount of not less than _____ inclusive per occurrence and _____ in the aggregate for bodily injury, death, and damage to property including loss of use thereof;
- (b) a deductible not exceeding _____ per occurrence except with respect to bodily injury for which there will be no deductible;
- (c) include as named insureds, the Province, the Landlord, the Osoyoos Indian Band, Project Co, the Project Contractors and all Sub-Contractors, but excluding suppliers whose only function is to supply or transport products to the Site, and not extending to any activities, works, jobs or undertakings of any of the insureds other than those directly related to the Design and Construction;
- (d) include Lender Endorsements substantially in the form set out in Appendix 5A [Lender Endorsements], including, without limitation, naming the Senior Lenders as additional insureds;
- (e) contain a waiver of subrogation against all insureds under the policy; and
- (f) include coverage for:
 - (1) premises and operations liability;
 - (2) products or completed operations liability;
 - (3) blanket contractual liability;
 - (4) cross liability;
 - (5) contingent employer's liability;
 - (6) personal injury liability;
 - (7) shoring, blasting, excavating, underpinning, demolition, piledriving and caisson work, work below ground surface, tunnelling and grading, as applicable;

- (8) liability with respect to non-owned licensed vehicles, with a sublimit of _____ ;
- (9) broad form property damage;
- (10) broad form completed operations for a period of _____ after Service Commencement;
- (11) limited pollution liability with a sublimit of _____ 0 with _____ discover and reporting period;
- (12) blanket tenants legal liability with a sublimit of _____ ;
- (13) use of attached machinery;
- (14) loading and unloading of automobiles;
- (15) loss of use without damage to property;
- (16) elevator and hoist collision liability;
- (17) intentional injury committed to protect persons or property;
- (18) watercraft (not in excess of _____);
- (19) voluntary medical payments (_____ per person), _____ in the aggregate;
- (20) physical damage to non-owned auto with a sublimit of _____;
- (21) legal defence costs;
- (22) bodily injury or property damage resulting directly or indirectly from radioactive isotopes (away from a nuclear facility) which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial use.
- (23) forest fire fighting expenses with a sublimit of _____ ; and
- (24) employee benefits administrative errors and omissions with a sublimit of _____

1.2 Course of Construction Coverage

During the Construction Period, the Province will take out, maintain in force and extend or will cause to be taken out, maintained and extended, course of construction insurance against "All Risks" of physical loss or damage (the "**Construction Property Policy**") covering all materials, property, structures and equipment purchased for, entering into or forming part of the Facility including all Design and Construction, while located anywhere within Canada or the United States of America during construction, erection, installation and testing of the Facility which will include the following terms:

- (a) coverage in an amount of not less than the replacement value of the Facility determined at the time of replacement with the following sublimits:
- (1) for property insured under the policy and stored at an off Site location or in transit in Canada or the United States of America, a limit of not less than the total of all values stored at any single location, or the value of the largest single shipment to be transported by land to the Site if such transport by land is not covered by marine cargo insurance;
 - (2) the full value of all material and equipment forming part of the Facility lifted on Site by cranes during Construction;
 - (3) professional fees to establish quantum of any covered loss, , any one accident or occurrence;
 - (4) fire fighting expense,
 - (5) debris removal and clean up, ;
 - (6) expediting expense,
 - (7) immediate repairs,
 - (8) testing and commissioning, , any one item;
 - (9) extra expense,
- (b) include coverage for:
- (1) off premises service interruption;
 - (2) soft costs, having a waiting period of in respect of the Facility;
 - (3) margin of profit;
 - (4) interruption by civil authority or apparent civil authority;
 - (5) escalation ;
 - (6) underground services, temporary buildings and structures, temporary boilers and pressure vessels, scaffolding, false work, forms, hoardings, excavation, site preparation, landscaping and similar work;
 - (7) electronic data processing equipment and media, including the cost to restore or recreate data;
 - (8) valuable papers;
 - (9) accounts receivable;

- (10) unintentional errors & omissions;
 - (11) breach of conditions;
 - (12) prevention of ingress or egress; and
 - (13) costs of demolition and the increased cost to repair or replace resulting from the application of bylaws or ordinances;
- (c) deductibles, per occurrence, not exceeding the following amounts and if more than one deductible applies, the highest one will apply:
- (1) for floods,
 - (2) for testing and commissioning,
 - (3) for earthquakes, the greater of _____ of the total insured value of the Facility at the time of the loss;
 - (4) for all other insured perils,
- (d) include, as named insureds, the Province, the Landlord, the Osoyoos Indian Band, Project Co, the Project Contractors and all Sub-Contractors, as their interests may appear, and not extending to any activities, works, jobs or undertakings of any of the insureds other than those directly related to the Design and Construction;
- (e) include Lender Endorsements substantially in the form set out in Appendix 5A [Lender Endorsements], including, without limitation, naming the Senior Lenders as additional insureds and loss payee, and with respect to the delay in start-up coverage referred to in Section 1.2(f) [Course of Construction Coverage] of this Schedule, name Project Co and the Senior Lenders as the exclusive loss payees;
- (f) delay in start-up coverage:
- (1) in an amount sufficient to compensate Project Co for additional capital payments, additional interest for the extension of financing necessary for the completion of the project, legal and accounting expenses, property taxes, insurance premiums, building permits and other miscellaneous costs, various incurred fees, fixed operational and maintenance expenses, additional commissions, advertising, margin of profit of Project Co, caused by the delay in Service Commencement resulting from any of the perils insured against under the Construction Property Policy;
 - (2) having an indemnity period of not less than _____ in respect of the Facility;
 - (3) having a waiting period of _____ in respect of the Facility;

- (4) having a limit of _____ in respect of the Facility; and
- (5) including only Project Co and the Senior Lenders as named insureds;
- (g) exclusion for contractor's equipment of any description, except scaffolding and hoarding;
- (h) permit use and occupancy of the incomplete Facility by Project Co, the Project Contractors, the Sub-Contractors and the Province prior to the Service Commencement Date for:
 - (1) construction purposes;
 - (2) office purposes;
 - (3) installing, testing and commissioning or storing of equipment or machinery; and
 - (4) staff orientation and training; and
- (i) contain a waiver of subrogation against all protected entities (including those set out in Section 1.2(h) [Course of Construction Coverage] of this Schedule), except where a loss is caused by or resulting from any error in Design or any other professional error or omission.

1.3 Other Construction Period Coverage

During the Construction Period, Project Co will take out, maintain in force and renew or will cause to be taken out, maintained and renewed with respect to Design and Construction for the Facility:

- (a) automobile liability insurance which will include the following terms:
 - (1) coverage in an amount of not less than _____ inclusive per occurrence;
 - (2) coverage for Project Co, the Project Contractors and all Sub-Contractors; and
 - (3) include coverage for third party property damage and bodily injury (including accident benefits) arising out of the use of any automobile used in connection with the Project;
- (b) if aircraft or watercraft are used in connection with the Project and except to the extent covered under the Construction CGL Policy, aircraft and watercraft (including owned and non-owned) liability insurance for bodily injury, death and damage to property including loss of use thereof and including aircraft passenger hazard if applicable which will include the following terms:
 - (1) coverage in an amount of not less than _____ inclusive per occurrence;
 - (2) coverage for Project Co, the Project Contractors and all Sub-Contractors;

- (3) include the Province as an additional insured;
 - (4) contain a waiver of subrogation against the Province; and
 - (5) a deductible not exceeding an amount acceptable to the Province, acting reasonably;
- (c) if ocean marine cargo is used to transport any of the materials, equipment or property supplied under or used during the Project and which are critical to achieve Service Commencement, marine cargo insurance, covering all such materials, equipment and other property, which will include the following terms:
- (1) coverage in an amount not less than the full replacement value of the shipment;
 - (2) coverage for Project Co, the Project Contractors and all Sub-Contractors;
 - (3) include the Province as an additional named insured;
 - (4) subject to the conditions of the Institute Cargo Clauses (All Risks), including war and strikes extensions, and including transit and storage where applicable;
 - (5) if an entire vessel is chartered for shipping materials, equipment or property then charterer's liability insurance will also be provided in amounts sufficient to protect and indemnify the Province, Project Co, the Project Contractors and all Sub-Contractors from and against all liability arising out of the chartering of such vessel; and
 - (6) a deductible not exceeding an amount acceptable to the Province, acting reasonably;
- (d) "All Risks" insurance covering all construction equipment owned, leased or rented by Project Co, the Project Contractors or any Sub-Contractor for use during the Construction or for which any of them may be responsible which will include the following terms:
- (1) coverage in an amount of not less than actual cash value of such equipment;
 - (2) coverage for Project Co, the Project Contractors and all Sub-Contractors;
 - (3) contain a waiver of subrogation against the Province; and
 - (4) a deductible not exceeding an amount acceptable to the Province, acting reasonably; and
- (e) workers' compensation insurance in accordance with Schedule 2 [Design and Construction Protocols].

2. OPERATION AND MAINTENANCE-RELATED INSURANCE REQUIREMENTS

2.1 Project Co Commercial Liability Policy

During the Operating Period, Project Co will take out, maintain in force and renew or will cause to be taken out, maintained and renewed, comprehensive general liability insurance in relation to the Project (the "**Project Co Operating CGL Policy**") which will include the following terms:

- (a) coverage in an amount of not less than _____ inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and in the aggregate with respect to products and completed operations;
- (b) a deductible not exceeding _____ per occurrence other than for bodily or personal injury for which there will be no deductible;
- (c) include as named insureds, the Province, the Landlord, Osoyoos Indian Band, Project Co and the Service Provider but excluding suppliers whose only function is to supply or transport products to the Site, and not extending to any activities, works, jobs or undertakings of any of the insureds other than those directly related to the Services;
- (d) include Lender Endorsements substantially in the form set out in Appendix 5A, including, without limitation, naming the Senior Lenders and the Province as additional insureds;
- (e) include the Landlord as an additional insured;
- (f) contain a waiver of subrogation against the Province;
- (g) include coverage for:
 - (1) products and completed operations liability;
 - (2) blanket written contractual liability;
 - (3) protective liability;
 - (4) contingent employer's liability;
 - (5) personal injury liability;
 - (6) non-owned automobile liability;
 - (7) sudden and accidental pollution;
 - (8) cross liability/severability of interests;
 - (9) employees and volunteers as additional insureds;
 - (10) broad form property damage; and

- (11) legal defence costs.

2.2 Other Operating Period Coverage

During the Operating Period, Project Co will take out, maintain in force and renew or will cause to be taken out, maintained and renewed:

- (a) workers' compensation insurance coverage for all employees of Project Co and any Sub-Contractor engaged in the performance of the Services, in accordance with Laws and the requirements of any Governmental Authority; and
- (b) during the Operating Period, when construction, rehabilitation or major repair work is being carried out by or on behalf of Project Co as part of the Services under this Agreement and the risks associated with such work are not insured by the insurance described in the policies described in Section 1 [Construction-Related Insurance Requirements] or Section 2 [Operation and Maintenance-Related Insurance Requirements] of this Schedule Project Co will, subject to Section 1 [Construction-Related Insurance Requirements] of this Schedule, take out, maintain in force and renew or will cause to be taken out, maintained and renewed, such of the insurance described in Section 1 [Construction-Related Insurance Requirements] or Section 2 [Operation and Maintenance-Related Insurance Requirements] of this Schedule in such amounts, as a prudent owner would reasonably require, as determined by the Province acting reasonably, at least 10 Business Days before the commencement of the applicable period during which the insurance is required. To the extent such work is undertaken pursuant to a Change Certificate and such work is not covered in the policies described in Section 1 [Construction-Related Insurance Requirements] or Section 2 [Operation and Maintenance-Related Insurance Requirements] of this Schedule, the Change Certificate for such work will include such insurance coverage as the Province, acting reasonably, considers necessary in the circumstances

3. GENERAL INSURANCE PROVISIONS

3.1 Insurance Representative

Before commencing any Construction, Project Co will appoint an insurance representative who will communicate with the Province and keep the Province advised of all material matters of insurance, including claims, possible claims and policy changes or amendments. Project Co will at all times maintain such a representative throughout the Term. Such representative will be an individual located in Canada and Project Co will advise the Province promptly of any change in such representative during the Term.

3.2 Insurers and Terms of Policies

Each of Project Co and the Province will ensure that all policies for the insurance they are respectively required to or will obtain pursuant to this Schedule are obtained and maintained with Qualified Insurers licensed in Canada and, subject to this Schedule, are in such forms and contain such terms and

conditions which are equal to or better than those that would be obtained by prudent owners and operators of projects of similar scope and magnitude to the Project and, in addition to the required inclusions or permitted exclusions for each policy specifically described in this Schedule, include such other inclusions and exclusions as such prudent owner or operator would require or permit.

3.3 Additional Insurance

None of the insurance coverage amounts or sublimits specified in this Schedule limit the liability of Project Co with respect to any obligations of Project Co to the Province arising under this Agreement. Project Co will obtain and maintain, or cause to be obtained and maintained, at its cost, all such other policies of insurance required by Law or which Project Co deems necessary having regard for the policies of insurance which prudent owners and operators of projects of similar scope and magnitude to the Project would maintain and obtain, or cause to be obtained and maintained, including:

- (a) directors and officers liability and corporate indemnification insurance; and
- (b) professional errors and omissions insurance covering professional error and omissions for which Project Co, the Design-Builder or any Design Professionals may be liable in connection with the Project.

3.4 Particular Requirements of Policies

Without limiting the generality of this Schedule and the provisions of Section 6 [Insurance, Damage and Destruction]:

- (a) each commercial policy of insurance required under this Agreement will:
 - (1) bear an endorsement to the effect that the insurer will not effect any adverse material change or amendment to the policy or any cancellation of the policy without first giving at least 30 days prior written notice by registered mail to the Province and each of the other named insureds and loss payees;
 - (2) contain an endorsement to the effect that the policy (other than the policies set out in Section 1.3 [Other Construction Period Coverage] of this Schedule) will not be invalidated and coverage thereunder will not be denied to any insureds by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policy other than as a result of a negligent act, misrepresentation or omission of such insured; and
 - (3) be primary and not require the sharing of any loss by any insurer of the Province or any other named insured;
- (b) each commercial policy of liability insurance required under this Agreement will contain a cross liability endorsement to the effect that Project Co and the Province and the other insureds will each be entitled to indemnification under such policy as if each were alone insured under such policy and notwithstanding that the claim in respect of which indemnification is sought is made by any other insured; and

- (c) each policy of property insurance required under this Agreement must be on a stated amount co-insurance basis, other than:
 - (1) the contractor's equipment insurance described in Section 1.3(d) [Other Construction Period Coverage] of this Schedule, and;
 - (2) the Construction Property Policy.

3.5 Evidence of Insurance

In respect of those policies of insurance required to be maintained by:

- (a) Project Co. pursuant to this Schedule, upon the issue of and upon every renewal of each such policy, and otherwise upon request by the Province, Project Co will deliver to the Province a certificate of insurance or certified copy of each such policy or other satisfactory evidence of adequate insurance; and
- (b) The Province, upon the issue of and upon every renewal or extension, as applicable, of each such policy, and otherwise upon request by Project Co, the Province will deliver to Project Co a certificate of insurance or certified copy of each such policy or other satisfactory evidence of adequate insurance.

On request, the party responsible for obtaining any policy of insurance required under this Schedule will provide to the other party a certified copy of such policy within a reasonable period of such request.

No review or approval of any insurance certificate or insurance policy by either party will derogate from or diminish such party's rights under this Agreement.

3.6 Claims

Project Co will:

- (a) maintain a written register of all claims and incidents that might reasonably result in a claim under any of the policies of insurance required by this Agreement and will allow the Province to inspect such register at any time; and
- (b) notify the Province and provide full particulars of any incident giving rise to a claim:
 - (1) within 5 Business Days after making any claim under any of the policies for the insurance required by this Agreement where the value of the claim exceeds \$10,000; or
 - (2) immediately:
 - (a) after any Property Loss; and
 - (b) after any claim (regardless of the value of the claim) involving personal injury or death, accompanied by full particulars of the incident giving rise to the claim.

The parties agree to enter into the Insurance Trust Agreement in the form attached as Appendix 5B [Insurance Trust Agreement].

3.7 Project Co Deductibles

Subject to Section 3.8 [Province Deductibles] of this Schedule, Project Co will be responsible for the deductible portion of, or waiting period for, any claim made on any policy of insurance described in this Schedule.

3.8 Province Deductibles

The Province will be responsible for the deductible portion of, or waiting period for, any claim made on the policies of insurance described in this Schedule in respect of any:

- (a) earthquake or flood, except to the extent that the flood or the flood damage is caused by, attributable to or increased by the actions or inactions of Project Co or any Project Co Person; or
- (b) Compensation Event.

3.9 No Indemnification for Insured Claims

Project Co will not be entitled to claim compensation, indemnification or reimbursement from the Province under this Agreement to the extent that Project Co:

- (a) is entitled to recover any such amounts under any insurance in force at the time of loss; or
- (b) would have been entitled to recover any such amounts under any insurance if it had complied with its obligation to take out and maintain, or cause to be taken out and maintained, insurance in accordance with this Agreement.

3.10 Compliance

- (a) Project Co will comply with the terms, conditions and requirements of all policies for the insurance required by this Schedule and will not do or omit to do, or permit to be done or omitted by any Project Co Person, anything on or with respect to the Facility or the Lands that could reasonably be expected to result in the cancellation of any insurance described in this Schedule, or that would reasonably be expected to entitle any insurer to refuse to pay any claim under the policy for any such insurance.
- (b) The Province will not do, or permit to be done by any Province Person, anything on or with respect to the Facility or the Lands that could reasonably be expected to result in the cancellation of any insurance described in this Schedule, or that would entitle any insurer to refuse to pay any claim under the policy for any such insurance.
- (c) The Province and Project Co will, and Project Co will cause the Project Contractors and the Sub-Contractors to:

- (1) comply with all insurance policy warranties made known to them; and
- (2) take any and all special precautions necessary to prevent fires occurring in or about the Facility as required by the terms of the Construction Property Policy.

3.11 Failure to Insure

Subject to Section 6.15 [Consequences of Risks Becoming Uninsurable], if either party (the “**Non-Insuring Party**”) fails or refuses to obtain or maintain in force any insurance required to be effected by it under this Schedule, or to provide evidence of such insurance and renewals in relation thereto as and when required and in accordance with this Schedule, the other party (the “**Insuring Party**”) will, without prejudice to any of its other rights under this Agreement or otherwise, have the right itself to procure such insurance, in which event any amounts paid by the Insuring Party for that purpose together with all reasonable costs incurred by the Insuring Party in procuring such insurance will become due and payable by the Non-Insuring Party to the Insuring Party.

3.12 Increase in Amount of Coverage

The Province and Project Co will ensure that, throughout the Operating Period, the amounts of coverage in respect of the policies of insurance required to be obtained and kept in force under Sections 2 [Operation and Maintenance – Related Insurance Requirements] of this Schedule are not less than the greater of the amounts:

- (a) specified in Sections 2 [Operation and Maintenance – Related Insurance Requirements]; and
- (b) of coverage that would be obtained from time to time by prudent owners and operators of projects of similar scope and magnitude as the Project in respect of such policies of insurance

(each a “**Prudent Coverage Amount**”).

If, at any time, a party (the “**Notifying Party**”) determines that the amount of coverage then in effect (the “**Actual Coverage Amount**”) in respect of any commercial policy of insurance required to be obtained and kept in force by a party under Sections 2 [Operation and Maintenance – Related Insurance Requirements] of this Schedule, as applicable, is or will be less than the Prudent Coverage Amount, the Notifying Party will notify the other party in writing of such determination and, if both parties agree, or it is determined under the Dispute Resolution Procedure, that the Actual Coverage Amount is or will be less than the Prudent Coverage Amount, the party responsible for effecting and maintaining such policy of insurance will forthwith cause the amount of coverage in respect thereof to be increased to an amount equal to at least the Prudent Coverage Amount.

3.13 Project Co Contractors and Sub-Contractors

Project Co will determine the applicable insurance coverage to be obtained by Project Contractors and Sub-Contractors provided that such insurance coverages will be consistent with insurance that prudent Sub-Contractors would be required to maintain for projects of similar scope and magnitude to the Project.

4. INSURANCE PAYMENT

4.1 Project Co Premiums

Other than as set out in Section 4.2 [Province Premiums] of this Schedule, Project Co will pay all premiums payable under the policies of insurance required to be maintained pursuant to this Schedule.

4.2 Province Premiums

The Province will pay all premiums under the policies of insurance described in this Schedule other than the following in respect of which Project Co will pay all premiums:

- (a) those described in Section 1.3 [Other Construction Period Coverage] of this Schedule, subject to Section 4.3 [Increases in Premiums] of this Schedule;
- (b) those described in Sections 2 [Operation and Maintenance – Related Insurance Requirements] of this Schedule; and
- (c) any other policies of insurance obtained by Project Co pursuant to Section 3.3 [Additional Insurance] of this Schedule.

For any policy of insurance which Project Co is responsible for obtaining and the Province is responsible for paying the premium under this Schedule, Project Co will include with its invoice to the Province for the Payment Period in which the premiums for such policies become payable by Project Co, a copy of the premium invoice (including all applicable Taxes and reasonable brokerage commissions) from the respective insurance broker together with all other relevant documentation which the Province may reasonably require and the Province will pay such amount concurrently with the payment due to Project Co in accordance with Section 6.1 [Invoicing and Payment Arrangements] of Schedule 8 [Payments].

4.3 Increases in Premiums

If and to the extent any increase in the amount of any premium payable in respect of any policy of insurance the premium for which is to be paid by the Province pursuant to Section 4.2 [Province Premiums] of this Schedule is reasonably attributable to the acts or omissions of Project Co or any Project Co Person, Project Co will pay the amount of any such increase.

APPENDIX 5A**LENDER ENDORSEMENTS**

With respect to any policy of insurance noted in Schedule 5 [Insurance Requirements] as requiring these Lender Endorsements, Project Co and the Province will use all reasonable efforts to have the underwriters of such policies include terms and endorsements substantially similar to those set out in this Appendix 5A with such changes and amendments as may reasonably be required in the context of the coverage provided under, and the wording contained in, each such policy.

Notwithstanding any other provision of this Policy, the following endorsement shall apply:

Section I: Definitions**1. In this endorsement:**

Finance Parties has the meaning ascribed thereto in the Note Indenture;

Indenture Trustee means BNY Trust Company of Canada, as indenture trustee for and on behalf of the Senior Lenders under the Senior Financing Agreements, or any successor, assignee or replacement permitted under this Agreement;

Insurance Trust Account means an account in the name of the Insurance Trustee, in trust for the parties set forth in the Insurance Trust Agreement, and maintained at the sole expense of Project Co and into which shall be paid certain proceeds of insurance and which account shall operate pursuant to, and in accordance with, the Insurance Trust Agreement;

Insured means those parties so described in the policy declarations;

Insurers means the insurer or insurers underwriting this insurance policy;

Note Indenture means the note indenture dated as of the Effective Date between Project Co, the General Partner and the Indenture Trustee and any indentures supplemental thereto;

Project means the project described in the declarations to this Policy;

Project Co means Plenary Justice Okanagan Limited Partnership, by its general partner, Plenary Justice Okanagan GP Inc.; and

Province means Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Technology, Innovation and Citizens' Services;

Senior Lenders means The Manufacturers Life Insurance Company, the Great-West Life Assurance Company and The Canada Life Assurance Company;

Section II: Policy formation/basis

2. Separate Policy

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

3. Interest of the Finance Parties and the Province

3.1 The Insurers acknowledge that the Finance Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional insureds under this Policy and that the premium specified in this Policy provides consideration for their being insured parties.

3.2 The Insurers acknowledge that the Province and (in respect of third party liabilities) its officers, directors, employees, secondees and assigns are each additional insureds under the sections of this Policy relating to property damage and third party liability risks and that the premium specified in this Policy provides consideration for their being insured parties.

4. Liability for premium

Neither the Indenture Trustee, nor the Finance Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium.

5. Disclosure

5.1 The Finance Parties shall have no duty of disclosure to Insurers in relation to the Policy.

5.2 The Insurers acknowledge to the Finance Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring Project Co in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Finance Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Finance Party. The acknowledgements provided by the Insurers in this clause 5.2 shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party (including Project Co) other than the Finance Parties and the Indenture Trustee in the absence of such acknowledgements.

5.3 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

Section III: Rights to avoid/cancel or change Policy terms

6. Non-vitiation

- 6.1 The Insurers undertake to each Insured that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy.
- 6.2 The Insurers agree that no Insured shall be penalised or prejudiced in any way by any unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together "**the Relevant Matter**"), but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.

7. Cancellation

- 7.1 The Insurers agree that they shall not seek to cancel or suspend the construction phases of this insurance except for non payment of premium.
- 7.2 The Insurers shall promptly notify the Indenture Trustee, and the Province in writing of any default in the payment of premium and shall give the Indenture Trustee, and the Province at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

8. Changes in cover

The Insurers shall give the Indenture Trustee and the Province at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. Amendments to Endorsement

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between Project Co, the Insurers and the Indenture Trustee, such amendment to be endorsed on the Policy.

Section IV: Claims

10. Notice of claims

- 10.1 Notice of claim by the Province or the Finance Parties or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

11. Claim Payments/Loss Payee

Payments made in accordance with this Clause 11 shall, to the extent of the payment, discharge the Insurers' liability to pay Project Co or any other Insured.

11.1 In respect property and boiler and machinery risks only:

All claim payments or return premium shall be paid into the Insurance Trust Account or to such other account as the Indenture Trustee and the Province may specify in writing.

11.2 In respect of the insurance under this Policy of third party liability risks only:

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the Insurance Trust Account or such account as the Indenture Trustee and the Province direct in writing.

Any return premiums shall be paid to the Insurance Trust Account or such other account as the Indenture Trustee and the Province direct in writing.

11.3 In respect of the insurance under this Policy of loss of revenue risks only:

All claim payments or return premiums shall be paid to the Insurance Trust Account or such other account as the Indenture Trustee and the Province direct in writing.

12. Waiver of subrogation

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate Schedules arising out of any occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- (i) such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out).

13. Primary insurance

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Project;
- (b) any third party liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies, if any;
- (d) any claim made under a Contingent Motor Liability extension to this Policy, if any; or
- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
 - (i) any other policy specifically effected for the construction or operational phase(s) of the Project; or
 - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Project;
 or a related business interruption insurance policy.

Section V: Miscellaneous

14. Notice of Security Interest

The Insurers acknowledge that by an assignment contained (i) in a general security agreement dated on or about March 18, 2014 (the "**Assignment**"), Project Co assigned by way of security to the Finance Parties, all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in Project Co's interest in this insurance. The Province, Project Co and the Indenture Trustee agree that this endorsement and the Insurance Trust Agreement shall take priority over any such assignment.

15. Notice

- 15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:
 - 15.1.1 if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and
 - 15.1.2 if by post, within 7 business days of release from the relevant Insurer's office.

- 15.2 The address and fax number of the Indenture Trustee for all notices under or in connection with the Policy are those notified from time to time by the Finance Parties for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Indenture Trustee is as follows:

BNY Trust Company of Canada
Address: 320 Bay Street, 11th Floor
Toronto, ON M5H 4A6

Attention: Corporate Trust Administration
Facsimile: 416-360-1711

- 15.3 The address and fax number of the Province for all notices under or in connection with the Policy are those notified from time to time by the Province for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Province is as follows:

By post:
Ministry of Technology, Innovation and Citizens' Services
PO Box 9412, Stn Prov Gov, Victoria BC V8W 9V1
Attention: Deputy Minister or Associate Deputy Minister, Citizens' Services

By Fax: (

With an electronic copy for information purposes only to:
E-mail:
E-mail :

16. Governing law & Jurisdiction

The Policy shall be governed and interpreted in accordance with the Law of British Columbia. This endorsement overrides any conflicting provision in this Policy.

APPENDIX 5B

INSURANCE TRUST AGREEMENT

THIS AGREEMENT is made as of the 18th day of March, 2014

BETWEEN:

Her Majesty The Queen in Right of the Province of British Columbia, as represented by the Minister of Technology, Innovation and Citizens' Services

(the "**Province**")

AND:

BNY Trust Company of Canada, acting as Indenture Trustee for and on behalf of the Finance Parties

(the "**Indenture Trustee**")

AND:

Plenary Justice Okanagan Limited Partnership, by its general partner, Plenary Justice Okanagan GP Inc.

("Project Co")

AND:

BNY Trust Company of Canada, a trust company incorporated under the laws of Canada

(the "**Insurance Trustee**")

WHEREAS:

- A. The Province and Project Co have entered into the Project Agreement.
- B. The Province, the Indenture Trustee and Project Co have entered into the Lenders' Remedies Agreement.
- C. The Province, the Indenture Trustee and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Insurance Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

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

1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

VAN01: 3149216: v7

- (a) **"Assignment of Insurance"** means the assignment of insurance between Project Co and the Indenture Trustee dated as of the date hereof.
- (b) **"Bank"** means The Bank of Montreal.
- (c) **"Business Day"** has the meaning given in the Project Agreement.
- (d) **"Change of Authorization Event"** has the meaning given in Section 7(a) of this Insurance Trust Agreement.
- (e) **"Change of Authorization Notice"** has the meaning given in Section 7(b)(ii) of this Insurance Trust Agreement.
- (f) **"Default Notice"** means a written notice given by the Indenture Trustee to the Insurance Trustee that an event of default under the Senior Financing Agreements has occurred and is continuing or by the Province to the Insurance Trustee than an event of default under the Project Agreement has occurred and is continuing.
- (g) **"Default Period"** means the period commencing on the date upon which the Insurance Trustee receives a Default Notice and ending on the date upon which the Insurance Trustee receives written notice from the Indenture Trustee or the Province as the case may be that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (h) **"Equipment"** has the meaning given in the Project Agreement.
- (i) **"Facility"** has the meaning given in the Project Agreement.
- (j) **"Finance Parties"** has the meaning given in the Note Indenture.
- (k) **"Governmental Authority"** has the meaning given in the Project Agreement.
- (l) **"Insurance Policies"** has the meaning given in Section 4(a) of this Insurance Trust Agreement.
- (m) **"Insurance Proceeds"** means:
- (i) all proceeds of any Insurance Policy that are paid over to the Insurance Trustee by any insurer, Project Co, the Indenture Trustee or Province; and
 - (ii) any amounts paid by the Province or Project Co to the Insurance Trustee on the occurrence of an Uninsurable Risk (as defined in the Project Agreement), which would otherwise have been covered by an Insurance Policy.
- (n) **"Insurance Receivables"** has the meaning given in the Project Agreement.
- (o) **"Insurance Trust Account"** means BNY Trust Company of Canada In Trust For Plenary Okanagan Insurance Trust Account, Account Number: _____ at Bank of Montreal, 129 St. Jacques, Montreal, Quebec H2Y 1L6. Beneficiary SWIFT Code: _____, Intermediary SWIFT Code: _____
- (p) **"Insurance Trust Agreement"** means this insurance trust agreement.
- (q) **"Lenders' Remedies Agreement"** means the lenders' remedies agreement made on or about the date hereof between the Province, Project Co and the Indenture Trustee.

- (r) **"Note Indenture"** has the meaning given in the Project Agreement.
- (s) **"Order"** has the meaning given in Section 6(k) of this Insurance Trust Agreement.
- (t) **"Party"** means any of the Province, Project Co, the Indenture Trustee or the Insurance Trustee, and **"Parties"** means all of the Province, Project Co, the Indenture Trustee and the Insurance Trustee.
- (u) **"Project"** has the meaning given in the Project Agreement.
- (v) **"Project Agreement"** means the project agreement made on or about March 18, 2014 between the Province and Project Co.
- (w) **"Project Co Event of Default"** has the meaning given in the Project Agreement.
- (x) **"Province Event of Default"** has the meaning given in the Project Agreement.
- (y) **"Senior Financing Agreements"** has the meaning given in the Project Agreement.
- (z) **"Senior Lenders"** has the meaning given in the Project Agreement.
- (aa) **"Service Commencement"** has the meaning given in the Project Agreement.
- (bb) **"Termination Payment"** has the meaning given in the Project Agreement.
- (cc) **"Trust Property"** means all of the property held in trust by the Insurance Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

2. INTERPRETATION

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.

- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Insurance Trust Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of this Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Vancouver, British Columbia.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Insurance Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Insurance Trustee for the benefit of the Indenture Trustee and the Senior Lenders, provided that, upon receipt by the Insurance Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Insurance Trustee for the benefit of the Province.

- (b) The Insurance Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement but without limiting Project Co's obligations under the Project Agreement, the Indenture Trustee, the Province, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Insurance Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project in respect of which such Insurance Proceeds have been paid;
 - (ii) towards a Termination Payment in accordance with the Project Agreement; or
 - (iii) to the Province if the relevant Insurance Proceeds arise from Insurance Receivables that are payable to the Province or are assigned to the Province under the Project Agreement.

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs insurance or business interruption insurance shall be applied in accordance with the terms of the Senior Financing Agreements so as to enable Project Co to carry out the Project.

4. INSURANCE

- (a) Project Co and the Province shall each deliver, or cause to be delivered, to the Insurance Trustee originals of all property and asset related insurance policies that each of them is required to maintain under the Project Agreement, excluding any self-insurance by the Province pursuant to Section 2.5 of Schedule 5 to the Project Agreement (collectively, the "**Insurance Policies**"), and the Insurance Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Insurance Trustee shall distribute any Insurance Proceeds as follows:
 - (i) subject to the last paragraph of Section 3(c) and Section 4(c), in the case of the all risks course of construction (builders' risk), boiler and machinery insurance or property insurance policies that is required to be maintained under the Project Agreement:
 - (A) if the Insurance Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$2,000,000, to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
 - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$2,000,000, to the Indenture Trustee to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or

- (B) if the Insurance Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Insurance Trustee in such amounts and to such persons as the Indenture Trustee may at any time or from time to time direct in writing, provided that, if the Insurance Trustee has received a Change of Authorization Notice, the Insurance Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as the Province may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
- (ii) in the case of any other Insurance Policies, as directed by the Indenture Trustee, or, following receipt by the Insurance Trustee of a Change of Authorization Notice, as directed by the Province, to be distributed to the parties entitled thereto.
- (c) Notwithstanding anything in this Insurance Trust Agreement, all losses under (i) all risks course of construction (builder's risk) including boiler and machinery insurance carried prior to Service Commencement; (ii) property insurance carried after Service Commencement; and (iii) the boiler and machinery insurance carried after Service Commencement, which in each case relate to the Equipment purchased, owned or leased by the Province, shall be payable solely to the Province and shall not be payable to the Insurance Trustee or distributed pursuant to this Insurance Trust Agreement.
- (d) The Insurance Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
 - (i) if the Insurance Trustee has not received a Default Notice, as directed jointly by Project Co and the Province; and
 - (ii) if the Insurance Trustee has received a Default Notice, to such persons as the Lenders' Indenture Trustee and the Province jointly, or, following receipt by the Insurance Trustee of a Change of Authorization Notice, the Province, may at any time or from time to time direct in writing.
- (e) In the case of any dispute over such direction, the Parties agree to resolve such dispute in accordance with the Dispute Resolution Provisions of the Project Agreement, a copy of which will be provided to the Insurance Trustee upon request.

5. ACCOUNT AGREEMENT

- (a) The Insurance Trustee hereby agrees to promptly provide to the Indenture Trustee all monthly statements and other information with respect to the Insurance Trust Account provided to the Insurance Trustee by the Bank pursuant to the relevant account agreement. The Insurance Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Indenture Trustee may from time to time request in writing.
- (b) The Insurance Trustee hereby agrees to promptly provide to the Province all monthly statements and other information with respect to the Insurance Trust Account provided to the Insurance Trustee by the Bank pursuant to the relevant account agreement. The Insurance Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Province may from time to time request in writing.

6. THE INSURANCE TRUSTEE

- (a) The Insurance Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Insurance Trustee shall carry out all written directions given by the Indenture Trustee, the Province or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Insurance Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction in writing from the Indenture Trustee, the Province or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Insurance Trustee).
- (b) The Insurance Trustee will exercise its powers and carry out its obligations hereunder as insurance trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Insurance Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Insurance Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Insurance Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Indenture Trustee, the Senior Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Insurance Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence, bad faith, dishonesty, fraud or reckless disregard of duty by the Insurance Trustee. The Insurance Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Insurance Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Insurance Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.
- (d) The Insurance Trustee shall not:
- (i) be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Indenture Trustee on behalf of the Senior Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it;

- (ii) be under any duty to enquire as to the correctness of any amounts received by it on account of the proceeds of any insurance, nor shall it be under any obligation to take any steps to enforce the payment thereof to it; or
 - (iii) be responsible for the obtaining, placing or renewal of any policies of insurance or for the enforcement or observance of any such policy and shall only be responsible under the terms of this Insurance Trust Agreement with respect to money actually received from time to time by it representing the proceeds of any such insurance.
- (e) Notwithstanding the foregoing, the Insurance Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Insurance Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
- (i) the Insurance Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Insurance Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Insurance Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Insurance Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Insurance Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Insurance Trustee with respect to the performance of this Insurance Trust Agreement by the Insurance Trustee or any of the Insurance Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Insurance Trustee fee letter, the Insurance Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Insurance Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Indenture Trustee, the Senior Lenders or the Province for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Insurance Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Insurance Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust

Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an “**Order**”), the Insurance Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Insurance Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Insurance Trustee complies with any Order, the Insurance Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Insurance Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Indenture Trustee, the Province and Project Co.

- (l) Unless otherwise specifically set forth herein, the Insurance Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Insurance Trustee’s usual collection practices or terms regarding items received by the Insurance Trustee for deposit or collection. Except and to the extent provided herein, the Insurance Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Insurance Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Indenture Trustee, or, where the Insurance Trustee has received a Change of Authorization Notice, the Province, is ambiguous or uncertain, the Insurance Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Insurance Trustee has received written instructions, signed by the Indenture Trustee or, if the Insurance Trustee has received a Change of Authorization Notice, the Province, which resolve such ambiguity or uncertainty, provided that the Insurance Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Indenture Trustee, or where the Insurance Trustee has received a Change of Authorization Notice, the Province, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Insurance Trustee, any instruction, notice or other communication delivered to the Insurance Trustee by the Indenture Trustee and the Province jointly shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Insurance Trustee shall comply with such direction, instruction, notice or other communication. After the Insurance Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Insurance Trustee by the Province shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Insurance Trustee shall comply with such direction, instruction, notice or other communication from the Province.
- (o) Each of the Indenture Trustee and the Province shall provide to the Insurance Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Insurance Trustee hereunder. The Insurance Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Insurance Trustee by the Indenture Trustee or the Province, as applicable. The Insurance Trustee shall refuse to act upon any instruction given by the Indenture Trustee or the Province which is signed by any person other than an individual named in the incumbency certificate provided to the Insurance Trustee by the Indenture Trustee or the Province, as

applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.

- (p) The Insurance Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile or other electronic transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Insurance Trustee by the Indenture Trustee or the Province, as applicable, pursuant to Section 6(o).

7. INDENTURE TRUSTEE AND PROVINCE RIGHTS TO DIRECT

- (a) Until the occurrence of (i) termination of the Project Agreement in accordance with the Lenders' Remedies Agreement, (ii) an obligation of Project Co for payment of, or an assignment of, the Insurance Proceeds to the Province in accordance with the Project Agreement, and (iii) receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 9 [Compensation on Termination] to the Project Agreement (a "**Change of Authorization Event**"), the Indenture Trustee and the Province jointly shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Insurance Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds. Nothing in this Section 7(a) shall modify the Project Agreement, including Schedule 9 [Compensation on Termination].
- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Indenture Trustee shall cease to be entitled, and the Province shall thenceforth be entitled, to direct the Insurance Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
- (ii) the Indenture Trustee and the Province shall jointly provide notice to the Insurance Trustee (a "**Change of Authorization Notice**") that the Province shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Insurance Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Insurance Trustee where a Province Event of Default has occurred. Where an Province Event of Default has occurred, upon receipt by the Indenture Trustee and Senior Lenders of all amounts owing by the Province to the Indenture Trustee and Senior Lenders under the Lenders' Remedies Agreement, the Insurance Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.
- (d) The Indenture Trustee hereby agrees with and confirms to the other parties hereto that if a conflict or inconsistency exists in or between a provision of this Insurance Trust Agreement and a provision of the Assignment of Insurance, the provisions of this Insurance Trust Agreement shall prevail.

8. TERMINATION

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
- (i) the obligations of Project Co to the Indenture Trustee and the Senior Lenders under the Senior Financing Agreements have been paid and performed in full and the Senior

Lenders have no further obligation to make any further advances or other credit accommodations under the Senior Financing Agreements;

- (ii) the obligations of Project Co to the Province have been paid and performed in full; and
 - (iii) the Insurance Trustee has fully discharged its obligations hereunder with respect to any Insurance Proceeds paid to it.
- (b) The Insurance Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Insurance Trustee shall be effective until such time as the Lender's Indenture Trustee, the Province, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement insurance trustee satisfactory to the Indenture Trustee, the Senior Lenders and the Province. If the Parties hereto have failed to enter into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement within one-hundred and twenty (120) days from the date the Insurance Trustee has delivered a notice of termination pursuant to this Section 8(b), the Insurance Trustee may apply, at Project Co's expense, to the appropriate court of the Province of British Columbia to appoint a replacement under this Insurance Trust Agreement.

9. ASSIGNMENT

- (a) The Insurance Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Indenture Trustee, the Province and Project Co.

10. NOTICES

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

If to the Province:

By Hand:

Ministry of Technology Innovation and Citizens' Services
c/o Workplace Development Services 3rd Floor
W341 - 4000 Seymour Place
Victoria, BC V8W 9V1
Attention: Deputy Minister or Associate Deputy Minister,
Citizens' Services

By post:

Ministry of Technology, Innovation and Citizens' Services
PO Box 9412, Stn Prov Gov, Victoria BC V8W 9V1
Attention: Deputy Minister or Associate Deputy Minister,
Citizens' Services

By Fax: 250-952-6301

With an electronic copy for information purposes only to:

E-mail:

E-mail :

If to the Indenture Trustee: BNY Trust Company of Canada
 320 Bay Street, 11th Floor
 Toronto, ON M5H 4A6

Attention: Corporate Trust Administration
 Facsimile: 416-360-1711

If to Project Co: Plenary Justice Okanagan Limited Partnership
 400 Burrard Street, Suite 2000
 Commerce Place
 Vancouver, BC V6C 3A6

Attention:
 Telephone:
 Facsimile:
 Email:

If to the Insurance Trustee: BNY Trust Company of Canada
 320 Bay Street, 11th Floor
 Toronto, ON M5H 4A6

Attention: Corporate Trust Administration
 Facsimile: 416-360-1711

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but

shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.

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

11. AMENDMENTS

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

12. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

13. FORCE MAJEURE

No party shall be liable to any other party, or held in breach of this Insurance Trust Agreement, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of acts of God, riots, terrorism, acts of war, epidemics, earthquakes, or any other similar causes beyond the affected party's reasonable control and where such failure in performance is not caused directly or indirectly by the affected party (including but not limited to, mechanical, electronic or communication interruptions, disruptions or failures, unless caused by the negligent or willful misconduct of the affected party). Performance times under this Insurance Trust Agreement shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section, provided that the affected party shall take commercially reasonable steps to mitigate or remedy the event giving rise to the delay.

14. ANTI-MONEY LAUNDERING

The Insurance Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Insurance Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, notwithstanding Section 8(b), should the Insurance Trustee, in its sole judgment, determine at

any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign effective on ten (10) days' written notice to the other parties to this Insurance Trust Agreement, provided (i) that the Insurance Trustee's written notice shall describe the circumstances of such non-compliance; (ii) that if such circumstances are rectified to the Insurance Trustee's satisfaction within such ten (10) day period, then such resignation shall not be effective.

15. RELATIONSHIP BETWEEN THE PARTIES

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

16. ENTIRE AGREEMENT

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

17. SEVERABILITY

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

18. ENUREMENT

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

19. GOVERNING LAW AND JURISDICTION

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

20. FURTHER ASSURANCE

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

21. LANGUAGE OF AGREEMENT

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

22. COUNTERPARTS

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

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

SIGNED on behalf of **HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**
by a duly authorized representative of
the **MINISTER OF TECHNOLOGY INNOVATION
AND CITIZENS SERVICES** in the
presence of:

(Witness)

Associate Deputy Minister, Ministry of Technology,
Innovation and Citizens' Services

BNY TRUST COMPANY OF CANADA, acting as
Indenture Trustee for and on behalf of the Finance
Parties (as defined in the Note Indenture)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

**PLENARY JUSTICE OKANAGAN LIMITED
PARTNERSHIP, by its general partner, PLENARY
JUSTICE OKANAGAN GP INC.**

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

BNY TRUST COMPANY OF CANADA, acting as
Insurance Trustee hereunder.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 6

CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

TABLE OF CONTENTS

1. CHANGES	1
1.1 Changes Required by Province	1
1.2 No Entitlement to Perform a Change	1
1.3 Preliminary Change Instruction	1
1.4 Restrictions on Changes	1
1.5 Delivery of Change Report	2
1.6 Change Report Contents	4
1.7 Justification and Supporting Documentation for Contemplated Change Estimates	6
1.8 Valuation of and Payment for Changes	7
1.9 Net Change Value	7
1.10 Mark-Up on Changes	9
1.11 Effect on the Project Schedule or Delays to Services	9
1.12 Agreement on a Change	9
1.13 Change Certificate	10
1.14 Disagreement on Change Report	10
1.15 Province May Require Changes During the Operating Period	11
1.16 Changes in Other Circumstances	11
1.17 Change Directive	11
2. MINOR WORKS	12
2.1 Minor Work Rates	12
2.2 Direction for Minor Works	13
2.3 Project Co to Minimize Inconvenience	14
2.4 Payment for Minor Works	14
2.5 Minor Works Disputes	14
3. INNOVATION PROPOSALS	14
3.1 Innovation and Value Engineering	14
3.2 Content of Innovation Proposal	14
3.3 Costs of Developing Innovation Proposal	15
3.4 Evaluation of Innovation Proposal	15
3.5 Acceptance and Implementation of Innovation Proposal	16
3.6 Sharing Benefits of an Innovation Proposal	16
4. RESPONSIBILITY AND PAYMENT FOR CHANGES	16
4.1 Responsibility for Changes, Minor Works and Innovation Proposals	16
4.2 Service Payments in Respect of Changes, Minor Works and Innovation Proposals	16
4.3 Consequential Amendments to Appendix 8A	17

5. ALTERNATE CHANGE PROCESS DURING DESIGN 17

5.1 Development Changes 17

5.2 Alternate Process 17

5.3 Opportunity to Object..... 18

5.4 Design and Construction Representatives 18

5.5 Implementation 18

5.6 Reconciliation 19

5.7 Development Change Register 19

5.8 No Dispute 19

SCHEDULE 6

CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

1. CHANGES

1.1 Changes Required by Province

The Province may at any time during the Term, without invalidating this Agreement, require Changes in accordance with this Schedule 6 [Changes, Minor Works and Innovation Proposals]. Except to the extent that a Change Certificate expressly requires otherwise, Project Co will implement a Change in accordance with all the terms of this Agreement, including Schedule 2 [Design and Construction Protocols], Schedule 3 [Design and Construction and Specifications] and Schedule 4 [Services Protocols and Specifications].

1.2 No Entitlement to Perform a Change

Without prejudice to Project Co's rights under this Agreement, including Section 8.3 [Project Co's Entitlements Upon Occurrence of a Compensation Event], the Province may at any time after giving notice to Project Co, perform, or engage any person to perform, any work on the Site or in the Facility that is not included in Project Co's obligations under this Agreement. None of Project Co, the Project Contractors or the Sub-Contractors will have any right or entitlement to perform any such work. Project Co may submit a proposal to the Province for the performance of such work, but nothing in this Agreement will obligate the Province to consider or accept such proposal.

1.3 Preliminary Change Instruction

The Province may at any time during the Term issue to Project Co an instruction (a "**Preliminary Change Instruction**") describing a potential Facility Change or Services Change that the Province is considering. A Preliminary Change Instruction will include sufficient description of the contemplated Change, including any requirements under Section 1.12(b) [Agreement on a Change] of this Schedule to permit Project Co to prepare a Change Report.

1.4 Restrictions on Changes

The Province will not at any time during the Term require, and Project Co may refuse to implement, a Change (including Minor Works) which:

- (a) would be contrary to Laws;
- (b) would render the insurance policies required under this Agreement void or voidable and the Province does not agree to provide replacement security satisfactory to Project Co acting reasonably;
- (c) would cause the revocation of any Permit required by Project Co to perform its obligations under this Agreement, and such Permit would not, using reasonable efforts, be capable of amendment or renewal;

- (d) would require a new Permit for Project Co to perform its obligations under this Agreement, which Permit would not, using reasonable efforts by Project Co or the Province, as applicable, be obtainable;
- (e) would cause Project Co to be unable to obtain a Permit required by Project Co to perform its obligations under this Agreement, provided that such Permit was previously required but at the time of the Preliminary Change Instruction had not been obtained and such Permit would not, using reasonable efforts by Project Co or the Province, as applicable, be obtainable;
- (f) would materially and adversely affect the risk allocation and payment regime under this Agreement with respect to Design, Construction or Services; or
- (g) would, if implemented, result in a change to the essential nature of the Facility as a correctional center.

If Project Co, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then Project Co will promptly give notice to the Province of its objection, with written reasons. If the Province disagrees then it may deliver a Dispute Notice to Project Co, and the parties will cooperate to have the issue resolved in a timely manner pursuant to the Dispute Resolution Procedure.

1.5 Delivery of Change Report

Subject to Section 1.4 [Restrictions on Changes] of this Schedule:

- (a) as soon as practicable and in any event, to the extent reasonably possible, within 15 Business Days after receipt of a Preliminary Change Instruction, or such other period as the parties agree acting reasonably, Project Co will at its cost prepare and deliver to the Province a Change Report signed by Project Co's Representative for the contemplated Change described in the Preliminary Change Instruction; or
- (b) notwithstanding Section 1.5(a) [Delivery of Change Report] of this Schedule if the Net Change Value of the contemplated Change (comprised of a Facility Change or a Services Change or both) is likely to be more than \$100,000, (Index Linked), then:
 - (1) Project Co may, at its election within 5 Business Days after receipt of the Preliminary Change Instruction for such contemplated Change give notice to the Province that it intends to first prepare and deliver a preliminary estimate (the "**Preliminary Estimate**") of the net cost of the contemplated Change;
 - (2) if Project Co has given notice as described in Section 1.5(b)(1) [Delivery of Change Report] of this Schedule, then, within 10 Business Days after provision of such notice, Project Co will, at its cost, prepare and deliver to the Province an order of magnitude estimate of the net cost of the contemplated Change, and the Province may give notice to Project Co to proceed with Section 1.5(b)(3) [Delivery of Change Report] of this Schedule, or alternatively, to proceed with the preparation of the Change Report for the contemplated Change and Project Co

will prepare and deliver the Change Report as soon as practicable and in any event, to the extent reasonably possible, within 15 Business Days after receipt of such notice, or such longer period as the parties agree acting reasonably;

- (3) if the Province has given notice as described in Section 1.5(b)(2) [Delivery of Change Report] of this Schedule to proceed with this Section, then within 10 Business Days after receipt of such notice, Project Co will, at its cost, prepare and deliver to the Province:
- (A) a reasonable estimate of costs if any (the “**Change Report Costs**”) that Project Co would incur to retain third parties (such as design consultants and construction managers) that Project Co would require to prepare the Change Report, including any incremental costs incurred under management service contracts held by Project Co, but excluding the costs of Project Co’s own staff and employees, and the staff and employees of a Project Contractor, or any of their Affiliates who are normally part of the general management, administration, and supervision of the Design, Construction or Services; and
 - (B) a Preliminary Estimate of the contemplated Change, in sufficient detail and accuracy to permit the Province to make an informed decision as to whether to proceed with the contemplated Change, including as appropriate:
 - (i) preliminary cost estimates of the main elements of the contemplated Change;
 - (ii) a preliminary implementation schedule and work plan for the implementation of the contemplated Change; and
 - (iii) a description of the impact of the contemplated Change on the Facility during implementation or in the use of the Facility; and
- (4) the Province may within 10 Business Days following receipt of the Preliminary Estimate, or at any time if Project Co fails to comply with the time requirements set out in this Section 1.5(b) [Delivery of Change Report] of this Schedule, give notice to Project Co to proceed with the preparation of the Change Report for the contemplated Change and Project Co will prepare and deliver the Change Report as soon as practicable and in any event, to the extent reasonably possible, within 15 Business Days after receipt of such notice, or such longer period as the parties agree, acting reasonably.

If Project Co prepares a Change Report pursuant to Section 1.5(b)(4) [Delivery of Change Report] of this Schedule, and the Province elects not to proceed with the contemplated Change, then the Province will pay Project Co’s substantiated Change Report Costs.

1.6 Change Report Contents

A Change Report will include:

- (a) if and to the extent a contemplated Change is a Facility Change:
 - (1) a description of the scope of the contemplated Change with respect to Design and Construction;
 - (2) a comparison of the scope of Design and Construction as a result of the contemplated Change as compared to the scope prior to the Change;
 - (3) subject to Section 1.11 [Effect on the Project Schedule or Delays to Services] of this Schedule, a description of any adjustments to the Project Schedule, including to the Target Service Commencement Date, which Project Co will require as a result of the implementation of the contemplated Change (including details of any corresponding adjustments required by any Project Contractor or any Sub-Contractors) and any compensation required under Section 1.9(d) [Net Change Value] of this Schedule; and
 - (4) a description of any impact of the contemplated Change on the performance of the Services;
- (b) if and to the extent a contemplated Change is a Services Change:
 - (1) a description of the scope of the contemplated Change with respect to Services; and
 - (2) a comparison of the scope of Services as a result of the contemplated Change as compared to the scope prior to the Change; and
- (c) for all contemplated Changes (in addition to the requirements of Section 1.6(a) or 1.6(b) [Change Report Contents] of this Schedule, as applicable):
 - (1) an estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Change, including the following (which will be shown separately if requested by the Province), as applicable:
 - (A) all Design costs (based on the estimated number of hours reasonably required to perform any additional Design);
 - (B) all Construction labour, material and equipment costs, supported as the case may be by quotations from the applicable Project Contractor and Sub-Contractors;
 - (C) all Services labour, material and equipment costs, supported as the case may be by quotations from the applicable Project Contractor and Sub-Contractors;

- (D) all additional costs of site management, including supervision of trade foremen, site overheads and site establishment including, without duplication, any costs related to Project Co's management and oversight of the Project that should reasonably be included in the contemplated Change;
 - (E) all costs of relevant Permits, including an amendment or renewal of a Permit, a new Permit or a Permit that is in the course of being obtained;
 - (F) all costs associated with services provided by professional advisors;
 - (G) all financing costs;
 - (H) if and to the extent a contemplated Change is a Facility Change that also materially affects the cost of the Services, all changes to the cost of the Services;
 - (I) if and to the extent a contemplated Change is a Services Change that requires a material change to the Facility, all changes to the cost of the Facility; and
 - (J) if and to the extent a contemplated Change has an impact, adverse to Project Co, in respect of the Energy Targets given pursuant to Appendix 2D [Energy] of this Agreement, costs associated with such adverse impact unless and to the extent the Change itself provides for relief from such impact through an adjustment to the guarantee;
- (2) an estimate of the cost savings, if any, resulting from the contemplated Change;
 - (3) any proposal(s) as to how the contemplated Change could be accomplished at no net cost;
 - (4) a description of any changes to the Senior Financing Agreements that would be required to reflect a change in the risk profile of the Project arising from the contemplated Change;
 - (5) a description of any changes to the Service Payments that are required to reflect the costs and cost savings referred to in Sections 1.6(c)(1) and 1.6(c)(2) [Change Report Contents] of this Schedule;
 - (6) identification of any amounts payable by the Province to Project Co, if any, other than the Service Payments;
 - (7) Project Co's proposal as to how any increased costs to Project Co resulting from the contemplated Change might be funded;
 - (8) the value of the loss or reduction of benefits resulting from the contemplated Change;

- (9) a description of any additional consents or approvals required, including amendments, if any, of any Permits required to implement the contemplated Change;
- (10) a description of any impact on the obligations of Project Co under any Material Contracts;
- (11) a description of the extent to which the contemplated Change would interfere with Project Co's ability to comply with any of its obligations under this Agreement, the Material Contracts, any Sub-Contracts and any Permits;
- (12) the name of the Sub-Contractor(s) (if any) which Project Co intends to engage for the purposes of implementing the contemplated Change, together with a description of the qualifications of any such Sub-Contractor(s) so as to demonstrate the ability of such Sub-Contractor(s) to implement the contemplated Change;
- (13) a description of any further effects (including benefits and impairments) which, Project Co foresees as being likely to result from the contemplated Change;
- (14) a description of any actions that would be reasonably required by the Province to implement the contemplated Change;
- (15) a description of the steps Project Co will take to implement the contemplated Change, in such detail as is reasonable and appropriate in all the circumstances; and
- (16) a description of any impact on expected usage of utilities for the current Contract Year and subsequent Contract Years.

The cost of the correction of a Defect or deficiency will not be included in the valuation of a Change.

All of the costs described in this Section will be provided in current applicable dollar amounts and will also be provided in amounts as at the Base Date. There will be no indexation of any cost amounts unless specifically agreed to by the Province.

1.7 Justification and Supporting Documentation for Contemplated Change Estimates

The cost estimates included in a Change Report will be in sufficient detail to allow evaluation by the Province and will include such supporting information and justification as is necessary to demonstrate that:

- (a) Project Co has used all reasonable efforts, including utilizing competitive quotes or tenders, to minimize the cost of a contemplated Change and maximize potential related cost savings;

- (b) Project Co and its Project Contractors and Sub-Contractors have valued the Change as described in Section 1.8 [Valuation of and Payment for Changes] of this Schedule, and have not included other margins or mark-ups;
- (c) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account; and
- (d) Project Co has mitigated or will mitigate the impact of the contemplated Change, including on the Project Schedule, the performance of the Services, the expected usage of utilities, and the direct costs to be incurred.

1.8 Valuation of and Payment for Changes

The value and method of valuation of a Change will be as agreed by the parties and failing agreement will be the net cost (or saving) of implementing the Change, calculated in accordance with Section 1.9(a) [Net Change Value] of this Schedule (and for greater certainty a Change may have a net cost, or a net saving, or may result in no net cost or saving), and:

- (a) if a Change has a net cost (a positive Net Change Value), the Province will pay Project Co the Net Change Value plus the Change Mark-Up and any amounts due under Section 1.9(d) [Net Change Value] of this Schedule; and
- (b) if a Change has a net savings (a negative Net Change Value), then Project Co will pay the Province the Net Change Value.

1.9 Net Change Value

- (a) The value of a Change (the "**Net Change Value**") is the aggregate of the direct incremental costs (minus the aggregate cost savings) reasonably incurred to implement the Change, supported by invoices, purchase orders, time sheets and other customary industry documentation, as follows:
 - (1) Design: the direct incremental costs (or cost savings) of any Design incurred (or saved) by the entity that retains the design personnel, based on the additional (or decreased) number of design consultant's hours required to undertake the Change;
 - (2) Construction Labour: the direct incremental costs incurred (or cost savings) by the entity that engages the construction labour, based on the additional (or decreased) number of labour and direct labour-supervision hours required to undertake the Change (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers' compensation insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course, and including any severance and termination costs directly resulting from the Change);

- (3) Materials and Equipment: the direct incremental costs incurred (or cost savings) by the entity that procures the materials, consumables and equipment, for the supply and delivery of such materials, consumables and equipment (including the cost of any associated testing, commissioning, spare parts, manuals and software, and including any related design and engineering), except that any changes to the Province's cost of Category 1, 2, 3, or 4 Equipment will not be included in the calculation of Net Change Value;
- (4) Procurement Cost: the direct incremental costs incurred (or cost savings) by the procuring entity to obtain and evaluate tenders and award a contract for work required for the Change that is to be tendered under Section 1.9(c) [Net Change Value] or Section 1.12(b) [Agreement on a Change] of this Schedule, and the supervision and management of such contract;
- (5) Services: the direct incremental costs incurred (or cost savings) by the entity that retains the Services personnel, based on the number of personnel hours required to undertake the Change; and
- (6) Miscellaneous: all other additional net costs or savings directly attributable to the Change, including project management, site management, supervision, site establishment, living and travel allowances, services provided by professional advisors, wastage, disposal, insurance, bonding, financing and Permits (including amendment or renewal of a Permit, or obtaining new Permits), calculated at the direct cost or saving to the entity that directly incurs or saves such costs, Costs related to expenses that would have been incurred had the change not taken place will not be considered directly attributable to the Change,

all without addition of any mark-ups except as otherwise expressly provided for in this Section 1 [Changes] of this Schedule;

- (b) the rates and charges applied in Section 1.9(a) [Net Change Value] above will be no greater than the market rates, prevailing at the time of the implementation of the Change, paid between arms length contracting parties;
- (c) unless otherwise agreed by the Province, Project Co will obtain competitive quotations or tenders for all work, equipment and materials required to implement a Change;
- (d) subject to Section 1.11 [Effect on the Project Schedule or Delays to Services] of this Schedule, if a Change causes a delay in Service Commencement and if Project Co is entitled to an equitable adjustment of the Project Schedule (including the Target Service Commencement Date) as a result of a Change, the cost of the Change will include an amount calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had the Change and the delay in Service Commencement not occurred and taking into consideration the following (without duplication):

- (1) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting solely from the Change and the delay, including any increased financing costs caused by a reduction in the amortization schedule for the Senior Debt;
- (2) the Service Payments that would have otherwise been payable to Project Co; and
- (3) no amount will be payable for Avoidable Costs or Indirect Losses.

For greater certainty, Project Co will not be entitled to any amount under this Section 1.9(d) [Net Change Value] of this Schedule if the Change does not cause a delay in Service Commencement, including in circumstances where Project Co has updated the Target Service Commencement Date without obtaining the Province's consent where required by Section 9.2 [Project Schedule Updates] of Schedule 2 [Design and Construction Protocols]; and

- (e) no amount will be payable to Senior Lenders in connection with the consent to any Change unless consent is required under the Senior Financing Agreements and the amount payable is reasonable.

1.10 Mark-Up on Changes

If a Change has a positive Net Change Value, and is not a Minor Works change, the Province will pay a mark-up of 10% on the Net Change Value determined in accordance with Section 1.9 [Net Change Value] of this Schedule (the "**Change Mark-Up**") to cover other costs and profit.

1.11 Effect on the Project Schedule or Delays to Services

Project Co will use all reasonable efforts, as described in Section 2.5 [General Duty of Project Co to Mitigate] to minimize the effect of a Change on the Project Schedule (including the Target Service Commencement Date) and the performance of the Services and subject to the foregoing, Project Co will be entitled to an equitable adjustment of the Project Schedule (including the Target Service Commencement Date) and the requirements for performance of the Services as a result of the Change. Without limiting the generality of the foregoing, the implementation of a Change, to the extent Project Co has identified the effect on the Services and such effect has been documented in a Change Certificate, but without duplication of relief that may be provided in a Change Certificate, will constitute an Excusing Event.

1.12 Agreement on a Change

Following receipt by the Province of a Change Report prepared in accordance with Section 1.6 [Change Report Contents] of this Schedule:

- (a) as soon as practicable, and in any event within 15 Business Days after the Province receives a Change Report, or such longer period as the parties agree acting reasonably, the Province will deliver to Project Co any requests for clarifications or amendments, and

the parties' Representatives will meet and use all reasonable efforts to agree to the Change Report, including the costs, payments (including payment of direct costs and adjustments to Service Payments, if any) and other information contained in the Change Report;

- (b) if the Province is required by applicable Laws or Governmental Authority to require Project Co to competitively tender any contract in relation to a contemplated Change, Project Co will seek and evaluate competitive tenders for the proposed Change; and
- (c) the Province may in writing modify a Preliminary Change Instruction at any time prior to the parties reaching an agreement on the Change Report for any matter relating to the Change Report or arising from the discussions in relation thereto, in which case Project Co will, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification (or such longer period as the parties may agree acting reasonably), notify the Province of any consequential changes to the Change Report.

1.13 Change Certificate

A Change will come into effect by the Province issuing to Project Co a Change Certificate signed by the Province's Representative. If the parties have agreed on the Change Report without amendment, it is sufficient for the Change Certificate to be signed by the Province's Representative. Subject to Section 1.14 [Disagreement on Change Report] of this Schedule, if a Change Report requires amendment the Change Certificate comes into effect when signed by the Province's Representative and Project Co's Representative. Subject to Section 1.17 [Change Directive] of this Schedule, Project Co will not proceed with a Change prior to receiving a Change Certificate from the Province signed by either the applicable Province Representative or by the applicable Province Representative and the applicable Project Co Representative, as applicable. A Change Certificate issued in accordance with this Section 1.13 [Change Certificate] will be binding upon the Province and Project Co. Subject to Section 1.4 [Restrictions on Changes] of this Schedule and Section 1.14(b) [Disagreement on Change Report] of this Schedule, upon receipt of a Change Certificate Project Co will implement the Change, without prejudice to Project Co's right to refer any question of valuation of the Change to the Dispute Resolution Procedure.

1.14 Disagreement on Change Report

If the parties do not agree on a Change Report, then the Province may:

- (a) except in connection with a Change required pursuant to Section 1.16 [Changes in Other Circumstances] of this Schedule, elect not to proceed with the Change described in the Preliminary Change Instruction; or
- (b) issue a Change Certificate to Project Co stating the Province's determination of the matters referred to in the Change Report, and if Project Co disagrees with all or any of the determinations set out in the Change Certificate, then Project Co may deliver to the Province a Dispute Notice, and Project Co will, without prejudice to its rights with respect to such Dispute, use all reasonable efforts to implement the Change as directed in the Change Certificate.

The Change Certificate referred to in Section 1.14(b) [Disagreement on Change Report] of this Schedule is effective when signed by the Province's Representative alone.

1.15 Province May Require Changes During the Operating Period

The Province may, without invalidating this Agreement, require a Renovation at any time during the Operating Period. A Renovation will be implemented and valued as a Change pursuant to and subject to the terms of this Schedule.

1.16 Changes in Other Circumstances

The Province will issue a Preliminary Change Instruction in respect of:

- (a) an Province decision regarding Facility reinstatement pursuant to Section 6.4(b) [Project Co's Obligations – Material Damage or Destruction]; and
- (b) a deemed Change pursuant to Section 8.8(a) [Parties' Entitlements Upon Occurrence of a Change in Law].

1.17 Change Directive

Subject to Section 1.4 [Restrictions on Changes] of this Schedule but notwithstanding any other provision of this Schedule, the Province may at any time issue a Change Directive to Project Co, signed by the Province's Representative, directing Project Co to proceed with a contemplated Change in which case the following will apply:

- (a) Project Co will proceed with the Change and the valuation and the time extensions and payment of any adjustments will be made as soon as reasonably possible after the implementation thereof in the same manner as a Change for which a Preliminary Change Instruction, Change Report and Change Certificate would be issued hereunder;
- (b) if Project Co has not previously done so, Project Co will within 30 days after the issuance of the Change Directive provide a Change Report in accordance with the requirements of this Schedule for a Change Report and Section 1.12(a) [Agreement on a Change] of this Schedule will apply;
- (c) pending a final determination as to any time extensions or valuation and payment of any adjustments for a Change or any other matters in the Change Report delivered by Project Co pursuant to Section 1.17(b) [Change Directive] of this Schedule, the Province will pay Project Co amounts reasonably demonstrated by Project Co in writing from time to time to be payable for the Change, including reimbursement of amounts that Project Co reasonably incurs with respect to the Change. The Province will fund all Changes implemented by way of a Change Directive as provided for in Section 4.2 [Service Payments in Respect of Changes, Minor Works and Innovation Proposals] of this Schedule; and
- (d) if the parties agree on the Change Report, the Province will issue a signed Change Certificate stating the parties' agreed determination of the matters referred to in the

Change Report. If the parties do not agree on a Change Report, then the Province will issue a signed Change Certificate stating the Province's determination of the matters referred to in the Change Report. If Project Co disagrees with all or any of the determinations set out in the Change Certificate, then Project Co may deliver to the Province a Dispute Notice, and Project Co will, without prejudice to its rights with respect to such Dispute, continue to implement the Change as directed in the Change Directive.

The Province may issue a Change Directive at any time in its discretion, including in the absence of a Preliminary Change Instruction, at any time following issuance of a Preliminary Change Instruction, if Project Co fails to provide a Change Report, if a Change Report or Change Certificate is not promptly agreed upon by the parties, or if there is a Dispute in relation to a Preliminary Change Instruction, Change Report or Change Certificate (including a Dispute as to whether there is a Change), but not if there is a Dispute as to whether Project Co is entitled to refuse to implement the Change under Section 1.4 [Restrictions on Changes] of this Schedule.

2. MINOR WORKS

2.1 Minor Work Rates

Rates for Minor Works will be established and applied as follows:

- (a) not less than 60 days before the anticipated Service Commencement Date, and not less than 30 days before the commencement of each subsequent Contract Year, Project Co will submit to the Province for review and approval by the Province a schedule of hourly rates (the "**Minor Works Rates**") to be applied in respect of any request by the Province for Minor Works to be completed during the next occurring Contract Year;
- (b) the schedule of Minor Work Rates will cover trades and workers that the Province, acting reasonably, identifies as those who may be required for Minor Works that might be required in the next occurring Contract Year, such as plumbers, electricians, painters and site personnel required to supervise and coordinate any Minor Works, and for greater certainty some of the above may be employees of a Project Contractor;
- (c) the Province, acting reasonably, may identify amendments to the categories that may be required for Minor Works in the next applicable Contract Year. For greater certainty, the categories will apply to the Project Contractors and Sub-Contractors unless otherwise agreed by the Province;
- (d) the Minor Work Rates will be based on the actual hourly cost that will be paid to the individual (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers' compensation insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course), and will include a mark up of 5% to cover Project Co's head office overhead and profit, except that the Minor Work Rates will not be greater than the prevailing market rates paid by arms length contracting parties;

- (e) if Project Co requires trades or workers not included in the Minor Works Rates to complete the Minor Works, the price of the Minor Works will be based actual hourly cost that will be paid to the individuals (including allowance for all payroll burdens such as overtime premiums (when paid), vacation pay, pensions, statutory payments, workers' compensation insurance, union dues, tool money, medical insurance, and any other payments directly paid in the ordinary course), and will include a mark up of 5% to cover Project Co's head office overhead and profit, except that price of the Minor Works will not be greater than the prevailing market rates paid by arms length contracting parties;
- (f) if materials, consumables or equipment are required to perform the Minor Works, the price of the Minor Works will be based on the direct costs to be incurred by the entity that procures the materials, consumables and equipment and shall include a mark up of 5% to cover all indirect, head office, supervision and management (including without duplication, all costs related to Project Co's management and oversight of the Project, site management, supervision of trade foremen, site overheads and site establishment) and other costs and profit; and
- (g) if the parties are unable to agree on the categories Minor Works Rates or price of the Minor Works as required under Section 2.1(a), 2.1(e), and 2.1(f) [Minor Work Rates] of this Schedule then the cost of Minor Works will be valued as described in Section 2.5 [Minor Works Disputes] of this Schedule.

2.2 Direction for Minor Works

The Province may at any time following the Service Commencement Date require Project Co to perform Minor Works as follows:

- (a) within 10 Business Days of a request in writing for Minor Works, Project Co will, at its own cost, prepare and deliver to the Province a written price estimate covering the full scope of the requested Minor Works, based on the applicable Minor Works Rates or, if and to the extent the Minor Works Rates are not applicable, the price of the Minor Works in accordance with Section 2.1(e) and (f) [Minor Works Rates] of this Schedule;
- (b) a Preliminary Change Instruction and a Change Report will not be required for Minor Works;
- (c) upon further written direction from the Province, Project Co will in a timely manner carry out the Minor Works; and
- (d) the completed Minor Works will be a part of the completed Facility and accordingly, as required by this Agreement, and without further payment, except for an appropriate adjustment to the Service Payment to reflect the effect, if any, on the cost of the Services or the Life Cycle Requirements, Project Co will be responsible for any Defect or Deficiency, and for all Services and Life Cycle Requirements related to the completed Minor Works.

2.3 Project Co to Minimize Inconvenience

Prior to commencing any Minor Works, Project Co will notify the Province of the estimated duration of the Minor Works so that the Province and Project Co can agree upon a convenient time for carrying out the Minor Works in a manner that minimizes and mitigates inconvenience and disruption to the use of the Facility. Project Co will use all reasonable efforts to minimize the duration of any Minor Works, and will schedule Minor Works as reasonably requested by the Province, including doing works outside normal operating hours.

2.4 Payment for Minor Works

Project Co will as of the end of a calendar month invoice the Province monthly for Minor Works completed in the calendar month, supported by appropriate invoices and work records, and the Province will pay Project Co by the later of the 20th day of the next calendar month, or 20 calendar days following receipt of the invoice, for Minor Works performed in the previous calendar month.

2.5 Minor Works Disputes

Any Dispute arising in connection with Minor Works, including the price to be paid for Minor Works and the annual determination of the Minor Works Rates, will be resolved in accordance with the Dispute Resolution Procedure.

3. INNOVATION PROPOSALS

3.1 Innovation and Value Engineering

Project Co may at any time during the Operating Period submit a proposal to the Province (an "**Innovation Proposal**") to implement modifications to the Facility and the Services, including through innovation or value engineering, for the purpose of achieving efficiencies and reducing the Service Payments or the overall cost to the Province of the Facility and the Services or the Province's overall energy costs (including costs of energy related measures such as carbon taxes). Project Co must demonstrate to the Province's satisfaction that an Innovation Proposal:

- (a) is originated and initiated solely by Project Co (including by Project Co bearing all research and development costs) without the involvement of the Province or its consultants; and
- (b) offers savings, innovation or efficiency that is not otherwise called for or provided by this Agreement.

3.2 Content of Innovation Proposal

An Innovation Proposal will:

- (a) set out all the information required in a Change Report as required under Section 1.6 [Change Report Contents] of this Schedule, modified to apply to an Innovation Proposal;
- (b) specify Project Co's reasons and justification for proposing the Innovation Proposal;

- (c) request the Province to consult with Project Co with a view to the Province deciding whether to agree to the Innovation Proposal and, if so, what consequential changes the Province may require;
- (d) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Agreement, and the comparative advantages of each to Project Co and the Province;
- (e) indicate whether a payment by the Province in respect of direct costs or a variation to the Service Payments is proposed and, if so, give a detailed estimate of such proposed payment or variation;
- (f) indicate if there are any dates by which a decision by the Province must be made; and
- (g) include such other information and documentation as may be reasonably requested by the Province to fully evaluate and consider the Innovation Proposal.

3.3 Costs of Developing Innovation Proposal

Project Co may deliver to the Province preliminary information with respect to a proposed Innovation Proposal, but unless the Province, in its discretion, agrees to pay or share the costs of developing an Innovation Proposal, the costs of investigating a potential Innovation Proposal will be borne entirely by Project Co.

3.4 Evaluation of Innovation Proposal

The Province will evaluate and give consideration to an Innovation Proposal taking into account all relevant issues, including whether:

- (a) a change in the Service Payments will occur;
- (b) the Innovation Proposal affects the quality or delivery of the Facility or the Services;
- (c) the Innovation Proposal lowers the Province's overall energy costs (including costs of energy related measures such as carbon taxes);
- (d) the Innovation Proposal will interfere with the relationship of the Province with any third parties;
- (e) the financial strength of Project Co is sufficient to deliver the changed Facility or changed Services, as applicable;
- (f) the residual value of the Facility is affected; and
- (g) the Innovation Proposal materially affects the risks or costs to which the Province is exposed,

and any other matter the Province considers relevant. The Province may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.

3.5 Acceptance and Implementation of Innovation Proposal

Notwithstanding any potential cost savings of an Innovation Proposal, the Province is under no obligation to accept an Innovation Proposal and may in its discretion elect not to implement an Innovation Proposal. An Innovation Proposal that is accepted by the Province will be implemented as a Change and Project Co will not implement an Innovation Proposal prior to the issuance of a Change Certificate.

3.6 Sharing Benefits of an Innovation Proposal

If the Innovation Proposal causes or will cause the costs of Project Co or of a Project Contractor or Sub-Contractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs (incurred by Project Co, a Project Contractor or a Sub-Contractor) of the Innovation Proposal (taking into account any other uses of the Innovation Proposal by Project Co), the net savings in the costs of Project Co and such Project Contractor or Sub-Contractor will be shared equally by Project Co and the Province, and the Province's share of the net savings will be reflected in a reduction of the Service Payments.

4. RESPONSIBILITY AND PAYMENT FOR CHANGES

4.1 Responsibility for Changes, Minor Works and Innovation Proposals

Except as specifically provided in this Agreement, the Province will bear no risk or liability whatsoever arising from any Change, Minor Works or Innovation Proposal other than the liability to make payment in connection therewith. Notwithstanding the previous sentence, the Province will pay to Project Co increased costs or any Direct Losses suffered by Project Co as a result of any particular design, materials, goods, workmanship or method of construction which the Province specifies must be incorporated in a Change and which is subsequently shown to be defective (other than as a result of the default or negligence of Project Co or any Project Co Person), if:

- (a) Project Co objected in writing to the incorporation of such item prior to the issue of the relevant Change Certificate; and
- (b) such objection was rejected by the Province.

4.2 Service Payments in Respect of Changes, Minor Works and Innovation Proposals

Payments between the parties and any adjustments to Service Payments in respect of Changes, Minor Works and Innovation Proposals will be made in accordance with any agreed basis for payment set out in the Change Certificate. The basis for payment may at the Province's discretion include progress draws, milestone payments, lump sum payments, time and materials or maximum amounts. If no basis for payment is included in the Change Certificate, payment will be made in accordance with Section 10 [Lump Sum Payments and Service Payment Adjustments].

If payments between the parties in respect of Changes, Minor Works and Innovation Proposals include an adjustment to payments (if any) during the Construction Period, Service Payments or otherwise require an update to the Financial Model, Project Co will expeditiously update and will provide such updated Financial Model to the Province, all in accordance with Section 10 [Lump Sum Payments and Service Payment Adjustments]. The Province may in its discretion waive or defer the requirements for Project Co to make such updates to the Financial Model in respect of Changes, Minor Works and Innovation Proposals. The updates to the Financial Model will be shown as of the relevant current date and, as applicable, the Base Date.

4.3 Consequential Amendments to Appendix 8A

If the Change, Minor Works or Innovation Proposal affects any of the contents of Appendix 8A [Functional Units, Priority Levels and Unit Deduction Amounts], the parties will in accordance with Section 4 [Review of Functional Units, Deductions, Etc.] of Schedule 8 [Payments] review and adjust Appendix 8A [Functional Units, Priority Levels and Unit Deduction Amounts].

5. ALTERNATE CHANGE PROCESS DURING DESIGN

5.1 Development Changes

The parties may during the Design process agree to utilize an alternate procedure for agreeing on and tracking Changes that:

- (a) on an individual basis, are less than \$100,000 in value, including “no cost” Changes;
- (b) on a cumulative basis, are less than \$1,000,000;
- (c) do not result in a change in the Target Service Commencement Date;
- (d) do not result in a change to the Financial Model; and
- (e) would not fall within the scope of Section 1.4 [Restrictions on Changes] of this Schedule.

In such cases the parties may, on an individual Change basis, agree to utilize the process set out in this Section 5 [Alternate Change Process During Design] of this Schedule rather than the process set out in Section 1 [Changes] of this Schedule (“**Development Changes**”).

5.2 Alternate Process

Where a party identifies a potential Development Change, that party may present the potential Development Change to the other party in a form, and with such supporting information, as it considers to be appropriate to the nature and complexity of the potential Development Change.

Where a party presents a potential Development Change, the parties’ respective Design and Construction Representatives will meet as soon as practicable to discuss the proposed Development Change and where:

- (a) the proposed Development Change meets the requirements of Section 5.1 [Development Changes] of this Schedule; and
- (b) the parties reach agreement with respect to the value of the proposed Development Change and any contractual amendments required to implement the proposed Development Change,

Project Co will record the terms of the parties' agreement with respect to the applicable Development Change (a "**Development Change Record**").

Promptly after preparing a Development Change Record, and in any event prior to implementation of the agreed Development Change, Project Co will deliver a copy of the Development Change Record to the Province's Design and Construction Representative.

5.3 Opportunity to Object

If, within 5 Business Days after receipt of a Development Change Record, the Province's Design and Construction Representative objects in writing to the Development Change Record on the basis that it is not an accurate representation of the parties' agreement, the parties will meet to discuss the Development Change and attempt to resolve the objection.

If an objection cannot be resolved, then the proposed Change will be deemed not to be a Development Change and will not be implemented by the parties; provided that either the Province or Project Co will be permitted to pursue such Development Change in accordance with the Change process in accordance with this Schedule.

If an objection is resolved, then following such resolution, the parties will record the terms of the Development Change (the "**Development Change Record Confirmation**"), and such Development Change Record Confirmation will be signed on behalf of the parties.

5.4 Design and Construction Representatives

The Province's Design and Construction Representative and Project Co's Design and Construction Representative will have authority to agree on the value of Development Changes and contractual amendments to implement such Development Changes.

5.5 Implementation

Where there is no objection to a proposed Development Change within the 5 Business Day period specified in Section 5.3 [Opportunity to Object] of this Schedule, the Development Change Record will become the Development Change Record Confirmation. Following the issue of a Development Change Record Confirmation, the parties will promptly proceed with implementation of the applicable Development Change on the terms set out in the applicable Development Change Record Confirmation.

5.6 Reconciliation

No later than the 10th day of each month, Project Co's Design and Construction Representative will prepare and deliver to the Province's Design and Construction Representative, a register of all Development Changes agreed during the prior month (the "**Development Change Register**").

5.7 Development Change Register

Within 30 days after the issuance of the 95% construction documents pursuant to Section 4.2(c)(3) [Design Process] of Schedule 2 [Design and Construction Protocols], the Province will prepare and deliver to Project Co a consolidated Change Certificate encompassing all of the agreed Development Changes, as set out in the applicable Development Change Registers.

5.8 No Dispute

The parties agree that a failure to reach agreement with respect to a proposed Development Change pursuant to the procedure set out in this Section 5 [Alternative Change Process During Design] shall not constitute a Dispute, and shall not be referred for resolution to the Dispute Resolution Procedure.

SCHEDULE 7

LANDS

TABLE OF CONTENTS

1. PROVINCE’S OBLIGATIONS AND REPRESENTATIONS..... 1

1.1 Grant of Licence Over Site 1

1.2 Terms Affecting Licence Grant 1

1.3 Property Taxes 2

2. PROJECT CO’S OBLIGATIONS AND ACKNOWLEDGMENTS 2

2.1 “As Is Where Is” 2

2.2 Encumbrances and Transfer of Administration and Control 2

2.3 Project Co Not To Encumber..... 3

2.4 No Restriction on Province Use or Development 3

2.5 No Registration 3

2.6 Liens 4

2.7 Title to Improvements 4

2.8 Osoyoos Indian Band 4

3. HAZARDOUS SUBSTANCES..... 4

3.1 Responsibility..... 4

3.2 Restrictions on Use 5

3.3 Removal of Project Co Hazardous Substances 5

3.4 Title to Project Co Hazardous Substances..... 5

3.5 Disposal of Hazardous Substances 5

SCHEDULE 7

LANDS

1. PROVINCE'S OBLIGATIONS AND REPRESENTATIONS

1.1 Grant of Licence Over Site

- (a) From the Effective Date until the later of:
- (1) the Termination Date; and
 - (2) the date the Province no longer requires Project Co to provide the transitional services described in Section 14.3 [Transitional Arrangements],

the Province hereby grants and will continuously until the applicable date above grant or cause to be granted to Project Co a non-exclusive licence of use and access to, on and over the Lands and the Facility to the extent required by Project Co to allow Project Co to perform the Design, the Construction and the Services (the "**Licence**").

- (b) Project Co may for the same purposes described in Section 1.1(a) [Grant of Licence Over Site] of this Schedule grant sub-licences to any Project Co Person, provided that any such grant will be subject to, and terminate upon, termination of the Licence.
- (c) In consideration for the Licence, Project Co will provide the Design, the Construction and the Services subject to and in accordance with this Agreement.

1.2 Terms Affecting Licence Grant

Without limiting the other provisions of this Schedule and this Agreement, the following terms and conditions apply to the Licence:

- (a) no legal demise or other interest in land, and no interest in the Facility or any other improvements, is granted to Project Co or created by this Agreement;
- (b) the Licence is non-exclusive and no right to exclusive possession of the Lands or the Facility is granted to Project Co;
- (c) Project Co's rights are subject to the Encumbrances and the terms and conditions of:
- (1) the Transfer of Administration and Control of a Leasehold Interest between Her Majesty in Right of Canada, as landlord, Osoyoos Indian Band, as the First Nation having possession of the Lands, and the Province, as tenant, as such transfer agreement may be amended, restated, modified, extended or renewed from time to time (the "**Transfer of Administration and Control**"); and
- (d) subject to Section 5.12 [The Province's Access to Site] of Schedule 2 [Design and Construction Protocols], the Province will be entitled at any time and from time to time to

grant to Province Persons and any other persons, including contractors and the general public, access to the Lands and the Facility.

1.3 Property Taxes

The Province will be responsible for property taxes (if any) or payments in lieu of taxes payable or service fees in respect of the Lands and the Facility, or the occupation thereof by the Province, Project Co or any Project Contractor or Sub-Contractor, in accordance with and subject to the terms of the Transfer of Administration and Control.

2. PROJECT CO'S OBLIGATIONS AND ACKNOWLEDGMENTS

2.1 "As Is Where Is"

Except as specifically set out in this Agreement and subject to the provisions of Section 3.1 [Responsibility] of this Schedule, Project Co accepts the Lands and the Licence on an "as is, where is" basis and acknowledges that the Province's interest in the Lands is a leasehold interest pursuant to the Transfer of Administration and Control.

2.2 Encumbrances and Transfer of Administration and Control

- (a) Project Co acknowledges that it has reviewed the Encumbrances in effect as of the Effective Date and Project Co will fully and punctually observe and perform (to the same extent as if Project Co were the owner of the Lands and bound by the Encumbrances), any limitations, restrictions, obligations, liabilities and other terms and conditions set out in the Encumbrances and Project Co assumes all risks arising therefrom, except as specifically set out in the Project Agreement. Encumbrances may without restriction be modified, added or removed, provided that the foregoing will not limit Project Co's entitlements under this Agreement if such modification, addition or removal results in a Change.
- (b) Project Co acknowledges and agrees that it has received a copy of the Transfer of Administration and Control and covenants and agrees with the Province:
 - (1) that it has no greater interest and will have no greater interest in the Lands than the Province under the Transfer of Administration and Control;
 - (2) that to the extent that any right or benefit conferred or obligation or liability imposed herein is in direct conflict with the Transfer of Administration and Control, the applicable provision of the Project Agreement will prevail over the applicable provision of the Transfer of Administration and Control to the extent of the conflict;
 - (3) to perform all of the obligations of the Province under the Transfer of Administration and Control and to be bound by the terms of the Transfer of Administration and Control, except for: (i) the payment of rent; (ii) obtaining and maintaining commercial building form property insurance and boiler and

machinery insurance as defined in the Transfer of Administration and Control; (iii) payment of property taxes (if any) or payments in lieu of taxes payable in respect of the Lands and the Facility, or the occupation thereof by the Province, Project Co or any Project Contractor or Sub-Contractor; (iv) any obligations arising pursuant to Sections 7.1, 7.2 and 7.3 (Environment) except to the extent to which such obligations are also obligations of Project Co under the Project Agreement; and (v) any commitments, liabilities or obligations of the Province under the Transfer of Administration and Control which arise as a result of the breach of the Transfer of Administration and Control provisions by the Province or as a result of the negligence of the Province, except to the extent caused or contributed to by Project Co; and

- (4) not to do or omit to do any act in or around the Lands which would cause a breach of the Province's obligations under the Transfer of Administration and Control, unless such action or omission results from the application of Section 2.2(b)(2) above.

2.3 Project Co Not To Encumber

Project Co will not, without the consent of the Province:

- (a) grant or permit any Charge affecting or against the Lands or the Facility; or
- (b) do or omit to do, or cause, suffer or permit to be done or omitted to be done by any Project Co Person anything that would result in any Charge against or affecting the Lands, the Facility or any asset, matter or thing that may be required to be delivered or transferred to the Province on the Termination Date pursuant to Section 14.2 [Transfer to the Province of Assets, Contracts, etc.],

and will at its own expense promptly discharge and remove or cause to be discharged and removed any such encumbrance.

2.4 No Restriction on Province Use or Development

Project Co acknowledges that the Province may from time to time without restriction use, develop or re-develop, or permit the use, development or re-development of, the Lands, the Facility or any portion thereof (including by way of subdivision) for any purpose and by any Person. To the extent such use, development or re-development adversely interferes with the Licence or adversely interferes with Project Co's ability to carry out the Design, the Construction and the Services, the Province will, to address such interference, initiate a Change.

2.5 No Registration

Project Co will not register in any land title office this Agreement, the Licence or any instrument, claim or notice in respect of the Licence or any other rights of Project Co under this Agreement.

2.6 Liens

Project Co will, at its own cost and expense, cause any and all builders liens and other liens and claims of lien for labour, services or materials furnished or alleged to have been furnished with respect to the Design, the Construction or the Services that are registered against or otherwise affect the Lands or the Facility or any part thereof, to be paid, satisfied, released or vacated forthwith after the Province has sent Project Co written notice of any such lien or claim. If there is a bona fide dispute of the validity or correctness of any such lien or claim, Project Co will be entitled to defend against the lien or claim in any proceedings if Project Co first:

- (a) pays into Court, or provides sufficient security for, the amount claimed and costs as the Court may direct, as may be required to obtain a Court order for the discharge of such lien or claim of lien from title to the Lands, and obtains such discharge and registers such discharge in the Land Title Office to cancel such lien; or
- (b) provides such other reasonable security in respect of such lien or claim as the Province may in writing, and in its discretion, approve.

2.7 Title to Improvements

Project Co will not acquire any property interest in or title to the Lands or the Facility or any other improvements to the Lands. As between Project Co and the Province, title to and ownership of the Facility and all other improvements to the Lands will at all times during the Term (as defined in the Transfer of Administration and Control) be vested in the Province in accordance with and subject to the terms and conditions in the Transfer of Administration and Control.

2.8 Osoyoos Indian Band

Project Co will not contact the Osoyoos Indian Band or the Osoyoos Indian Band Holdings Corporation, as general partner for Osoyoos Indian Band Holdings Limited Partnership, concerning the Transfer of Administration and Control without having first received the Province's prior written consent.

3. HAZARDOUS SUBSTANCES

3.1 Responsibility

Notwithstanding any other provision of this Agreement or this Schedule, Project Co will not be responsible for any Hazardous Substance in, on, below or adjacent to the Lands or any cost, expense or claim arising therefrom, other than the following which will be the responsibility of Project Co:

- (a) any Hazardous Substance brought onto, created at, or released to, the Lands or any adjacent lands or waters by Project Co or any Project Co Person during the Term; and
- (b) any Hazardous Substance for which Project Co has agreed to accept responsibility in Schedule 3 [Design and Construction Specifications].

3.2 Restrictions on Use

Unless otherwise expressly required or permitted under this Agreement, Project Co will not install, use or store, or permit to be installed, used or stored on the Lands or adjacent property any Hazardous Substances or any materials, equipment or apparatus, the installation, use or storage of which is likely to cause or in fact causes the generation, accumulation or migration of any Hazardous Substance in contravention of any applicable Laws. Without limiting the generality of the foregoing, Project Co will not use the Lands, and will not permit the use of the Lands, to dispose of, handle or treat any Hazardous Substance in a manner that would cause the Lands, or any adjacent property, to become a contaminated site under applicable Laws.

3.3 Removal of Project Co Hazardous Substances

Without limiting the obligations of Project Co under any other provision of this Section 3 [Hazardous Substances] or any other provision of this Agreement, Project Co shall prior to the Termination Date, and promptly at any other time, if requested by the Province or by any Governmental Authority pursuant to any Environmental Laws remediate by removal and disposal (unless an alternative method of remediation is required by applicable Environmental Laws, in which case Project Co shall remediate in accordance with such Environmental Laws) all Project Co Hazardous Substances from, on and under, the Lands and any adjacent lands and waters in accordance with the requirements of such Governmental Authority and all applicable Environmental Laws and other Laws.

Notwithstanding the foregoing, Project Co shall, prior to the Termination Date, remove from the Lands and any adjacent lands and waters all Project Co Hazardous Substances that are not required for the ongoing operation of the Facility.

3.4 Title to Project Co Hazardous Substances

Notwithstanding any Laws or any other provision in this Agreement to the contrary, all Hazardous Substances and goods or other items containing Hazardous Substances brought onto, used at or released at or from the Lands by Project Co or any Project Co Person shall be and remain the sole and exclusive responsibility and property of Project Co and shall not become the responsibility or property of the Province, notwithstanding their incorporation into or affixation to the Lands or the Facility and notwithstanding any termination of this Agreement or expiry of the Term, provided that the foregoing provision does not apply to any Hazardous Substances that are authorized for incorporation into the Facility in accordance with the Reviewed Drawings and Specifications.

3.5 Disposal of Hazardous Substances

Project Co shall ensure that all Project Co Hazardous Substances are disposed of only at recognized waste disposal facilities in Canada that, to Project Co's knowledge after exercising due diligence, are (i) authorized to accept Hazardous Substances and that (ii) have all required environmental Permits.

SCHEDULE 8

PAYMENTS

TABLE OF CONTENTS

1.	CALCULATION OF SERVICE PAYMENTS.....	1
1.1	Service Payment	1
1.2	Energy Gainshare/Energy Painshare	2
2.	DEDUCTIONS FROM SERVICE PAYMENTS	2
2.1	Entitlement to Make Deductions.....	2
2.1A	Demand Requisition	2
2.2	Classification of Event	2
2.3	Service Failure Becoming Unavailability Event	3
2.4	Total Unavailability	3
2.5	Deductions for Unavailability Events	3
2.6	Unavailable But Used	4
2.7	Deductions for Service Failures.....	4
2.8	Response Time	4
2.9	Deduction Triggers	4
2.10	Multiple Events	5
2.11	Temporary Repairs.....	5
2.12	Compliance with Laws and Good Industry Practice	6
2.13	Deficiency Correction Period - Unavailability	7
2.14	Service Failure Related Solely to Unavailability	7
2.15	Transition Periods - Service Failures	7
2.16	Payment for Province Funded Rectification	8
2.17	Suspending Rectification of Province Funded Rectification	8
2.18	Payment for Rectification of Province Funded Rectification	9
2.19	Right to Dispute	9
2.20	Interaction with Indemnification	10
2.21	Application of this Section	10
2.22	Rectification to be Best Value.....	10
3.	TEMPORARY ALTERNATIVE ACCOMMODATION.....	10
3.1	Project Co Option to Provide	10
3.2	Requirements	10
3.3	Notice Requirements	11
3.4	Acceptance by Province	11
3.5	Effect of Acceptance.....	12
3.6	Additional Province Costs.....	12
3.7	Deduction.....	12
3.8	Return to Functional Unit.....	12

3.9 Failure to Complete Works 12

3.10 Long Stop Return Date 13

4. REVIEW OF FUNCTIONAL UNITS, DEDUCTIONS, ETC..... 13

4.1 Initiation of Review 13

4.2 Results of Review 14

4.3 Effective Time of Adjustments 14

4.4 Result of Change, Minor Works or Innovation Proposal 14

5. FAILURE BY PROJECT CO TO MONITOR OR REPORT 14

5.1 Performance Monitoring Report 14

5.2 Failure to Monitor or Report..... 14

5.3 Misconduct..... 15

5.4 No Prejudice to Other Rights..... 15

6. GENERAL PAYMENT PROVISIONS 15

6.1 Invoicing and Payment Arrangements 15

7. CONSTRUCTION PERIOD PAYMENT 18

7.1 Total Construction Period Payment Amount 18

APPENDIX 8A FUNCTIONAL UNITS, PRIORITY LEVELS AND UNIT DEDUCTION AMOUNTS

APPENDIX 8B CONSTRUCTION PERIOD PAYMENTS

APPENDIX 8C SERVICE PAYMENTS

APPENDIX 8D RESPONSE TIME AND RECTIFICATION PERIOD REQUIREMENTS

SCHEDULE 8

PAYMENTS

1. CALCULATION OF SERVICE PAYMENTS

1.1 Service Payment

From and after the Service Commencement Date, the Province will pay Project Co in respect of each Payment Period the Service Payment calculated as follows:

- (a) the Capital Payment for that Payment Period set out in Appendix 8C [Service Payments], Table 1 [Capital Payments], which amount will not be Index Linked; plus
- (b) the Life Cycle Payment for that Payment Period set out in Appendix 8C [Service Payments], Table 2 [Life Cycle Payments], which amount will be Index Linked; plus
- (c) the Facility Maintenance Payment for that Payment Period set out in Appendix 8C [Service Payments], Table 3 [Facility Maintenance Payments], which amount will be Index Linked; plus
- (d) the Diesel Fuel Service Payment; plus
- (e) the Snow Ploughing and Removal Services Payment; and
- (f) subject to Section 2.1 [Entitlement to Make Deductions] of this Schedule, minus the aggregate of Deductions for that Payment Period.

Provided that

- (g) if the first Payment Period after the Service Commencement Date is less than a full calendar month, the Service Payment will be reduced by the same proportion that such Payment Period is less than a full calendar month;
- (h) if the last Payment Period of the Term is less than a full calendar month, the Service Payment will be reduced by the same proportion that the last Payment Period is less than a full calendar month; and
- (i) the Service Commencement Date and the date Service Payments commence will not be earlier than September 30, 2016 notwithstanding Project Co achieving Service Commencement earlier than such date.

Project Co acknowledges and agrees that the Payment Periods identified in the tables in Appendix 8C [Service Payments] assume that Service Commencement will be achieved by the Target Service Commencement Date and the Payment Periods are expressed numerically in terms of the Payment Periods starting from the Target Service Commencement Date. If Service Commencement is achieved after the Target Service Commencement Date, then the first Service Payment will be for the relevant Payment Period, or prorated portion thereof, indicated for the time after the Target Service

VAN01: 3149198: v7

Commencement Date, and Project Co will not be entitled to any Service Payment for Payment Periods, or prorated portions thereof, between the Target Service Commencement Date and the Service Commencement Date.

1.2 Energy Gainshare/Energy Painshare

The Province will pay Project Co the applicable Energy Gainshare, and Project Co will pay the Province the applicable Energy Painshare, within 30 days after the invoice submitted under Section 4.3 [Calculation and Invoicing] of Appendix 2D [Energy].

2. DEDUCTIONS FROM SERVICE PAYMENTS

2.1 Entitlement to Make Deductions

If at any time after the Service Commencement Date an Unavailability Event or a Service Failure occurs the Province will be entitled to make Deductions in accordance with this Schedule (including Section 2.9 [Deduction Triggers] of this Schedule) in respect of that Unavailability Event or Service Failure (and, for greater certainty, in respect of all other Unavailability Events and Service Failures) from the Service Payment for the relevant Payment Period, except that:

- (a) the aggregate of all Deductions that the Province may make from a Service Payment may not exceed the amount of the Service Payment in respect of a Payment Period before the Deductions; and
- (b) to the extent that an Unavailability Event or a Service Failure is the result of an Excusing Event or a Compensation Event, the Province will not be entitled to make Deductions.

2.1A Demand Requisition

Project Co will, and the Province may, issue Demand Requisitions for all Events, including when any element of the Facility does not comply with the requirements of this Agreement (including Schedule 3 [Design and Construction Specification] and Schedule 4 [Services Protocols and Specifications]).

It shall be deemed a Service Failure if Project Co does not issue a Demand Requisition in such circumstances.

2.2 Classification of Event

Project Co will classify an Event as a Service Failure or an Unavailability Event (and the rank thereof) at the time at which the Demand Requisition is provided to the Help Desk, and will as part of such classification indicate whether Project Co believes that the Event caused Province Funded Rectification. The Province may, in its discretion, require Project Co to revise all or any part of such classification.

- (a) If the Province exercises its right to revise Project Co's initial classification of an Event, Project Co will proceed with the Rectification in accordance with such revised classification, without prejudice to Project Co's right to challenge the revised classification under the Dispute Resolution Procedure.

- (b) If an Event which results in an immediate Service Failure Deduction (because there is no applicable Response Time or Rectification Period) can properly be classified as both a Service Failure and an Unavailability Event at the time that the Demand Requisition is reported to the Help Desk, it will be classified as the Event that has the highest potential Deduction available to it.

If Project Co classifies an Event as Province Funded Rectification, Project Co will notify the Province in writing within the applicable Response Time:

- (a) that Project Co has classified the Event as Province Funded Rectification;
- (b) whether the Province Funded Rectification is: (i) Property Loss of more than \$10,000; or (ii) Malicious Damage of more than \$1000; and
- (c) whether the Rectification of the Province Funded Rectification is likely to exceed \$50,000, (collectively, the "Notice of Province Funded Rectification").

Upon receipt of the Notice of Province Funded Rectification, the Province will have the right to investigate the Event.

An Event which is incorrectly classified may be re-classified only with the approval of the Province, such approval not to be unreasonably withheld. If such an Event is re-classified, the appropriate Deduction (if applicable) will be made and any Deduction incorrectly applied will be withdrawn.

2.3 Service Failure Becoming Unavailability Event

A Service Failure may become or lead to an Unavailability Event if circumstances change or the Service Failure continues. In such a circumstance, when the Functional Unit becomes Unavailable, the Service Failure will have ended (without prejudice to the Service Failure Deductions that have accrued to that point) and an Unavailability Event will have occurred.

2.4 Total Unavailability

When Total Unavailability occurs, there will be deemed to be an Unavailability Event for each Functional Unit that otherwise met the Availability Condition at that time and all such Functional Units will continue to be deemed to be Unavailable until such Total Unavailability no longer occurs.

2.5 Deductions for Unavailability Events

Subject to Sections 2.1 [Entitlement to Make Deductions], 2.9 [Deduction Triggers] and 2.12 [Compliance with Laws and Good Industry Practice] of this Schedule, the Deduction in respect of each Unavailability Event will be, subject to Section 2.6 [Unavailable But Used] of this Schedule, the aggregate of the Unit Deduction Amounts for all Functional Units made Unavailable as a result of the Unavailability Event.

2.6 Unavailable But Used

If any Functional Unit (including Temporary Alternative Accommodation) is Unavailable (including, for greater certainty, Functional Units that are deemed Unavailable under Section 2.9 [Deduction Triggers] of this Schedule) but the Province continues to use it for the intended use or purpose of that Functional Unit or Temporary Alternative Accommodation, for the purposes of Section 2.4 [Total Unavailability] of this Schedule the Unit Deduction Amount applicable to an Unavailability Deduction for such Functional Unit will be multiplied by 50%.

2.7 Deductions for Service Failures

Subject to Sections 2.1 [Entitlement to Make Deductions] and 2.15 [Transition Periods – Service Failure] of this Schedule, the amount of the Deduction in respect of a Service Failure will be as follows:

- (a) for a High Service Failure, the sum of (Index Linked);
- (b) for a Medium Service Failure, the sum of (Index Linked); and
- (c) for a Low Service Failure, the sum of (Index Linked).

2.8 Response Time

If an Event occurs and a Response Time is indicated in Schedule 4 [Services Protocols and Specifications], in addition to any other Deduction arising from such Event, if Project Co does not respond as required under this Agreement within the applicable Response Time:

- (a) a Low Service Failure will be deemed to have occurred; and
- (b) unless otherwise specified in Schedule 4 [Services Protocols and Specifications], a new Response Time will start and the provisions of this Section will again apply and will continue to apply with repeated Low Service Failures until Project Co responds as required under this Agreement.

Nothing in this Section will limit any other Deductions in respect of the same Event or the occurrence of, and Deductions in respect of, additional Events that occur within a Response Time period.

2.9 Deduction Triggers

If an Event occurs:

- (a) in the case of a Service Failure for which there is no Rectification Period, the Province will make the applicable Service Failure Deduction;
- (b) in the case of an Unavailability Event, other than a deemed Unavailability Event due to Total Unavailability, if Project Co Rectifies the Unavailability Event within the Rectification Period, then no Deduction will be made for such Unavailability Event;

- (c) in the case of a deemed Unavailability Event due to Total Unavailability, the Province will make the applicable Unavailability Deduction; and
- (d) in any case and in addition to the foregoing, if Project Co does not Rectify the Event (which in the case of deemed Unavailability Events due to Total Unavailability means that Total Unavailability no longer occurs), including any Service Failure for which there is a Rectification Period, within the Rectification Period:
 - (1) the applicable Deduction will be made for the Event; and
 - (2) a new Event (which in the case of a Service Failure will be of the same category as the original Service Failure unless otherwise specified in Schedule 4 [Services Protocols and Specifications]) will be deemed to occur at the end of such Rectification Period and the provisions of this Section 2.9 will again apply and will continue to apply with repeated Deductions until Project Co Rectifies the Event.

Nothing in this Section 2.9 will limit any other Deductions in respect of the same Event or the occurrence of, and Deductions in respect of, additional Events that occur within a Rectification Period.

2.10 Multiple Events

If the root cause of a series of Events is substantially the same, whether or not Project Co Rectifies any or all of the Events within the applicable Rectification Period, there will be deemed to be a Medium Service Failure on the occurrence of any of the following:

- (a) the third such Event in a day and on the occurrence of each subsequent such Event in that day; and
- (b) the fourth such Event in a rolling consecutive seven day period and on the occurrence of each subsequent such Event in that seven day period.

2.11 Temporary Repairs

If Project Co, acting reasonably and in accordance with this Agreement, is unable to Rectify an Unavailability Event within the applicable Rectification Period, then:

- (a) Project Co may provide the Province with both of the following proposals within the applicable Rectification Period or such longer time as is reasonable in the circumstances:
 - (1) a Temporary Repair together with any temporary modification to the Availability Condition required for the relevant Functional Unit until the Permanent Repair is completed (the "**Temporary Repair Proposal**"); and
 - (2) a Permanent Repair, including the period within which to complete the Permanent Repair (the "**Permanent Repair Proposal**");

- (b) the Province will accept any reasonable proposal, but Project Co will not carry out a repair until the relevant proposal is accepted by the Province;
- (c) if the Province accepts a Temporary Repair Proposal, Project Co will carry out the Temporary Repair in accordance with the Temporary Repair Proposal, as it may be modified by the parties in accordance with the terms of this Agreement, and the modified Availability Condition contained in the accepted Temporary Repair Proposal will apply;
- (d) if the Province accepts a Permanent Repair Proposal, Project Co will carry out the Permanent Repair in accordance with the Permanent Repair Proposal, as it may be modified by the parties in accordance with the terms of this Agreement, and the modified Availability Condition contained in the accepted Temporary Repair Proposal will apply;
- (e) if the Province rejects a proposal, Project Co will submit a new proposal in accordance with (a) above with the time period starting from the notice of rejection by the Province;
- (f) if the Permanent Repair is not completed by the deadline for the Permanent Repair, Project Co may revise the Temporary Repair Proposal and resubmit such proposal to the Province as a new Temporary Repair Proposal pursuant to Section 2.11(a) of this Schedule (in which case, if such Temporary Repair Proposal is accepted, Section 2.11(c) will apply);
- (g) as long as Project Co is reasonably complying with (a) through (e) above (including providing reasonable proposals), then from the occurrence of the Unavailability Event through the period of compliance with (a) through (e), the Province will not take Deductions in respect of the event that caused the Unavailability Condition ;
- (h) if either the Province or Project Co determines, acting reasonably, that such Unavailability Event poses a material risk to human safety or to Facility security, Project Co will take such reasonable steps as are necessary in the circumstance to eliminate the risk to human safety and ensure the security of the Facility within the applicable Rectification Period; and
- (i) except with respect to the applicable modification of the Availability Condition, nothing in this Section will limit the Province's entitlement to Deductions within the applicable Rectification Periods.

2.12 Compliance with Laws and Good Industry Practice

When carrying out Rectification, or works of Temporary Repair pursuant to Section 2.11 [Temporary Repairs] of this Schedule, Project Co will at all times act in accordance with Laws and Good Industry Practice. If in doing so Project Co breaches any Laws, there will be deemed to be a new additional High Service Failure. If in doing so Project Co breaches Good Industry Practice, but does not also breach Laws, there will be deemed to be a new additional Low Service Failure.

In the event that Malicious Damage has occurred that could have been anticipated, prevented, or substantially mitigated through proper performance of the Design, Construction or Services in accordance

VAN01: 3149198: v7

with this Agreement, Project Co will, as part of the Services, promptly Repair the Malicious Damage and undertake such additional modifications or adjustments to the Design and Construction of the Facility and to the performance of the Services as are necessary to maximize the Facility's sustainability and resistance to further or future Malicious Damage, provided that any modifications or adjustments will be subject to:

- (a) compliance with the Design and Construction Specifications and the Services Protocols and Specifications;
- (b) minimization of disruption to the operation of the Facility; and
- (c) consultation with, and prior approval of, the Province, such approval not to be unreasonably withheld or delayed.

2.13 Deficiency Correction Period - Unavailability

During the 28 day period beginning on the Service Commencement Date, the amount of any Unavailability Deductions for Unavailability Events directly caused by Deficiencies will be reduced by 100%. This Section does not give any relief in respect of any Service Failure Deductions.

2.14 Service Failure Related Solely to Unavailability

No Service Failure Deduction will be made if the Service Failure to which it relates arises solely as a result of the Unavailability of the Functional Unit in which the Service was to be provided. If any Functional Unit is Unavailable but the Province continues to use it for the intended use or purpose of that Functional Unit, the Province will, subject to Section 2.3 [Service Failure Becoming Unavailability Event] of this Schedule, deduct the full amount of any Service Failure Deductions that apply to the Services in the applicable Functional Unit.

2.15 Transition Periods - Service Failures

In respect of each Service there will be a period of 90 days (the "**New Service Provider Transition Period**") for Transition beginning on each New Service Provider Start Date. During each New Service Provider Transition Period the following provisions will apply:

- (a) during the first 30 days of the New Service Provider Transition Period, the amount of any Service Failure Deductions will be reduced by 75%;
- (b) during the next 30 days of the New Service Provider Transition Period, the amount of any Service Failure Deductions will be reduced by 50%; and
- (c) during the final 30 days of the New Service Provider Transition Period, the amount of any Service Failure Deductions will be reduced by 25%.

This Section will not give any relief during any period of Transition in respect of Unavailability Deductions.

2.16 Payment for Province Funded Rectification

Subject to Section 2.17 [Suspending Rectification of Province Funded Rectification] of this Schedule, Project Co will Rectify an Event classified as Province Funded Rectification within the applicable Rectification Period, without any further direction from the Province, and the Provisions of Section 2.4 [Payment for Minor Works] of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply as if the Rectifications were Minor Works.

2.17 Suspending Rectification of Province Funded Rectification

If Project Co has indicated that the Rectification of any Province Funded Rectification is likely to exceed \$50,000 or at any time after delivery of the Notice of Province Funded Rectification the Province notifies Project Co in writing to suspend all or any part of the Rectification of Province Funded Rectification, Project Co will:

- (a) immediately suspend all or any part of the Rectification of such Province Funded Rectification and the Event will be classified as an Excusing Event from:
 - (i) the time of notification of such suspension; or
 - (ii) the time of the Notice of Province Funded Rectification where Project Co has indicated that the Rectification of the Province Funded Rectification is likely to exceed \$50,000 in accordance with Section 2.2(c) [Classification of Event] of this Schedule,

until the Province directs Project Co in writing to proceed with such Rectification in accordance with Section 2.17(b)(4) of this Schedule.

Project Co shall be paid for such Rectification in accordance with Section 2.4 [Payment for Minor Works] of Schedule 6 [Changes, Minor Works and Innovation Proposals] to the extent of the Rectification performed by Project Co up to the time of such suspension;

- (b) if directed by the Province:
 - (1) provide an estimate for Rectification of the Province Funded Rectification in accordance with the Minor Works Rates in accordance with Section 2 [Minor Works] of Schedule 6 [Changes, Minor Works and Innovations Proposals] if it is later determined based on further assessment that the Province Funded Rectification is likely to be less than \$50,000;
 - (2) provide an estimate for Rectification of the Province Funded Rectification in accordance with rates to be agreed by the Parties;
 - (3) provide a Change Report for the Rectification of the Province Funded Rectification in accordance with Section 1.5 [Delivery of Change Report] of Schedule 6 [Changes, Minor Works and Innovations Proposals] irrespective of any monetary thresholds set for a Change Report, in which case all of the

provisions relating to a Change Report in Schedule 6 [Changes, Minor Works and Innovations Proposals] apply; and/or

- (4) proceed with the Rectification of the Province Funded Rectification in accordance with the Minor Works Rates (only if the Province Funded Rectification is likely to be less than \$50,000), or the estimate or Change Report as a result of Section 2.17(b)(1), (2) or (3) above;

Section 6.4 [Project Co's Obligations – Material Damage or Destruction] will apply where the Rectification Costs of Province Funded Rectification is likely to exceed \$5,000,000 and for the purposes of Section 2.11, the Reinstatement Plan will be substituted for the Temporary Repair Proposal and the deadline for Permanent Repair will be extended to any later date identified by the Reinstatement Plan for the Services in question to recommence or the Functional Unit in question to achieve an Availability Condition;

- (c) if either the Province or Project Co determines, acting reasonably, that suspending the Rectification of Province Funded Rectification poses a material risk to human safety or to Facility security, take such reasonable steps as are necessary in the circumstance to eliminate the risk to human safety and ensure the security of the Facility within the applicable Rectification Period, and the Provisions of Section 2.4 [Payment for Minor Works] of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply as if such reasonable steps were Minor Works; and
- (d) if a Rectification of Province Funded Rectification is suspended because such Rectification is likely to exceed \$50,000 but the Temporary Repair of such Province Funded Rectification can be performed for less than \$50,000, if directed by the Province, carry out such Temporary Repair, and the Provisions of Section 2.4 [Payment for Minor Works] of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply as if such Temporary Repair were Minor Works.

Section 6.4 [Project Co's Obligations – Material Damage or Destruction] will apply where the Rectification costs of Province Funded Rectification is likely to exceed \$5,000,000.

2.18 Payment for Rectification of Province Funded Rectification

To the extent any Rectification of Province Funded Rectification is not paid for as Minor Works, Project Co will, as of the end of a calendar month, invoice the Province monthly for such Rectification completed in the calendar month, supported by appropriate invoices and work records, and the Province will pay Project Co by the later of the 20th day of the next calendar month, or 20 calendar days following receipt of the invoice, for such Rectification performed in the previous calendar month.

2.19 Right to Dispute

Nothing contained in this Section 2, including the Province directing Project Co to proceed with the Rectification or of taking other steps in accordance with Section 2.17(b)(4), (c) or (d) [Suspending Rectification of Province Funded Rectification] of this Schedule, will prejudice the Province's right to

challenge Project Co's classification of an Event as Province Funded Rectification or the cost of the Rectification or of taking other steps under the Dispute Resolution Procedure.

2.20 Interaction with Indemnification

If during the Operating Period the Facility suffers Province Funded Rectification, the Province will not be entitled to indemnification from Project Co for such Province Funded Rectification except to the extent:

- (a) of the full amount of coverage prior to any deductibles of the insurance required to be maintained by Project Co pursuant to Section 2.1 [Project Co Commercial Liability Policy] of Schedule 5 [Insurance Requirements];
- (b) the amounts paid for such Province Funded Rectification were paid inappropriately or in error.

2.21 Application of this Section

This Section 2 [Deductions from Service Payments] of this Schedule applies only after the Service Commencement Date.

2.22 Rectification to be Best Value

All Rectifications of Province Funded Rectification undertaken by Project Co shall be done as efficiently as possible so as to keep the cost to the Province of such Rectification to a minimum and provide best value to the Province. The Province shall have the right to challenge an invoice issued under Section 2.18 [Payment for Rectification of Province Funded Rectification] of this Schedule on the basis that Project Co does not fulfill this obligation.

3. TEMPORARY ALTERNATIVE ACCOMMODATION

3.1 Project Co Option to Provide

If an Unavailability Event occurs Project Co may offer the Province Temporary Alternative Accommodation by notice (the "**Temporary Alternative Accommodation Notice**") to the Province within 5 Business Days from the commencement of the applicable Event.

3.2 Requirements

The Temporary Alternative Accommodation must:

- (a) comply with the Availability Condition for the Functional Units affected by the Unavailability Event for which Temporary Alternative Accommodation is offered;
- (b) be a temporary alternative having regard to the facts and the circumstances in existence;
- (c) be upon terms which are not materially different from the terms upon which the Province occupied the affected Functional Unit;

- (d) unless the Province otherwise agrees, be accommodation that Project Co is not already obligated to provide to the Province;
- (e) be supplied with the Services to the standards set out in Schedule 4 [Services Protocols and Specifications] which Project Co would under normal circumstances be providing within the Unavailable Functional Unit;
- (f) not involve the Province incurring any additional cost or charges in respect of the Temporary Alternative Accommodation including the reasonable costs of any relocation to and from the Temporary Alternative Accommodation; and
- (g) be in reasonable proximity to the Facility, be reasonably accessible and have adequate parking.

3.3 Notice Requirements

The Temporary Alternative Accommodation Notice must:

- (a) describe the Temporary Alternative Accommodation;
- (b) invite the Province to inspect the Temporary Alternative Accommodation and give the Province reasonable notice of a time and a date when it may do so;
- (c) set out Project Co's proposals regarding the timing and co-ordination of relocation to the Temporary Alternative Accommodation;
- (d) specify the date (which must be agreed by the Province before the submission of the written notice) by which Project Co reasonably expects the Province to be able to relocate back to the applicable Functional Unit (the "**Return Date**"); and
- (e) describe the terms upon which the Province will be entitled to occupy such Temporary Alternative Accommodation including the proposed division of such accommodation into Functional Units and the weighting to be attributed to them for the purposes of the operation of this Schedule.

3.4 Acceptance by Province

If it wishes to inspect the Temporary Alternative Accommodation the Province will do so within 5 Business Days of receipt of the Temporary Alternative Accommodation Notice. The Province will notify Project Co in writing of its acceptance or refusal of the proposed Temporary Alternative Accommodation within 24 hours of its inspection or, if the Province has elected not to inspect, within 5 Business Days of receipt of the Temporary Alternative Accommodation Notice. The Province may in its discretion refuse or accept any proposed Temporary Alternative Accommodation that does not meet the requirements of Section 3.2 [Requirements] of this Schedule and in all other cases will act reasonably when deciding to accept or refuse any proposed Temporary Alternative Accommodation.

3.5 Effect of Acceptance

If the Province accepts the offer of Temporary Alternative Accommodation:

- (a) which is not within the Facility then, without affecting the Province's remedial rights under Section 11 [Province's Step-In Rights], the Province will not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which the Province is entitled and able to return to and use the Functional Unit in accordance with the agreed program for return and re-commissioning referred to in Section 3.8 [Return to Functional Unit] of this Schedule; and
- (b) which is within the Facility and the Province subsequently needs such Temporary Alternative Accommodation in connection with needs that were not anticipated at the time the Province agreed to occupy the space, then the Province will be entitled to vacate the Temporary Alternative Accommodation.

3.6 Additional Province Costs

Project Co will pay for any additional reasonable and direct costs and expenses incurred by the Province in respect of Temporary Alternative Accommodation, including reasonable relocation costs to and from the Temporary Alternative Accommodation.

3.7 Deduction

If the Province accepts Project Co's offer of Temporary Alternative Accommodation, no further Deductions will be made in respect of a Functional Unit vacated by the Province while the Temporary Alternative Accommodation replacing that Functional Unit is being used by the Province. The Province will be entitled to make Deductions in respect of any Service Failure or Unavailability Event which occurs in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Unit which it replaced and any Deduction in respect of an Unavailability Event will be calculated using the Unit Deduction Amounts attributed to such Functional Unit.

3.8 Return to Functional Unit

When Project Co has completed the required works to enable the Province to return to the Functional Unit the Province will confirm that the Availability Condition is met for the Functional Unit and the Province and Project Co will agree to a relocation program to return to the Functional Unit and any necessary period for re-commissioning.

3.9 Failure to Complete Works

If the Province has accepted the proposed Temporary Alternative Accommodation and Project Co fails to complete the works to enable the Province to return to the relevant Functional Unit on the Return Date:

- (a) the Temporary Alternative Accommodation will be deemed to be Unavailable with effect from the Return Date until the date on which the Unavailability Event has been Rectified and the Province is able to resume its use of the Functional Unit; and

- (b) the Province may, in its absolute discretion, vacate the Temporary Alternative Accommodation at any time after the Return Date or remain in occupation, and in the latter circumstance a 50% reduction will apply with respect to the Unavailability Deduction.

3.10 Long Stop Return Date

The Province will specify a date (the “**Long Stop Return Date**”), being a date no earlier than 30 days after the Return Date, by which the Rectification must be completed and if Project Co fails to complete the Rectification of the Functional Unit for which the Temporary Alternative Accommodation is a replacement by the Long Stop Return Date:

- (a) the Province may (without prejudice to its rights under Section 12 [Project Co Events of Default] or any other express rights of the Province under this Agreement) take such steps as it considers to be appropriate (either itself or by engaging others to take such steps) to restore the Functional Unit to a condition that satisfies in all respects the requirements of Schedule 4 [Services Protocols and Specifications]; and
- (b) Project Co will reimburse the Province for all reasonable direct costs and expenses incurred by the Province in relation to taking the steps, or engaging others to take the steps, referred to in Section 3.10(a) [Long Stop Return Date] of this Schedule and the Province will be entitled to deduct any such amount from any amounts payable to Project Co under this Agreement.

4. REVIEW OF FUNCTIONAL UNITS, DEDUCTIONS, ETC.

4.1 Initiation of Review

The identification of Functional Units, Performance Indicators, Response Times, Rectification Periods, Unit Deduction Amounts and the amount of Deductions for each category of Service Failure and for Unavailability Events will be reviewed by the Province and Project Co at any time if requested by either party, but in any event will be reviewed at the following times, unless otherwise agreed by the parties:

- (a) at such time as the Design Development Phase as set out in Section 4.2 [Design Process] of Schedule 2 [Design and Construction Protocols] has been completed in all material respects;
- (b) in the circumstances referred to in Section 4.3 [Consequential Amendments to Appendix 8A] of Schedule 6 [Changes, Minor Works and Innovation Proposals];
- (c) following the Service Commencement Date; and
- (d) at least once in every Contract Year following the first anniversary of the Service Commencement Date for the purposes of the following Contract Year.

The Province and Project Co will act reasonably and diligently in carrying out the review, which will not exceed 30 days without the agreement of both parties. For the avoidance of doubt, the parties intend that

any changes made as a result of such a review will not alter the overall risk profile of the relevant Service or the likely magnitude of Deductions. If proposed changes would result in any such alteration, the matter will be deemed to be a Change subject to the provisions of Schedule 6 [Changes, Minor Works and Innovation Proposals].

4.2 Results of Review

The Province and Project Co may, in respect of each matter that is the subject of the review, either:

- (a) agree that the status of the relevant matter will continue to apply unchanged for the relevant Contract Year; or
- (b) agree to adjustments to the relevant matter to take effect in the relevant Contract Year.

If the parties do not agree within 30 days after completion of the review, either party may refer the matter to the Dispute Resolution Procedure. No change will be made with respect to a matter under review until agreed or until determined under the Dispute Resolution Procedure. For the avoidance of doubt, if the changes that are agreed or determined under the Dispute Resolution Procedure alter the overall risk profile of the relevant Service, the matter will be deemed a Change subject to the provisions of Schedule 6 [Changes, Minor Works and Innovation Proposals].

4.3 Effective Time of Adjustments

Any adjustment pursuant to a review will be effective from the commencement of the relevant Contract Year.

4.4 Result of Change, Minor Works or Innovation Proposal

As set out in Section 5.3 [Opportunity to Object] of Schedule 6 [Changes, Minor Works and Innovation Proposals] the parties will review and agree any changes to Appendix 8A [Functional Units, Priority Levels and Unit Deduction Amounts] that are needed as the result of a Change, Minor Works or an Innovation Proposal.

5. FAILURE BY PROJECT CO TO MONITOR OR REPORT

5.1 Performance Monitoring Report

The Performance Monitoring Report produced by Project Co for any Payment Period will be the initial source of the information regarding the performance of the Services for the relevant Payment Period for the purposes of calculating the relevant Deductions.

5.2 Failure to Monitor or Report

If Project Co fails to monitor or accurately report an Event, a Service Failure or an Unavailability Event:

- (a) such failure will be deemed to be a new Low Service Failure for each Event that has been misreported. The relevant Deduction for the new Low Service Failure will be made

in addition to the Deductions that would have been made had there been no failure to monitor or report;

- (b) the Province will be entitled to make Deductions in respect of any Service Failures or Unavailability Events in the manner prescribed in this Schedule, and the Performance Monitoring Report(s) and invoice(s) with respect to all Payment Periods affected by such failure will be restated to include any such Deductions; and
- (c) Project Co will pay to the Province the amount, if any, by which the amount paid to it for the affected Payment Periods exceeds the amount in the restated invoices for such Payment Periods.

5.3 Misconduct

If the Province's inspection or investigation of records reveals, on the part of Project Co or a Project Co Person:

- (a) fraudulent action or inaction;
- (b) deliberate misrepresentation; or
- (c) gross misconduct or incompetence,

then a new High Service Failure will be deemed to have occurred for each Event that has been misreported. The relevant Deduction for the new High Service Failure will be made in addition to the Deductions that would have been made had there been no misreporting.

5.4 No Prejudice to Other Rights

The provisions of this Section 5 [Failure by Project Co to Monitor or Report] of this Schedule are without prejudice to any rights of the Province in this Agreement, including pursuant Part 5 [Performance Monitoring and Reporting] of Schedule 4 [Services Protocols and Specifications] and Section 12.1 [Project Co Events of Default] of this Agreement.

6. GENERAL PAYMENT PROVISIONS

6.1 Invoicing and Payment Arrangements

With respect to invoicing and payment, the following will apply.

- (a) All Service Payments, except for any Diesel Fuel Services Payment and Snow Ploughing and Removal Services Payment, will be payable in advance for each Payment Period.
- (b) Any Diesel Fuel Services Payment will be payable in arrears. Project Co will use reasonable efforts to include in its invoice amounts in respect of any relevant Services within one Payment Period following the Payment Period in which such Services were carried out. Project Co will include in its invoice an amount in respect of any relevant Services within two Payment Periods following the Payment Period within which such

Services were carried out, and after that time Project Co waives the right to any claims against the Province for payment in respect of such Services.

- (c) Any Snow Ploughing and Removal Services Payments will be payable in arrears. Project Co will use reasonable efforts to include in its invoice amounts in respect of any relevant Services within one Payment Period following the Payment Period in which such Services were carried out. Project Co will include in its invoice an amount in respect of any relevant Services within two Payment Periods following the Payment Period within which such Services were carried out, and after that time Project Co waives the right to any claims against the Province for payment in respect of such Services.
- (d) A minimum of 10 Business Days prior to each Payment Period (referred to as the applicable Payment Period for the purpose of this Section), Project Co will provide the Province with an invoice in a form agreed by the parties, acting reasonably. The invoice will include as a minimum:
- (1) the Service Payment for the applicable Payment Period;
 - (2) the Deductions in respect of the Payment Period that is two Payment Periods before the applicable Payment Period;
 - (3) the amount of the Diesel Fuel Services Payments in respect of any Payment Period that is two Payment Periods before the applicable Payment Period and for which an invoice has not already been provided by Project Co pursuant to this Section;
 - (4) the amount of the Snow Ploughing and Removal Services Payments in respect of any Payment Period that is two Payment Periods before the applicable Payment Period and for which an invoice has not already been provided by Project Co pursuant to this Section;
 - (5) the final Performance Monitoring Report and Payment Adjustment Report for the Payment Period described in Section 6.1(d)(2) [Invoicing and Payment Arrangements] of this Schedule;
 - (6) any adjustments to a previous Payment Period, as set out in the applicable Payment Adjustment Report;
 - (7) any amount owing to the Province under this Agreement;
 - (8) any amount owing to Project Co under this Agreement;
 - (9) the amount of applicable GST, and any other information prescribed under the Excise Tax Act (Canada);
 - (10) the amount of applicable PST;

- (11) Project Co's GST registration number; and
 - (12) the net amount owing by the Province to Project Co, or by Project Co to the Province, as applicable.
- (e) The Province will review each invoice submitted in accordance with this Section within 5 Business Days and the Province will pay the amount approved by the Province on the later of the first day of the Payment Period or the 10th Business Day after receipt of the invoice. If an invoice does not meet any of the invoicing requirements, Project Co must resubmit a complete invoice which will be reviewed by the Province within 5 Business Days after receipt and the Province will pay the amount approved by the Province within 10 Business Days after receipt of such complete invoice.
- (f) The Province will not be obligated to make any payment unless all conditions of payment in this Agreement have been satisfied.
- (g) Within 10 Business Days following the end of each Payment Period, Project Co will submit to the Province:
- (1) a draft Performance Monitoring Report; and
 - (2) a draft of a report (a "**Payment Adjustment Report**") setting out any adjustments, including Deductions, to the Service Payments for that Payment Period, the amount of the Diesel Fuel Services Payment, the Snow Ploughing Services Payment and the amount of over-payment or under-payment from the amount paid previously by the Province for that Payment Period.
- (h) The Province may, but is not obligated to, provide comments to Project Co on the draft Performance Monitoring Report and the draft Payment Adjustment Report, which comments will be given due regard by Project Co in finalizing the Performance Monitoring Report and Payment Adjustment Report.
- (i) By the applicable date set out in Section 6.1(d) [Invoicing and Payment Arrangements] of this Schedule, Project Co will submit to the Province:
- (1) a final Performance Monitoring Report for that Payment Period; and
 - (2) a final Payment Adjustment Report, identifying changes in the final Payment Adjustment Report from the draft Payment Adjustment Report submitted by Project Co to the Province in accordance with Section 6.1(g) [Invoicing and Payment Arrangements] of this Schedule.
- (j) Project Co will include with each invoice and Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the invoiced amounts and amounts set out in each Payment Adjustment Report.

- (k) For the final 3 Payment Periods of the Term, the Province may withhold from payment a reasonable amount for possible adjustments to the Service Payments, and within 30 days after the expiry of the Term Project Co will provide the Province with a final invoice setting out Project Co's calculations to reconcile any over-payments or under-payments and the Province or Project Co, as applicable, will promptly pay the amount properly due and payable to the other party.

- (l) No payment will be construed as an acceptance or approval of incomplete, defective or improper Design, Construction, Services or any other matter provided by Project Co which is not in conformance with the requirements of this Agreement, and will not operate to relieve Project Co from any of its obligations under this Agreement.

7. CONSTRUCTION PERIOD PAYMENT

7.1 Total Construction Period Payment Amount

The Province will make payments to Project Co during the Construction Period in accordance with Appendix 8B [Construction Period Payments].

APPENDIX 8A

FUNCTIONAL UNITS, PRIORITY LEVELS AND UNIT DEDUCTION AMOUNTS

Unit Deduction Amounts:

for a Priority Level 1 Functional Unit, Index Linked;

for a Priority Level 2 Functional Unit, Index Linked;

for a Priority Level 3 Functional Unit, Index Linked;

for a Priority Level 4 Functional Unit, Index Linked; and

for a Priority Level 5 Functional Unit, Index Linked.

Functional Units and Priority Levels:

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
1.000 RECEPTION AND VISITS			
1.100 Public Lobby, Visitor Processing			
1.101	Covered Outdoor Waiting	1	4
1.102	Entrance Vestibule	1	4
1.103	Public Lobby	1	4
1.104	Reception Counter	1	3
1.105	Reception Work Area	1	3
1.106	Visitor Control Desk	1	4
1.107	Community Room	1	5
1.108	Equipment Storage	1	5
1.109	Security Screening	1	3
1.110	Visitor Interview Room	1	5
1.111	Washrooms	2	4
1.112	Vending Machines	1	5
1.113	Public Telephones	1	5
1.114	Visitor's Lockers	15	5
1.115	Visits Coordinator	2	4
1.116	Kiosk	1	5
1.200 Visitation			
1.201	Visits Waiting Room	1	3
1.202	Visitor Search Room	1	3

VAN01-3149198-v7

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
1.203	Main Pedestrian Sally Port	1	2
1.204	Open Visits	1	3
1.205	Private Professional Visits Rooms	6	3
1.206	Video Visitation Booths	25	3
1.207	Male Visitor Washroom	1	4
1.208	Female Visitor Washroom	1	4
1.209	Secure Visits Room	2	3
1.210	Visits Officer Station	1	4
1.211	Storage	1	5
1.212	Inmate Search Room	1	3
1.213	Inmate Washroom	2	3
1.214	Children's Playroom	1	3
1.215	Janitor Closet	1	4
1.216	Vestibule	1	4
2.000 SECURITY & CENTRAL CONTROL			
2.100 Security Surveillance Post			
2.101	Security Surveillance Post (SSP)	1	1
2.102	Main ESCS Room	1	1
2.103	Secure Vestibule	1	2
2.104	Communications Service Entrance Room	1	2
2.105	Washroom	1	3
3.000 ADMITTING & DISCHARGE (Based upon 50 new admissions per day)			
3.100 Admitting/Processing/Transfer/Discharge			
3.101	Secure Vehicle Yard	1	3
3.310	Storage Shed	1	5
3.102	Vehicular Secure Vestibule	1	2
3.103	A&D Sally Port	1	2
3.104	Inmate Washroom	1	4
3.105	Officer Washroom	1	4
3.106	Booking Lobby	1	3
3.107	ADW Security Intelligence	1	4
3.108	ADW Sentence Management Unit	1	4
3.109	SMU Secretary	1	4
3.110	Clerk	1	4
3.111	Instructor	1	4
3.112	Classification Officers	3	4
3.113	Conditional Release Coordinator	2	4
3.114	Kfiles/Warrant Entry	1	4
3.115	Audit	1	4
3.116	Security	2	4

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
3.117	Sheriff Manager	1	4
3.118	Sheriff's Office	1	4
3.119	Sheriff's Armory	1	1
3.120	Supplies Closet	1	5
3.121	Inmate Waiting Area	2	3
3.122	Decontamination/DNA Retrieval Cell	1	2
3.123	Supervisor A&D	1	4
3.124	Sentence Management Supervisor	1	4
3.125	A&D File Storage	1	5
3.126	Equipment Room	1	5
3.127	Single Holding Cells (Dirty)	4	2
3.128	Group Holding Cells (Dirty)	3	2
3.129	Shower Room	2	3
3.130	Booking/Video Capture Station	1	2
3.131	A&D Security Post	2	3
3.132	CPIC Terminal Room	1	4
3.133	Finger Print Station	1	3
3.134	Medical Screening	2	3
3.135	Mental Health Screening	2	3
3.136	Classification/Interview Rooms	2	3
3.137	Handwash Station	4	5
3.138	Search Area	1	3
3.139	Institutional Clothing Issue	1	3
3.140	Contaminated Clothes Handling	1	4
3.141	Clothing Rack Storage	1	4
3.142	Meal Cart Alcove	1	4
3.143	Single Holding Cells (Clean)	5	2
3.144	Group Holding Cells (Clean)	3	2
3.145	BOSS Chair Station	1	3
3.146	Janitor's Closet	1	4
3.147	Video Court Waiting Area	1	3
3.148	Video Courtroom (small)	6	3
3.149	Video Courtroom (large)	3	3
3.150	Video Court Officer Station	1	4
3.200	Admissions Property Storage		
3.201	Property Staging	1	4
3.202	Equipment Room	1	5
3.203	Institutional Clothing Storage	1	4
3.204	Unclaimed Property Storage	1	4
3.205	Inmate Personal Property/Clothing Storage	1	4

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
3.206	Staff Washrooms	1	4
3.300	Short-term Holding		
3.301	Reception Area/Effects Pickup	1	4
3.302	Supervisor's Office	1	4
3.303	Sleeping Rooms	15	3
3.304	Multipurpose Room	1	4
3.305	Washrooms and Showers	1	4
3.306	Interview/Search Room	2	4
3.307	Warming Kitchen	1	4
3.308	Storage	2	5
4.000 FACILITY ADMINISTRATION			
4.100	Administration		
4.101	Lobby	1	5
4.102	Warden's Office	1	4
4.103	ADW Standards	1	4
4.104	Warden's Secretary	1	4
4.105	DW Assistant	2	4
4.106	Visits and Communications Clerk	2	4
4.200	Business and Finance		
4.201	Director Of Business and Finance	1	4
4.202	Office Manager	1	4
4.203	Inmate Accounts	2	4
4.204	Pay/Leave Clerk	1	4
4.205	Accounts Payable	2	4
4.206	Financial Clerk	1	4
4.207	Purchasing Officer	1	4
4.300	Operations		
4.301	Deputy Warden Operations	1	4
4.302	ADW's Regulations	2	4
4.303	Corrections Supervisor/ Discipline Coordinator	3	4
4.304	Drop-In Workstations	6	5
4.305	Corrections Supervisor - Seg	1	4
4.400	Programmes		
4.401	Deputy Warden of Programmes	1	4
4.402	ADW Programmes	2	4
4.403	ADW Case Management	1	4
4.404	ADW Work Programmes	1	4
4.405	Correctional Super. - Programmes	3	4
4.406	Visits Officer	1	4
4.407	Core Programme Coordinator	1	4

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
4.408	Core Programme Officer	3	4
4.500	Sentence Management Unit		
4.501	Deputy Warden Offender Management	1	4
4.600	Staff Administration		
4.601	ADW, Staffing	1	4
4.602	Scheduler	1	4
4.603	Training Instructor	1	4
4.604	Recruiter	1	4
4.605	JI Instructor	1	4
4.700	Shared Support Spaces		
4.701	Administration Entrance Vestibule	1	4
4.702	File/Mail/Printing/Storage Room	1	4
4.703	Telephone Rooms	1	4
4.704	Secure Closet	1	4
4.705	Main C.E.R.	1	3
4.706	Janitor's Closet	1	4
4.707	Breakroom	1	4
4.708	Small Meeting Room	2	3
4.709	Large Meeting Room	1	3
4.710	Incident Command/Board Room	1	1
4.711	Washrooms	2	4
4.712	Handwash Station	2	4
5.000 HEALTH SERVICES			
5.100	Health Clinic (Adjacent to A&D)		
5.101	Holding Cell Lobby	1	4
5.102	Group Holding Cells	2	4
5.103	Single Holding Cells	2	4
5.104	Officer Workstation	1	4
5.105	Treatment Lobby	1	4
5.106	Inmate Washroom	2	4
5.107	Treatment/First Aid Room	1	3
5.108	Examination Room	2	4
5.109	Interview Rooms	2	4
5.110	Doctor Exam Suite	1	4
5.111	Dental Operator	1	3
5.112	Dental Compressor Room	1	3
5.113	Dental Storage	1	5
5.114	Digital Imaging Room	1	3
5.115	Physiotherapy Room	1	4
5.116	X-ray Room	1	4

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
5.117	Clean Sterile Supply	1	5
5.118	Soiled Holding	1	5
5.119	Bio-Hazardous Waste Storage	1	4
5.120	Janitor's Closet	1	4
5.200 Health Services Administration			
5.201	Nurse/Administration Area	1	3
5.202	Nurse Supervisor's Office	1	4
5.203	Drug & Alcohol Counselor	1	4
5.204	Mental Health Liaison Officer	2	4
5.205	Methadone Administrator	1	4
5.206	Visiting Professional	1	4
5.207	Small Meeting Room	1	4
5.208	File Storage	1	5
5.209	Staff Washroom	2	4
5.210	Dispensary Vestibule	1	4
5.211	Pharmacy	1	3
5.212	Autoclave Sterilization Area	1	3
5.213	Equipment Storage	1	5
5.214	Bulk Storage	1	5
5.215	Handwash Station	2	4
5.216	Health Staff Breakroom	1	4
5.300 Health Services Inpatient Cells (12 cells)			
5.301	Negative Pressure Isolation Cells-Single Occupancy	2	1
5.302	Positive Pressure Isolation Cells-Single Occupancy	1	1
5.303	Isolation Ante Room	1	3
5.304	Healthcare Cells - Single Occupancy	9	2
5.305	Healthcare Dayroom	1	3
5.306	Harm Reduction Cell	1	1
5.307	WC for Harm Reduction Cell	1	1
5.308	Showers	2	3
5.309	Interview Rooms	2	4
5.310	Outdoor Courtyard	1	3
5.311	Food Service Pantry	1	3
5.312	Storage	1	5
5.400 Special Management Unit (2 groupings of 12=24 beds)			
5.401	Officer's Workstation	1	2
5.402	Staff Washroom	1	4
5.403	Inmate Cell	24	2
5.404	Triage Room	1	4
5.405	Consult Room	2	4

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
5.406	Multipurpose Room	1	3
5.407	Outdoor Recreation Courtyard	1	3
5.408	Fitness Room	1	3
5.409	Video Visitation Booth	6	3
5.410	Inmate Telephone	4	3
5.411	Showers	4	3
5.412	Food Cart Storage	1	3
5.413	Servery/ Tray Dispensing	1	3
5.414	Hair Care Room	1	5
5.415	Storage	2	5
5.416	Janitor's Closet	1	4
5.417	Dayroom	1	3
6.000 PROGRAMME SERVICES			
6.100 Central Programme Cluster			
6.101	Work Programme Security Office	3	4
6.102	Multi-Purpose Room	2	4
6.103	Large Workshop	1	4
6.104	Small Workshop	2	4
6.105	Equipment Storage Room	3	5
6.106	Workshop Instructors	1	4
6.107	Inmate Muster	1	4
6.108	Inmate Changing/Shower Area	1	4
6.109	Open Custody Outside Work Programme Breakroom	1	4
6.110	Aboriginal Programme Room	1	4
6.111	Volunteer Area	1	5
6.112	Volunteer Office	1	5
6.113	Loading Area	1	4
6.114	Central Housekeeping Storage	1	4
6.115	Pantry	1	5
6.116	Equipment Storage	1	5
6.117	Chaplain's Office	1	4
6.118	Counseling Room	2	4
6.119	Library	1	4
6.120	Law Library	1	4
6.121	Librarian	1	4
6.122	Library Work Room	1	4
6.123	Handwash Station	1	4
6.124	Staff Washroom	3	4
6.125	Inmate Washroom	1	4
6.126	Janitor's Closet	1	4

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
6.127	Outside Vocational Work Area	1	5
6.128	Outside Sweat Lodge	1	5
6.129	Greenhouse	1	5
6.130	Greenhouse Storage	1	5
6.131	Inmate Programs Sally Port	1	2
6.132	Outside Vocational Work Area	2	5
7.000 LIVING UNITS			
7.100 General Population Living Unit			
7.101	Dayroom	8	3
7.102	Officer's Workstation	8	2
7.103	Staff Washroom	8	3
7.104	Inmate Cell	280	3
7.105	Inmate Cell (Handicapped accessible)	8	3
7.106	Interview Room	16	4
7.107	Multipurpose Room	8	4
7.108	Outdoor Recreation Courtyard	8	3
7.109	Fitness Room	8	3
7.110	Video Visitation Booths	48	3
7.111	Inmate Telephone	48	3
7.112	Private Telephone Room	8	3
7.113	Showers	72	3
7.114	Food Cart Storage	8	3
7.115	Servery/Tray Dispensing	8	3
7.116	Hair Grooming Room	8	5
7.117	Storage	16	5
7.118	Janitor's Closet	8	4
7.200 Open Population Living Unit			
7.201	Dayroom	2	2
7.202	Officer's Workstation	2	2
7.203	Staff Washroom	2	3
7.204	Inmate Cell	70	2
7.205	Inmate Cell (Handicapped accessible)	2	2
7.206	Interview Room	4	3
7.207	Multipurpose Room	2	4
7.208	Outdoor Recreation Courtyard	2	3
7.209	Fitness Room	2	3
7.210	Video Visitation Booth	12	3
7.211	Inmate Telephone	12	3
7.212	Private Telephone Room	2	3
7.213	Showers	18	3

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
7.214	Food Cart Storage	2	3
7.215	Servery/Tray Dispensing	2	3
7.216	Hair Grooming Room	2	5
7.217	Storage	4	5
7.218	Janitor's Closet	2	4
7.300	Segregation/Observation Housing		
7.301	Entrance Vestibule	1	2
7.302	Elevator	1	2
7.303	Officer's Workstation	1	2
7.304	Staff Washroom	1	3
7.305	Inmate Cell	35	2
7.306	Inmate Cell (Handicapped accessible)	1	2
7.307	Interview/Triage Room	1	3
7.308	Interview Room	2	3
7.309	Holding Cells	3	3
7.310	Hearing Room	1	2
7.311	Outdoor Recreation Courtyard	3	3
7.312	Video Visitation Booth	3	3
7.313	Inmate Telephone	3	3
7.314	Private Telephone Room	1	3
7.315	Showers	6	3
7.316	Servery Alcove	1	3
7.317	Storage	2	5
7.318	Janitor's Closet	1	4
7.400	Women's Living Unit		
7.401	Dayroom	1	3
7.402	Officer's Workstation	1	2
7.403	Staff Washroom	1	3
7.404	Inmate Cell	17	2
7.405	Inmate Cell (Handicapped accessible)	1	2
7.406	Triage Room	1	3
7.407	Interview Room	2	3
7.408	Multipurpose Room	1	3
7.409	Outdoor Recreation Courtyard	1	3
7.410	Fitness Room	1	3
7.411	Video Visitation Booth	6	3
7.412	Inmate Telephone	4	3
7.413	Private Telephone Room	1	3
7.414	Showers	4	3
7.415	Food Cart Storage	1	3

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
7.416	Servery/Tray Dispensing	1	3
7.417	Hair Care Room	1	5
7.418	Storage	2	5
7.419	Janitor's Closet	1	4
7.420	Laundry Room	1	3
7.500 Pod Support			
7.501	Correctional Supervisor	3	3
7.502	Staff Work Room	3	4
7.503	Staff Washroom	3	3
7.504	Video Courtroom	3	3
7.505	Video-Equipped Interview Room	6	3
7.506	Private Interview Rooms	6	3
7.507	Triage Room	3	3
7.508	Inmate Washroom	3	4
7.509	Staff Breakroom	3	4
7.510	OCP	3	1
7.511	OCP Washroom	3	3
7.512	Sub-ESCS/Comm Room	3	1
7.513	Secure Vestibule	3	2
7.514	Janitor's Closet	3	4
8.000 STAFF SERVICES			
8.100 Training			
8.101	Entrance Vestibule	1	4
8.102	Tactical Team Preparation Area	1	3
8.103	Training Center	1	4
8.104	Storage	2	5
8.105	Small Training Room	1	4
8.106	Computer Training Center	1	4
8.107	Computer Training Storage	1	5
8.108	General Storage	1	5
8.109	AV Storage	1	5
8.110	Janitor's Closet	1	4
8.111	Muster Room	1	4
8.200 Staff Support Services			
8.201	Breakroom	1	4
8.202	Outdoor Break Area	1	5
8.203	Resource Centre	1	4
8.204	Storage Room	1	5
8.205	Handwash Station	2	4
8.206	Staff Washrooms	2	4

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
8.207	Wellness Center	1	4
8.208	Male Locker Rooms	1	4
8.209	Female Locker Rooms	1	4
8.210	Quiet Room	2	4
8.211	Janitor's Closet	1	4
9.000 FOOD SERVICES			
9.100 Food Services			
9.101	Main Holding Cooler Room	1	2
9.102	General Freezer Room	1	2
9.104	Bulk Dry Goods Store	1	4
9.105	Kitchen Day Store	1	4
9.106	Kitchen Office	1	4
9.107	Preparation/Finishing Area	1	3
9.108	Tray Soaking	1	3
9.109	Staff Break Room	1	4
9.110	Beverage Production Area	1	4
9.111	Tray Plating Conveyor with Meals Tray Storage Area	1	3
9.112	Tray/M meal Delivery Cart Holding Area	1	3
9.113	Cart Wash Area	1	3
9.114	Central Dishwashing	1	3
9.115	Meal Tray Return Storage Area	1	4
9.116	Garbage Cooler/Sorting Area	1	4
9.117	Chemical Store	1	4
9.118	Washroom, Staff w/ Lockers	2	4
9.119	Handwash Station	4	4
9.120	Eyewash Station	1	4
9.121	Canteen Item Storage and Sorting	1	4
9.122	Loading Dock	1	3
9.123	Receiving Room	1	4
9.124	Janitor Closet	1	4
10.000 LAUNDRY SERVICES			
10.100 Laundry Services			
10.101	Work Programme Officer - Laundry	1	4
10.102	Internal Pick-up/Delivery	1	4
10.103	Laundry Sorting/Dirty Room	1	4
10.104	Washing and Drying Area	1	3
10.105	Laundry Staging/Clean	1	4
10.106	Handwash Station	1	4
10.107	Staff Washroom	1	4
10.108	Inmate Washroom	1	4

Ref. Num. of Functional Unit (as per Room Information Sheets)	Space Designation	Number of Functional Units	Priority Level
10.109	Break Area	1	4
10.110	Chemical Storage/Supplies	1	3
10.111	Eye Wash Station	1	3
11.000 MAINTENANCE AND STORES			
11.100 Stores			
11.101	Stores	1	4
11.102	Shipping/Receiving/Transition	1	4
11.103	Shipping/Receiving Office	1	4
11.104	Garbage Disposal	1	3
11.105	Staff Washroom	2	4
11.106	Deluge Shower	1	4
11.107	Handwash Station	2	4
11.108	Janitor's Closet	1	4
11.109	Services Sally Port	1	2
11.110	Landscape Equipment Storage	1	5
SYSTEMS			
	Fire Suppression (Section 9.2 of Schedule 3)		2
	Plumbing (Section 9.3 of Schedule 3)		3
	Heating, Ventilation and Air Conditioning (Section 9.4 of Schedule 3)		3
	Electrical (Section 9.6 of Schedule 3)		1
	Communication (Section 9.7 of Schedule 3)		2
	ESCS (Section 9.8 of Schedule 3)		1
	EOC (Section 9.8.11 of Schedule 3)		1

Total Units 1382

APPENDIX 8B

CONSTRUCTION PERIOD PAYMENTS

1. CONSTRUCTION PERIOD PAYMENT AMOUNTS

The Province will make monthly payments (each a “**Construction Period Payment**”) to Project Co during the Construction Period in accordance with this Appendix. The amount payable by the Province to Project Co as at the end of the month indicated in Table 8B-1 will be the amount by which the lesser of:

- (a) the cumulative maximum applicable to that month as set out in Column B of Table 8B-1; and
- (b) 40% of the Cost to Date at the end of that month,

exceeds the total of all Construction Period Payments previously paid by the Province to Project Co under this Appendix. These payments are intended as funding and to qualify as one of the listed items in paragraph 12(1)(x) of the Income Tax Act (Canada). The cumulative maximum of the Construction Period Payments must not exceed [amount to be confirmed prior to Financial Close in cell E41 of Form A1 in the Financial Model].

2. INVOICING AND PAYMENT

Project Co will invoice the Province for Construction Period Payments at any time after the end of the applicable month and will include with that invoice:

- (c) a certificate of the Independent Certifier certifying (in the manner outlined in Section 2.4 [Payment Certificates] of Schedule 2 [Design and Construction Protocols]) the Cost to Date as at the end of the applicable month. The Cost to Date will be determined in accordance with Section 3.4(a) of the Design-Build Agreement and will be the sum of s. 3.4(a)(1) and s. 3.4(a)(4), provided that in no event will the Province fund more than 40% of the cost of the Design and Construction properly completed and in no event will the Province fund the Retention Amount (as defined in the Design-Build Agreement) or pay funds into the Construction Delay Account (as defined in the Design-Build Agreement);
- (d) the amount of GST payable;
- (e) copies of all certifications (including from the Lender’s Technical Advisor) provided to, and communications from, the Senior Lenders (other than those previously provided under this Appendix) with respect to payments to the Design-Builder, the cost to complete the Project, the sufficiency of funds available to Project Co to complete the Project and the likelihood that Service Commencement will be achieved by the Longstop Date;
- (f) a certificate of an officer of Project Co certifying that:

- (1) Project Co is in compliance with all applicable provisions of the Senior Financing Agreements and the Design-Build Agreement with respect to all payments to the Design-Builder made on or before the date of the invoice;
- (2) Project Co has taken all steps required under the Senior Financing Agreement to draw the funds required (in addition to the amounts invoiced to the Province) to pay the Design-Builder and knows of no reason why such funds would not be advanced as requested;
- (3) Project Co is not in default under either the Project Agreement or any of the Senior Financing Agreements;
- (4) Project Co has available to it sufficient funds to complete the Project; and
- (5) the Project can reasonably be expected to achieve Service Commencement by the Longstop Date.

The Province will review each invoice submitted in accordance with this Section of this Appendix within 5 Business Days and pay the amount approved by the Province within 10 Business Days after receipt of the invoice.

Table 8B-1 [Cumulative Maximum Construction Period Payments]

A	B
Month	Cumulative Maximum
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	

A	B
Month	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	

APPENDIX 8C

SERVICE PAYMENTS

This Appendix 8C consists of three tables:

- (g) Table 1 [Capital Payments];
- (h) Table 2 [Life Cycle Payments]; and
- (i) Table 3 [Facility Maintenance Payments].

Note: Payments and totals shown are amounts rounded to the nearest whole dollar.

Table 1 [Capital Payments]

Note: The amounts set out in this Table are not Index Linked.

A	B
Payment Period	Capital Payment (not Index Linked)
Month 1	_____
Month 2	_____
Month 3	_____
Month 4	_____
Month 5	_____
Month 6	_____
Month 7	_____
Month 8	_____
Month 9	_____
Month 10	_____
Month 11	_____
Month 12	_____
Month 13	_____
Month 14	_____
Month 15	_____
Month 16	_____
Month 17	_____

A	B
Payment Period	Capital Payment (not Index Linked)
Month 18	
Month 19	
Month 20	
Month 21	
Month 22	
Month 23	
Month 24	
Month 25	
Month 26	
Month 27	
Month 28	
Month 29	
Month 30	
Month 31	
Month 32	
Month 33	
Month 34	
Month 35	
Month 36	
Month 37	
Month 38	
Month 39	
Month 40	
Month 41	
Month 42	
Month 43	
Month 44	
Month 45	
Month 46	
Month 47	
Month 48	
Month 49	
Month 50	
Month 51	
Month 52	

A	B
Payment Period	Capital Payment (not Index Linked)
Month 53	
Month 54	
Month 55	
Month 56	
Month 57	
Month 58	
Month 59	
Month 60	
Month 61	
Month 62	
Month 63	
Month 64	
Month 65	
Month 66	
Month 67	
Month 68	
Month 69	
Month 70	
Month 71	
Month 72	
Month 73	
Month 74	
Month 75	
Month 76	
Month 77	
Month 78	
Month 79	
Month 80	
Month 81	
Month 82	
Month 83	
Month 84	
Month 85	
Month 86	
Month 87	

A	B
Payment Period	Capital Payment (not Index Linked)
Month 88	
Month 89	
Month 90	
Month 91	
Month 92	
Month 93	
Month 94	
Month 95	
Month 96	
Month 97	
Month 98	
Month 99	
Month 100	
Month 101	
Month 102	
Month 103	
Month 104	
Month 105	
Month 106	
Month 107	
Month 108	
Month 109	
Month 110	
Month 111	
Month 112	
Month 113	
Month 114	
Month 115	
Month 116	
Month 117	
Month 118	
Month 119	
Month 120	
Month 121	
Month 122	

A	B
Payment Period	Capital Payment (not Index Linked)
Month 123	
Month 124	
Month 125	
Month 126	
Month 127	
Month 128	
Month 129	
Month 130	
Month 131	
Month 132	
Month 133	
Month 134	
Month 135	
Month 136	
Month 137	
Month 138	
Month 139	
Month 140	
Month 141	
Month 142	
Month 143	
Month 144	
Month 145	
Month 146	
Month 147	
Month 148	
Month 149	
Month 150	
Month 151	
Month 152	
Month 153	
Month 154	
Month 155	
Month 156	
Month 157	

A	B
Payment Period	Capital Payment (not Index Linked)
Month 158	
Month 159	
Month 160	
Month 161	
Month 162	
Month 163	
Month 164	
Month 165	
Month 166	
Month 167	
Month 168	
Month 169	
Month 170	
Month 171	
Month 172	
Month 173	
Month 174	
Month 175	
Month 176	
Month 177	
Month 178	
Month 179	
Month 180	
Month 181	
Month 182	
Month 183	
Month 184	
Month 185	
Month 186	
Month 187	
Month 188	
Month 189	
Month 190	
Month 191	
Month 192	

A	B
Payment Period	Capital Payment (not Index Linked)
Month 193	
Month 194	
Month 195	
Month 196	
Month 197	
Month 198	
Month 199	
Month 200	
Month 201	
Month 202	
Month 203	
Month 204	
Month 205	
Month 206	
Month 207	
Month 208	
Month 209	
Month 210	
Month 211	
Month 212	
Month 213	
Month 214	
Month 215	
Month 216	
Month 217	
Month 218	
Month 219	
Month 220	
Month 221	
Month 222	
Month 223	
Month 224	
Month 225	
Month 226	
Month 227	

A	B
Payment Period	Capital Payment (not Index Linked)
Month 228	
Month 229	
Month 230	
Month 231	
Month 232	
Month 233	
Month 234	
Month 235	
Month 236	
Month 237	
Month 238	
Month 239	
Month 240	
Month 241	
Month 242	
Month 243	
Month 244	
Month 245	
Month 246	
Month 247	
Month 248	
Month 249	
Month 250	
Month 251	
Month 252	
Month 253	
Month 254	
Month 255	
Month 256	
Month 257	
Month 258	
Month 259	
Month 260	
Month 261	
Month 262	

A	B
Payment Period	Capital Payment (not Index Linked)
Month 263	
Month 264	
Month 265	
Month 266	
Month 267	
Month 268	
Month 269	
Month 270	
Month 271	
Month 272	
Month 273	
Month 274	
Month 275	
Month 276	
Month 277	
Month 278	
Month 279	
Month 280	
Month 281	
Month 282	
Month 283	
Month 284	
Month 285	
Month 286	
Month 287	
Month 288	
Month 289	
Month 290	
Month 291	
Month 292	
Month 293	
Month 294	
Month 295	
Month 296	
Month 297	

A	B
Payment Period	Capital Payment (not Index Linked)
Month 298	
Month 299	
Month 300	
Month 301	
Month 302	
Month 303	
Month 304	
Month 305	
Month 306	
Month 307	
Month 308	
Month 309	
Month 310	
Month 311	
Month 312	
Month 313	
Month 314	
Month 315	
Month 316	
Month 317	
Month 318	
Month 319	
Month 320	
Month 321	
Month 322	
Month 323	
Month 324	
Month 325	
Month 326	
Month 327	
Month 328	
Month 329	
Month 330	
Month 331	
Month 332	

A	B
Payment Period	Capital Payment (not Index Linked)
Month 333	_____
Month 334	_____
Month 335	_____
Month 336	_____
Month 337	_____
Month 338	_____
Month 339	_____
Month 340	_____
Month 341	_____
Month 342	_____
Month 343	_____
Month 344	_____
Month 345	_____
Month 346	_____
Month 347	_____
Month 348	_____
Month 349	_____
Month 350	_____
Month 351	_____
Month 352	_____
Month 353	_____
Month 354	_____
Month 355	_____
Month 356	_____
Month 357	_____
Month 358	_____
Month 359	_____
Month 360	_____
Total	_____

Table 2 [Life Cycle Payments]

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 1	
Month 2	
Month 3	
Month 4	
Month 5	
Month 6	
Month 7	
Month 8	
Month 9	
Month 10	
Month 11	
Month 12	
Month 13	
Month 14	
Month 15	
Month 16	
Month 17	
Month 18	
Month 19	
Month 20	
Month 21	
Month 22	
Month 23	
Month 24	
Month 25	
Month 26	
Month 27	
Month 28	
Month 29	
Month 30	
Month 31	
Month 32	
Month 33	
Month 34	

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 35	
Month 36	
Month 37	
Month 38	
Month 39	
Month 40	
Month 41	
Month 42	
Month 43	
Month 44	
Month 45	
Month 46	
Month 47	
Month 48	
Month 49	
Month 50	
Month 51	
Month 52	
Month 53	
Month 54	
Month 55	
Month 56	
Month 57	
Month 58	
Month 59	
Month 60	
Month 61	
Month 62	
Month 63	
Month 64	
Month 65	
Month 66	
Month 67	
Month 68	
Month 69	
Month 70	

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 71	
Month 72	
Month 73	
Month 74	
Month 75	
Month 76	
Month 77	
Month 78	
Month 79	
Month 80	
Month 81	
Month 82	
Month 83	
Month 84	
Month 85	
Month 86	
Month 87	
Month 88	
Month 89	
Month 90	
Month 91	
Month 92	
Month 93	
Month 94	
Month 95	
Month 96	
Month 97	
Month 98	
Month 99	
Month 100	
Month 101	
Month 102	
Month 103	
Month 104	
Month 105	
Month 106	

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 107	
Month 108	
Month 109	
Month 110	
Month 111	
Month 112	
Month 113	
Month 114	
Month 115	
Month 116	
Month 117	
Month 118	
Month 119	
Month 120	
Month 121	
Month 122	
Month 123	
Month 124	
Month 125	
Month 126	
Month 127	
Month 128	
Month 129	
Month 130	
Month 131	
Month 132	
Month 133	
Month 134	
Month 135	
Month 136	
Month 137	
Month 138	
Month 139	
Month 140	
Month 141	
Month 142	

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 143	
Month 144	
Month 145	
Month 146	
Month 147	
Month 148	
Month 149	
Month 150	
Month 151	
Month 152	
Month 153	
Month 154	
Month 155	
Month 156	
Month 157	
Month 158	
Month 159	
Month 160	
Month 161	
Month 162	
Month 163	
Month 164	
Month 165	
Month 166	
Month 167	
Month 168	
Month 169	
Month 170	
Month 171	
Month 172	
Month 173	
Month 174	
Month 175	
Month 176	
Month 177	
Month 178	

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 179	
Month 180	
Month 181	
Month 182	
Month 183	
Month 184	
Month 185	
Month 186	
Month 187	
Month 188	
Month 189	
Month 190	
Month 191	
Month 192	
Month 193	
Month 194	
Month 195	
Month 196	
Month 197	
Month 198	
Month 199	
Month 200	
Month 201	
Month 202	
Month 203	
Month 204	
Month 205	
Month 206	
Month 207	
Month 208	
Month 209	
Month 210	
Month 211	
Month 212	
Month 213	
Month 214	

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 215	
Month 216	
Month 217	
Month 218	
Month 219	
Month 220	
Month 221	
Month 222	
Month 223	
Month 224	
Month 225	
Month 226	
Month 227	
Month 228	
Month 229	
Month 230	
Month 231	
Month 232	
Month 233	
Month 234	
Month 235	
Month 236	
Month 237	
Month 238	
Month 239	
Month 240	
Month 241	
Month 242	
Month 243	
Month 244	
Month 245	
Month 246	
Month 247	
Month 248	
Month 249	
Month 250	

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 251	
Month 252	
Month 253	
Month 254	
Month 255	
Month 256	
Month 257	
Month 258	
Month 259	
Month 260	
Month 261	
Month 262	
Month 263	
Month 264	
Month 265	
Month 266	
Month 267	
Month 268	
Month 269	
Month 270	
Month 271	
Month 272	
Month 273	
Month 274	
Month 275	
Month 276	
Month 277	
Month 278	
Month 279	
Month 280	
Month 281	
Month 282	
Month 283	
Month 284	
Month 285	
Month 286	

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 287	
Month 288	
Month 289	
Month 290	
Month 291	
Month 292	
Month 293	
Month 294	
Month 295	
Month 296	
Month 297	
Month 298	
Month 299	
Month 300	
Month 301	
Month 302	
Month 303	
Month 304	
Month 305	
Month 306	
Month 307	
Month 308	
Month 309	
Month 310	
Month 311	
Month 312	
Month 313	
Month 314	
Month 315	
Month 316	
Month 317	
Month 318	
Month 319	
Month 320	
Month 321	
Month 322	

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 323	
Month 324	
Month 325	
Month 326	
Month 327	
Month 328	
Month 329	
Month 330	
Month 331	
Month 332	
Month 333	
Month 334	
Month 335	
Month 336	
Month 337	
Month 338	
Month 339	
Month 340	
Month 341	
Month 342	
Month 343	
Month 344	
Month 345	
Month 346	
Month 347	
Month 348	
Month 349	
Month 350	
Month 351	
Month 352	
Month 353	
Month 354	
Month 355	
Month 356	
Month 357	
Month 358	

A	B
Payment Period	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 359	
Month 360	
Total	

Table 3 [Facility Maintenance Payments]

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 1	
Month 2	
Month 3	
Month 4	
Month 5	
Month 6	
Month 7	
Month 8	
Month 9	
Month 10	
Month 11	
Month 12	
Month 13	
Month 14	
Month 15	
Month 16	
Month 17	
Month 18	
Month 19	
Month 20	
Month 21	
Month 22	
Month 23	
Month 24	
Month 25	
Month 26	
Month 27	
Month 28	
Month 29	
Month 30	
Month 31	

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 32	
Month 33	
Month 34	
Month 35	
Month 36	
Month 37	
Month 38	
Month 39	
Month 40	
Month 41	
Month 42	
Month 43	
Month 44	
Month 45	
Month 46	
Month 47	
Month 48	
Month 49	
Month 50	
Month 51	
Month 52	
Month 53	
Month 54	
Month 55	
Month 56	
Month 57	
Month 58	
Month 59	
Month 60	
Month 61	
Month 62	
Month 63	
Month 64	
Month 65	

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 66	
Month 67	
Month 68	
Month 69	
Month 70	
Month 71	
Month 72	
Month 73	
Month 74	
Month 75	
Month 76	
Month 77	
Month 78	
Month 79	
Month 80	
Month 81	
Month 82	
Month 83	
Month 84	
Month 85	
Month 86	
Month 87	
Month 88	
Month 89	
Month 90	
Month 91	
Month 92	
Month 93	
Month 94	
Month 95	
Month 96	
Month 97	
Month 98	
Month 99	

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 100	
Month 101	
Month 102	
Month 103	
Month 104	
Month 105	
Month 106	
Month 107	
Month 108	
Month 109	
Month 110	
Month 111	
Month 112	
Month 113	
Month 114	
Month 115	
Month 116	
Month 117	
Month 118	
Month 119	
Month 120	
Month 121	
Month 122	
Month 123	
Month 124	
Month 125	
Month 126	
Month 127	
Month 128	
Month 129	
Month 130	
Month 131	
Month 132	
Month 133	

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 134	
Month 135	
Month 136	
Month 137	
Month 138	
Month 139	
Month 140	
Month 141	
Month 142	
Month 143	
Month 144	
Month 145	
Month 146	
Month 147	
Month 148	
Month 149	
Month 150	
Month 151	
Month 152	
Month 153	
Month 154	
Month 155	
Month 156	
Month 157	
Month 158	
Month 159	
Month 160	
Month 161	
Month 162	
Month 163	
Month 164	
Month 165	
Month 166	
Month 167	

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 168	
Month 169	
Month 170	
Month 171	
Month 172	
Month 173	
Month 174	
Month 175	
Month 176	
Month 177	
Month 178	
Month 179	
Month 180	
Month 181	
Month 182	
Month 183	
Month 184	
Month 185	
Month 186	
Month 187	
Month 188	
Month 189	
Month 190	
Month 191	
Month 192	
Month 193	
Month 194	
Month 195	
Month 196	
Month 197	
Month 198	
Month 199	
Month 200	
Month 201	

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 202	
Month 203	
Month 204	
Month 205	
Month 206	
Month 207	
Month 208	
Month 209	
Month 210	
Month 211	
Month 212	
Month 213	
Month 214	
Month 215	
Month 216	
Month 217	
Month 218	
Month 219	
Month 220	
Month 221	
Month 222	
Month 223	
Month 224	
Month 225	
Month 226	
Month 227	
Month 228	
Month 229	
Month 230	
Month 231	
Month 232	
Month 233	
Month 234	
Month 235	

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 236	
Month 237	
Month 238	
Month 239	
Month 240	
Month 241	
Month 242	
Month 243	
Month 244	
Month 245	
Month 246	
Month 247	
Month 248	
Month 249	
Month 250	
Month 251	
Month 252	
Month 253	
Month 254	
Month 255	
Month 256	
Month 257	
Month 258	
Month 259	
Month 260	
Month 261	
Month 262	
Month 263	
Month 264	
Month 265	
Month 266	
Month 267	
Month 268	
Month 269	

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 270	
Month 271	
Month 272	
Month 273	
Month 274	
Month 275	
Month 276	
Month 277	
Month 278	
Month 279	
Month 280	
Month 281	
Month 282	
Month 283	
Month 284	
Month 285	
Month 286	
Month 287	
Month 288	
Month 289	
Month 290	
Month 291	
Month 292	
Month 293	
Month 294	
Month 295	
Month 296	
Month 297	
Month 298	
Month 299	
Month 300	
Month 301	
Month 302	
Month 303	

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 304	
Month 305	
Month 306	
Month 307	
Month 308	
Month 309	
Month 310	
Month 311	
Month 312	
Month 313	
Month 314	
Month 315	
Month 316	
Month 317	
Month 318	
Month 319	
Month 320	
Month 321	
Month 322	
Month 323	
Month 324	
Month 325	
Month 326	
Month 327	
Month 328	
Month 329	
Month 330	
Month 331	
Month 332	
Month 333	
Month 334	
Month 335	
Month 336	
Month 337	

A	B
Payment Period	Facility Maintenance Payment (\$ as of Base Date) (Index Linked)
Month 338	
Month 339	
Month 340	
Month 341	
Month 342	
Month 343	
Month 344	
Month 345	
Month 346	
Month 347	
Month 348	
Month 349	
Month 350	
Month 351	
Month 352	
Month 353	
Month 354	
Month 355	
Month 356	
Month 357	
Month 358	
Month 359	
Month 360	
Total	

APPENDIX 8D

RESPONSE TIME AND RECTIFICATION PERIOD REQUIREMENTS

Response Time and Rectification Period requirements in respect of Unavailability Events			
Category of Unavailability Event (pursuant to Schedule 1)	Response Time	Functional Unit Priority Level (pursuant to Appendix 8A)	Rectification Period (Hours)
Emergency Event	15 minutes	One	2
		Two	2
		Three	3
		Four	3
		Five	4
Critical Event	30 minutes	One	4
		Two	4
		Three	6
		Four	6
		Five	8
Routine Event	2 hours	One	48
		Two	48
		Three	84
		Four	120
		Five	120

Response Time and Rectification Period requirements in respect of Service Failures		
Service Failure Designation (pursuant to Schedule 4)	Response Time	Rectification Period (Hours)
High	15 minutes	4
Medium	30 minutes	24
Low	2 hours	168

SCHEDULE 9

COMPENSATION ON TERMINATION

TABLE OF CONTENTS

1. TERMINATION FOR PROVINCE EVENT OF DEFAULT OR AT PROVINCE'S OPTION	1
1.1 Calculation	1
1.2 Notice to the Province	2
2. TERMINATION FOR PROJECT CO EVENT OF DEFAULT: RE-BIDDING PROCESS	3
2.1 Province Election	3
2.2 Re-Bidding Process	3
2.3 Release of Information	4
2.4 Determination and Payment of Termination Payment	4
2.5 Notice to Project Co.....	4
2.6 New Project Agreement.....	4
2.7 Subsequent Province Election.....	4
2.8 Province Decision Not to Complete.....	5
2.9 Time Limit For Re-Bidding Process.....	5
2.10 Appointment of Re-Bidding Process Monitor	5
2.11 Role of Re-Bidding Process Monitor	5
2.12 Post-Termination Date Payment	5
3. PROJECT CO EVENT OF DEFAULT: NO RE-BIDDING PROCESS.....	6
3.1 Application for No Re-Bidding Process	6
3.2 Determination of Adjusted Estimated Market Value.....	6
3.3 Determination by Valuator	8
3.4 Determination and Payment of Termination Payment	8
4. NO-FAULT TERMINATION.....	8
4.1 Calculation	8
4.2 Notice to the Province	9
5. ADJUSTMENTS AND DISPUTES.....	9
5.1 Income Tax Gross-Up - Partnership Project Co.....	9
5.2 Time Related Adjustments	10
5.3 Senior Debt.....	10
5.4 Disputes.....	10
6. PAYMENTS	11
6.1 Termination Payment Date.....	11
6.2 Tax Allocations	12
6.3 Liability for Sales Taxes.....	12

6.4	GST Filings.....	12
6.5	Full Settlement.....	12

SCHEDULE 9

COMPENSATION ON TERMINATION

1. TERMINATION FOR PROVINCE EVENT OF DEFAULT OR AT PROVINCE'S OPTION

1.1 Calculation

If either the Province or Project Co terminates this Agreement pursuant to Section 2.1(a) [Term and Termination], Section 6.6 [Province Election Not to Reinstate], Section 6.7(d) [Insufficient Insurance] or Section 13 [Province Events of Default], the Province will pay to Project Co on the Termination Payment Date a Termination Payment equal to the greater of:

- (a) the amount which would be determined under Section 4.1 [Calculation] of this Schedule if it applied; and
- (b) the aggregate amount, without duplication, of:
 - (1) the Senior Debt as at the Termination Date with per diem interest on amounts falling within paragraph (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date;
 - (2) the Employee Payments and the Project Contractor Breakage Costs;
 - (3) any accrued but unpaid amounts owing and payable by the Province to Project Co under this Agreement;
 - (4) any Insurance Receivables, if and to the extent Project Co has assigned them to the Province; and
 - (5) an amount which when taken together with Distributions made on or before the Termination Date, including Distributions paid on or in respect of Units and fees, principal, interest and breakage costs paid or repaid on Junior Debt taking account of the actual timing of all such Distributions, gives a nominal internal rate of return on the equity capital subscribed and contributed in respect of then outstanding Units and principal amounts advanced under then outstanding Junior Debt equal to the Threshold Equity IRR;

less, to the extent it is a positive amount, the aggregate of without double counting:

- (6) the aggregate of all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favour of the Senior Lenders;
- (7) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any claims under a Project Contract or claims against other third parties which have not been determined or have been

determined but not yet paid provided that in such case Project Co will assign any such rights and claims under the Project Contracts or claims against other third parties to the Province and give the Province reasonable assistance in prosecuting such claims;

- (8) to the extent not taken into account in calculating the amount under (b) above, the amount of any Contingent Funding Liabilities that are triggered as a result of or in relation to a termination of this Agreement;
- (9) the market value of any other assets and rights of Project Co (other than those transferred to the Province pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date to the extent realised before the Termination Payment Date provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms.
- (10) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Lenders to Project Co as a result of a prepayment under the Senior Financing Agreements;
- (11) any amounts received by the Senior Lenders (or on their behalf) on or after the Termination Date and before the Termination Payment Date as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and
- (12) any other amounts that the Province is entitled to set-off or deduct under this Agreement.

To the extent that the assets and rights referred to in Section 1.1(b)(9) [Calculation] of this Schedule are not realised and applied pursuant to that Section, Project Co will on payment of the amount due under this Section 1.1 [Calculation] of this Schedule assign such assets and rights to the Province.

1.2 Notice to the Province

As soon as practicable after termination of this Agreement pursuant to Section 2.1(a) [Term and Termination], Section 6.6 [Province Election Not to Reinstate], Section 6.7(d) [Insufficient Insurance] or Section 13.3 [Project Co's Options] Project Co will, acting reasonably, notify the Province of the Termination Payment as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up to date Financial Model and

certificates from the Senior Lenders as to the amounts owed to them. Project Co will provide to the Province all such documents and information as may be reasonably required by the Province to confirm the amount of the Termination Payment including Employee Information.

2. TERMINATION FOR PROJECT CO EVENT OF DEFAULT: RE-BIDDING PROCESS

2.1 Province Election

If the Province terminates this Agreement in accordance with Section 12.4 [Province Termination Right], the Province may, within 20 Business Days after the Termination Date, give notice to Project Co electing to have this Section 2 [Termination for Project Co Event of Default: Re-Bidding Process] of this Schedule apply if:

- (a) there is a Liquid Market as at the Termination Date; and
- (b) the Senior Lenders:
 - (1) either (i) have not exercised their rights under Section 4 [Step-In] of the Lenders' Remedies Agreement and have no further right to exercise such rights; or (ii) if they have exercised such rights, they have subsequently exercised their rights under Section 3.4 [Agent's Withdrawal Notice] of the Lenders' Remedies Agreement or their rights under Section 4 [Step-In] of the Lenders' Remedies Agreement have otherwise terminated in accordance with the Lenders' Remedies Agreement; or
 - (2) have not transferred Project Co's rights and obligations under this Agreement to a Suitable Substitute Project Co in accordance with the Lenders' Remedies Agreement and have no further right to do so, and have not demonstrated to the Province's satisfaction, acting reasonably, that they have used all reasonable efforts to do so,

but otherwise the Province will require a determination in accordance with Section 3 [Project Co Event of Default: No Re-Bidding Process] of this Schedule and the provisions of that Section will apply.

2.2 Re-Bidding Process

If Section 2 [Termination for Project Co Event of Default: Re-Bidding Process] of this Schedule applies, the Province will:

- (a) use all reasonable efforts to:
 - (1) conduct the Re-Bidding Process so as to obtain the maximum Highest Compliant Bid Price; and
 - (2) implement and complete the Re-Bidding Process as soon as practicable after making the election under Section 2.1 [Province Election] of this Schedule; and
- (b) notify, as soon as practicable and acting reasonably, Project Co of the requirements and terms of the Re-Bidding Process, including the timing of the Re-Bidding Process and the

criteria for a Compliant Bid and other matters which will be required to be taken into account by a Compliant Bid. Information provided to bidders during the Re-Bidding Process will include similar information to that provided to bidders in the original procurement process for the Project taking into consideration the relevance of such information and the status of the Project at the time of the Re-Bidding Process. All such references to bids and bidders include references to proposals and proponents and similar terms under other competitive projects.

2.3 Release of Information

Project Co hereby authorizes the Province to release any information that is reasonably required under the Re-Bidding Process which would otherwise be subject to the restrictions in Section 17.1 [Confidentiality] and Section 17.2 [Personal Information].

2.4 Determination and Payment of Termination Payment

If Section 2 [Termination for Project Co Event of Default: Re-Bidding Process] of this Schedule applies and:

- (a) the Adjusted Highest Compliant Bid Price is a positive amount, the Province will pay to Project Co on the Termination Payment Date a Termination Payment equal to the Adjusted Highest Compliant Bid Price; or
- (b) the Adjusted Highest Compliant Bid Price is less than zero, an amount by which the Adjusted Highest Compliant Bid Price is less than zero will be due and payable by Project Co to the Province on the earliest to occur of the dates referred to in Sections 6.1(a)(1) and 6.1(a)(2) [Termination Payment Date] of this Schedule.

2.5 Notice to Project Co

As soon as practicable after receipt of the bids, the Province will, acting reasonably, determine the Compliant Bids and will notify Project Co of the Adjusted Highest Compliant Bid Price and include in such notice the details and calculations of each component thereof.

2.6 New Project Agreement

Notwithstanding any Dispute relating to the Highest Compliant Bid Price, the Adjusted Highest Compliant Bid Price or the Re-Bidding Process, the Province will be entitled to enter into a New Project Agreement with the New Project Co in accordance with the Re-Bidding Process.

2.7 Subsequent Province Election

At any time prior to receipt by the Province of a Compliant Bid or at any time thereafter with the consent of Project Co, acting reasonably, the Province may, by notice to Project Co, elect for the provisions of Section 3 [Project Co Event of Default: No Re-Bidding Process] of this Schedule to apply and on such notice:

- (a) the provisions of Section 3 [Project Co Event of Default: No Re-Bidding Process] of this Schedule will apply; and

- (b) the Province will have no liability to Project Co in respect of any breach of the provisions of Section 2 [Termination for Project Co Event of Default: Re-Bidding Process] of this Schedule or in respect of making such election.

2.8 Province Decision Not to Complete

The Province will not be obligated to accept the Compliant Bid with the Highest Compliant Bid Price or to enter into any New Project Agreement with the New Project Co., however if the Province has received a Compliant Bid but decides not to accept it or to enter into a New Project Agreement, the Province will notify Project Co of this decision, Section 2.4 [Determination and Payment of Termination Payment] of this Schedule will continue to apply and the Termination Payment Date will be 30 days after the Province so notifies Project Co.

2.9 Time Limit For Re-Bidding Process

Subject to Section 2.8 [Province Decision Not to Complete] of this Schedule, if the Province makes an election under Section 2.1 [Province Election] of this Schedule but the Province has not signed a New Project Agreement with a New Project Co as contemplated by Section 2 [Termination for Project Co Event of Default: Re-Bidding Process] of this Schedule within 18 months after the Termination Date, the provisions of Section 3 [Project Co Event of Default: No Re-Bidding Process] of this Schedule will apply.

2.10 Appointment of Re-Bidding Process Monitor

Project Co may, at its own cost, appoint a Re-Bidding Process Monitor for the purpose of monitoring and reporting to Project Co and the Senior Lenders on the Province's compliance with the Re-Bidding Process.

2.11 Role of Re-Bidding Process Monitor

The Re-Bidding Process Monitor will be entitled to attend all meetings relating to the Re-Bidding Process, inspect copies of all relevant documentation and make submissions to the Province as to compliance with the Re-Bidding Process. The Province will not be bound to consider or act upon such submissions. The Re-Bidding Process Monitor will not disclose Confidential Information to Project Co or the Senior Lenders or take any action which might materially delay or interfere with the Re-Bidding Process but will be entitled to advise Project Co and the Senior Lenders on whether it considers that the Province has acted in accordance with the Re-Bidding Process and determined the Highest Compliant Bid Price.

2.12 Post-Termination Date Payment

If this Agreement is terminated in accordance with Section 12.4 [Province Termination Right], during the period from the Termination Date to the Termination Payment Date the Province will, on or before the later of:

- (a) 2 Business Days prior to each interest payment date under the Senior Financing Agreements; and
- (b) 3 Business Days after the Province has received written notice from Project Co of the amount of interest payable by it on such interest payment date,

as an advance against the payment to be made pursuant to this Section 3 pay to Project Co the interest payable on that interest payment date by Project Co to the Senior Lenders in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements. The Province may withhold payment if the Province has reasonable grounds to believe that the aggregate of that payment and all such previous payments would exceed the Termination Payment otherwise payable under this Section 2 [Termination for Project Co Event of Default: Re-Bidding Process]. All payments under this Section 2.12 [Post-Termination Date Payment] will be deducted from the Termination Payment and any over-payment will be re-paid by Project Co no later than the Termination Payment Date.

3. PROJECT CO EVENT OF DEFAULT: NO RE-BIDDING PROCESS

3.1 Application for No Re-Bidding Process

The provisions of Section 3 [Project Co Event of Default: No Re-Bidding Process] of this Schedule will apply if:

- (a) the Province terminates this Agreement in accordance with Section 12.4 [Province Termination Right] and does not, or is not entitled to, make an election under Section 2.1 [Province Election] of this Schedule; or
- (b) the Province so elects under Section 2.7 [Subsequent Province Election] of this Schedule; or
- (c) Section 2.9 [Time Limit for Re-Bidding Process] of this Schedule requires it.

3.2 Determination of Adjusted Estimated Market Value

Project Co and the Province will act reasonably in agreeing on the Adjusted Estimated Market Value which will be calculated as at the day following the Termination Payment Date, provided that in determining the Estimated Market Value (which will be determined by deducting the aggregate of the amounts referred to in Section 3.2(d) [Determination of Adjusted Estimated Market Value] of this Schedule from the aggregate of the amounts referred to in Section 3.2(c) [Determination of Adjusted Estimated Market Value] of this Schedule):

- (a) this Agreement will be assumed not to have been terminated and neither party is in default under its terms;
- (b) all forecast amounts will be calculated on a Nominal basis;
- (c) each of the following will be calculated and discounted at the Termination Date Discount Rate:
 - (1) all future Service Payments which according to the Financial Model Project Co expected to receive from the Termination Date to the Expiry Date; and
 - (2) all amounts payable by the Province to Project Co in respect of a Supervening Event or Province Change) and all other payments, other than any such amounts and payments that are reflected in the Service Payments as set out in (1) above,

which the Province is required to make to Project Co prior to the Expiry Date which Project Co has not been paid in accordance with this Agreement, including Construction Period Payments not yet paid;

- (d) the total of all costs forecast to be reasonably incurred by the Province as a result of termination and related to providing the Design, Construction and Services itself or by others from the Termination Date to the Expiry Date will be calculated and discounted at the Termination Date Discount Rate, such costs to include (without double counting):
- (1) all reasonable costs required to put the Facility in the condition required by this Agreement (including, in the case of termination prior to Service Commencement, the reasonable costs required to be expended to achieve Service Commencement) and to meet the level of performance for the Services, that will deliver the Service Payments referred to in Section 3.2(c)(1) [Determination of Adjusted Estimated Market Value] of this Schedule;
 - (2) an amount equal to all Taxes deemed paid by Project Co to achieve the Base Case Project IRR; and
 - (3) the projected cost of operating, maintaining and performing life cycle rehabilitation for the Facility from the Termination Date to the Expiry Date, such costs to be determined on the basis that:
 - (A) the costs referred to in Section 3.2(d)(1) [Determination of Adjusted Estimated Market Value] of this Schedule put the Facility in the condition required by this Agreement and that the Facility meets the said level of performance for the Services; and
 - (B) in the case of termination prior to Service Commencement, costs in respect of Services will be in amounts contemplated by the Financial Model at the Effective Date,

in each case such costs to be in substantially similar categories to those set out in the Financial Model at the Effective Date, but not (subject to 3.2(d)(3)(B) [Determination of Adjusted Estimated Market Value] above) necessarily of the same amounts as those costs set out in the Financial Model at the date of this Agreement, and to be forecast at a level that will deliver the Service Payments referred to in Section 3.2(c)(1) [Determination of Adjusted Estimated Market Value] of this Schedule, with such costs to include a reasonable risk margin to cover a realistic and reasonable risk assessment of likely cost overruns; and
- (e) if Section 182 of the *Excise Tax Act (Canada)* is applicable to the Termination Payment payable under this Section, the Estimated Market Value will be increased by an amount such that after remitting the applicable GST, Project Co will be in the same position as it would have been if Section 182 of the *Excise Tax Act (Canada)* were not applicable.

The above determined amount will be adjusted to the extent required under Section 5.1 [Income Tax Gross-Up – Partnership Project Co] of this Schedule.

3.3 Determination by Valuator

If the Province and Project Co cannot agree on the Adjusted Estimated Market Value within 30 days after the date on which the Province elected for the provisions of Section 3 [Project Co Event of Default: No Re-Bidding Process] of this Schedule to apply or they were deemed to apply, then either party may require, by notice to the other party, that the Adjusted Estimated Market Value be determined by a Valuator as of an estimated Termination Payment Date. If the parties cannot agree on the appointment of a Valuator within 5 Business Days of such notice, the appointment of the Valuator will be a Dispute and resolved, with a Valuator appointed, pursuant to the Dispute Resolution Procedure. The Province and Project Co will each pay one-half of the fees of, and any costs and expenses incurred by, the Valuator. The parties will cooperate with, and provide all such information as may reasonably be required by, the Valuator to assist in the Valuator's determination of the Adjusted Estimated Market Value.

3.4 Determination and Payment of Termination Payment

If Section 3 [Project Co Event of Default: No Re-Bidding Process] of this Schedule applies and:

- (a) the Adjusted Estimated Market Value is a positive amount, the Province will pay to Project Co on the Termination Payment Date a Termination Payment equal to the Adjusted Estimated Market Value; and
- (b) the Adjusted Estimated Market Value is less than zero, an amount equal to the amount by which the Adjusted Estimated Market Value is less than zero will be due and payable by Project Co to the Province by the earliest of:
 - (1) 60 days after the parties have agreed or been deemed to have agreed the Adjusted Estimated Market Value; and
 - (2) 45 days after the amount of the Adjusted Estimated Market Value is determined under the Dispute Resolution Procedure.

4. NO-FAULT TERMINATION

4.1 Calculation

If Project Co or the Province terminates this Agreement pursuant to Section 6.7(e) [Insufficient Insurance], 6.8 [Economic Reinstatement Test During Construction], 6.9 [Uncollectable Insurance Receivables], 6.15 [Consequences of Risks Becoming Uninsurable], 8.4 [Project Co's Entitlement Upon Occurrence of a Relief Event] or 8.6 [Parties' Entitlement Upon Occurrence of a Force Majeure Event], the Province will pay to Project Co on the Termination Payment Date a Termination Payment equal to the aggregate of:

- (a) the Senior Debt as at the Termination Payment Date with per diem interest on amounts falling within paragraph (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date;

- (b) any accrued but unpaid amounts owing and payable by the Province to Project Co under this Agreement;
- (c) the amount, if any, by which the Junior Debt exceeds the amount of all Distributions made in respect of Junior Debt;
- (d) the amount, if any, by which the amount of capital contributed to Project Co by the Partners exceeds the amount of Distributions made by Project Co to its Partners; and
- (e) the Employee Payments and the Project Contractor Breakage Costs,

less:

- (f) the amount of any Distributions other than those referred to in 4.1(c) and (d) [Calculation] of this Schedule, and
- (g) any other amounts that the Province is entitled to set-off or deduct under this Agreement.

If the aggregate of the amount calculated above is less than the Senior Debt plus the amount referred to in 4.1 (e) [Calculation] of this Schedule, then the Termination Payment will be increased so that it is equal to the aggregate of the Senior Debt plus the amount referred to in 4.1 (e) [Calculation] of this Schedule.

4.2 Notice to the Province

As soon as practicable after termination of this Agreement as contemplated by this Section 4 [No Fault Termination] of this Schedule, Project Co will, acting reasonably, notify the Province of the Termination Payment as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up to date Financial Model and certificates from the Senior Lenders as to the amounts owed to them and will also provide to the Province all such documents and information reasonably required by the Province to confirm the amount of the Termination Payment including Employee Information.

5. ADJUSTMENTS AND DISPUTES

5.1 Income Tax Gross-Up - Partnership Project Co

For the purpose of this Section 5.1 [Income Tax Gross-Up – Partnership Project Co]:

"Deemed Corporate Project Co" means a fictional fully taxable single purpose British Columbia resident corporation that (i) is, and has since the date of this Agreement been, a subsidiary of a public corporation carrying on an active business with the same fiscal year end as Project Co; and (ii) has had the same revenues and expenses as Project Co and has taken all exemptions, relief, allowances, deductions, set offs and credits permitted under laws relating to Income Taxes (including any that would be available in relation to the Project) since the date of this Agreement so as to minimize its Income Tax payable; and

"Taxable Shareholder Portion" means:

- (a) 100% if Project Co is a taxable entity with respect to Income Tax; or

- (b) that percentage, measured as at the Termination Date, of the total equity interests of Project Co that are not owned, directly or indirectly, by persons (1) described in Section 149 of the *Income Tax Act (Canada)*, or the equivalent section if there are changes to the *Income Tax Act (Canada)*. and (2) not subject to the payment of Income Tax in respect of payments by Project Co from proceeds of the Termination Payment.

If a Termination Payment is payable by the Province under Section 1 [Termination for Province Event of Default or at Province's Option] or Section 4 [No Fault Termination] of this Schedule and such Termination Payment would, in the hands of a Deemed Corporate Project Co (if the Deemed Corporate Project Co were being paid the Termination Payment), be subject to Income Tax payable to a Governmental Authority within Canada that would not have been payable but for the fact that such amount is payable as compensation on termination, then the Province will pay to Project Co the Taxable Shareholder Portion of the additional amount that would be required to be paid to the Deemed Corporate Project Co (if the Deemed Corporate Project Co were being paid the Termination Payment) to put it in the same position after Income Tax as it would have been in had the Termination Payment (or portion thereof) not been subject to any such Income Tax, taking account of any exemption, relief, allowances, deduction, setting off or credit in respect of Income Tax (whether available by choice or not) which would be available to the Deemed Corporate Project Co to reduce the Tax to which the Termination Payment, or any portion thereof, would be subject.

5.2 Time Related Adjustments

It is understood that the calculations of the Termination Payment pursuant to Sections 1 [Termination for Province Event of Default or at Province's Option], 3 [Project Co Event of Default: No Re-Bidding Process] and 4 [No Fault Termination] of this Schedule are as of an estimated Termination Payment Date and that such estimated date may not be the actual Termination Payment Date for reasons including the existence of a Dispute. The parties will act reasonably in adjusting the amount of such calculated Termination Payment to reflect the actual Termination Payment Date.

5.3 Senior Debt

The Province will be entitled to rely on one or more certificates of officers of the Senior Lenders or their agent(s) as conclusive evidence of the amount of the Senior Debt. The receipt of this amount by Project Co, the Senior Lenders or their agent(s) will discharge the Province's obligation to pay any portion of compensation due to Project Co that is attributable to the Senior Debt.

5.4 Disputes

If:

- (a) the Province does not agree with Project Co's determination of the Termination Payment under Section 1 [Termination for Province Event of Default or at Province's Option] or Section 4 [No Fault Termination] of this Schedule, the Province may, within 20 Business Days of the notice referred to in Section 1.2 [Notice to Province] or Section 4.2 [Notice to Province] of this Schedule as the case may be, refer the matter to the Dispute Resolution Procedure; or

- (b) Project Co does not agree with the Province's determination of the Adjusted Highest Compliant Bid Price under Section 2 [Termination for Project Co Event of Default: Re-Bidding Process] of this Schedule or the Valuator's determination of the Adjusted Estimated Market Value under Section 3 [Project Co Event of Default: No Re-Bidding Process] of this Schedule, Project Co may, within 20 Business Days of the notice referred to in Section 2.5 [Notice to Project Co] of this Schedule or the Valuator's determination under Section 3.3 [Determination by Valuator] of this Schedule, refer the matter to the Dispute Resolution Procedure.

If either party does not refer the matter to the Dispute Resolution Procedure within the periods provided for in 5.4 (a) or (b) [Disputes] of this Schedule, as applicable, such party will be deemed to have agreed to the amount of the applicable determination of the Termination Payment as of the estimated Termination Payment Date.

6. PAYMENTS

6.1 Termination Payment Date

The Termination Payment Date will be determined as follows:

- (a) if the Termination Payment is determined pursuant to Section 1 [Termination for Province Event of Default or at Province's Option], 3 [Project Co Event of Default: No Re-Bidding Process] or 4 [No Fault Termination] of this Schedule, the Termination Payment Date will be:
- (1) if the amount thereof is agreed to or deemed agreed to by the Province and Project Co on the earliest of:
 - (A) the date advised by the Province; and
 - (B) 60 days after such agreement or deemed agreement, as the case may be; or
 - (2) if the amount thereof is the subject of a Dispute, 45 days after the amount of the Termination Payment is determined under the Dispute Resolution Procedure; and
- (b) if the Termination Payment is determined pursuant to Section 2 [Termination for Project Co Event of Default: Re-Bidding Process] of this Schedule, the Termination Payment Date will be the earliest of:
- (1) 45 days after the Adjusted Highest Compliant Bid Price has been agreed or determined pursuant to the Dispute Resolution Procedure; or
 - (2) 30 days after the New Project Co has executed and delivered the New Project Agreement.

6.2 Tax Allocations

The Province and Project Co will:

- (a) act reasonably and will co-operate with each other to determine the Income Tax treatment resulting from a Termination Payment and to allocate the Termination Payment to each of the non-fixed assets transferred to the Province pursuant to Section 14.2 [Transfer to the Province of Assets, Contracts, etc.] so as to minimize the amount of Taxes payable on such transfer;
- (b) failing agreement on such treatment or allocation, use the treatment or allocation determined by the Province unless and until such time as a different treatment or allocation is determined under the Dispute Resolution Procedure or by the Canada Revenue Agency (after all appeals have been exhausted); and
- (c) use the allocation agreed to in (a) above or determined in accordance with (b) above in their respective Tax filings and returns.

6.3 Liability for Sales Taxes

The Province will be responsible for all applicable sales Taxes payable in connection with the transfers referred to in Section 14.2 [Transfer to the Province of Assets, Contracts, etc.] and will either pay all such sales Taxes directly or reimburse Project Co for such sales Taxes if Project Co is required to, and does, remit such sales Taxes.

6.4 GST Filings

If Section 182 of the *Excise Tax Act (Canada)* applies to a Termination Payment, the Province and Project Co will submit their respective GST filings in respect of any period in which a Termination Payment was made on the basis that Section 182 of the *Excise Tax Act (Canada)* will apply to any such Termination Payment.

6.5 Full Settlement

Any and all amounts paid by the Province to Project Co under this Schedule or any agreement or determination that the Province has no obligations to make any payment to Project Co under this Schedule will be in full and final settlement of each party's rights and claims against each other for termination of this Agreement and any Project Contract, whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of either party to the other that arose prior to the date of termination of this Agreement (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Termination Payment; and
- (b) any liability of either party to the other that may arise after the date of termination of this Agreement (but not from the termination itself), including, for greater certainty, liabilities arising under the provisions of this Agreement which are intended by Section 17.12

[Survival] to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Payment.

SCHEDULE 10
LENDERS' REMEDIES AGREEMENT

for the Okanagan Correctional Centre Project

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA, AS REPRESENTED BY THE MINISTER OF TECHNOLOGY,
INNOVATION AND CITIZENS' SERVICES**

BNY TRUST COMPANY OF CANADA

**PLENARY JUSTICE OKANAGAN LIMITED PARTNERSHIP,
BY ITS GENERAL PARTNER, PLENARY JUSTICE OKANAGAN GP INC.**

Dated: March 18, 2014

SCHEDULE 10

LENDERS' REMEDIES AGREEMENT

TABLE OF CONTENTS

1. DEFINITION AND INTERPRETATION.....	1
1.1 Definition.....	1
1.2 Construction and Interpretation.....	5
1.3 Governing Law.....	7
1.4 Attornment.....	7
2. CONSENT TO SECURITY.....	8
2.1 Consent.....	8
2.2 No Notice of Other Security.....	8
2.3 Province Obligations.....	8
2.4 Province's Rights not Prejudiced.....	8
3. NOTICES.....	8
3.1 Termination Notice.....	8
3.2 Notice of Event of Default.....	9
3.3 Indicative Notice.....	9
3.4 Agent's Withdrawal Notice.....	9
3.5 Notice of Antecedent Liabilities.....	9
3.6 Subsequent Province Notice of Liabilities.....	10
3.7 No Right to Terminate.....	10
4. STEP-IN.....	10
4.1 Step-In Notice.....	10
4.2 Contents of Step-In Notice.....	10
4.3 One Step-In Period.....	10
4.4 Appointed Representative Rights.....	10
4.5 Province Right to Terminate.....	11
5. STEP-OUT.....	11
5.1 Step-Out Notice.....	11
5.2 Expiry of Step-In Period.....	11
5.3 Project Co Remains Bound.....	12
6. SENIOR LENDER REPLACEMENT OF PROJECT CO.....	12
6.1 Project Co Transfer Notice.....	12
6.2 Province Consent.....	12
6.3 Withholding of Consent.....	12
6.4 Terms of Transfer.....	13

7. INSURANCE	14
7.1 Release of Insurance Proceeds	14
8. COVENANTS	14
8.1 Province Covenants	14
8.2 Agent Covenants	15
8.3 Project Co Covenant	15
9. STEP-IN RIGHTS UNDER MATERIAL CONTRACTS	16
9.1 Priority of Step-In Rights under Material Contracts	16
9.2 Step-in from Termination Date	16
9.3 Release of Security	16
9.4 Retention of Security for Deficiency	16
9.5 Assignment of Material Contracts by Finance Parties.....	17
10. ASSIGNMENT.....	17
10.1 Restriction on Assignment.....	17
10.2 Assignment by Agent.....	17
10.3 Assignment by Senior Lender	18
10.4 Assignment by Province	18
10.5 New Agreement.....	18
11. GENERAL	18
11.1 Term	18
11.2 Conflict or Inconsistency.....	18
11.3 Entire Agreement.....	18
11.4 Waiver.....	19
11.5 Counterparts	19
11.6 Confidentiality	19
11.7 Notices.....	19
11.8 No Partnership or Agency	20
11.9 Remedies Cumulative	20
11.10 Disputes.....	21

SCHEDULE 10

LENDERS' REMEDIES AGREEMENT

THIS AGREEMENT is dated as of March 18, 2014

BETWEEN:

**Her Majesty the Queen in Right of the Province of British Columbia, as represented
by the Minister of Technology, Innovation and Citizens' Services,**

(the "**Province**")

AND:

BNY Trust Company of Canada

(the "**Agent**"), as Indenture Trustee for the Senior Lenders

AND:

**Plenary Justice Okanagan Limited Partnership, by its general partner, Plenary
Justice Okanagan GP Inc.**

(the "**Project Co**")

WHEREAS:

- A. The Province and Project Co have entered into the Project Agreement (defined below);
- B. Pursuant to the Note Indenture (defined below), the Senior Lenders have agreed, subject to the terms and conditions contained therein, to make available to Project Co the loan facility specified therein to finance certain costs to be incurred and expenditures to be made by Project Co in connection with the Project Agreement; and
- C. It is a condition precedent to the obligations of the Senior Lenders under the Note Indenture that this Agreement be executed and delivered by the parties.

NOW THEREFORE in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITION AND INTERPRETATION

1.1 Definition

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meanings given to such terms in the Project Agreement, and:

“Agent’s Withdrawal Notice” has the meaning set out in Section 3.4;

“Agreement” means this agreement including any recitals, schedules and appendices to this agreement, as amended, supplemented or restated from time to time;

“Antecedent Liabilities” means, as at any time:

- (a) all amounts due and payable by Project Co to the Province under the Project Agreement at such time; and
- (b) all obligations which should have, but have not, been performed and outstanding liabilities of Project Co under the Project Agreement, in each case at such time;

“Appointed Representative” means the Senior Lenders’ Representative identified in a Step-In Notice;

“Deficiency” has the meaning set out in Section 9.4(b);

“Discharged Obligations” has the meaning set out in Section 6.4;

“Discharged Rights” has the meaning set out in Section 6.4;

“Event of Default” has the meaning set out in the Note Indenture;

“Finance Parties” has the meaning set out in the Note Indenture;

“Indenture Trustee” has the meaning set out in the Note Indenture;

“Indicative Notice” means either an Indicative Step-In Notice or an Indicative Transfer Notice given in accordance with Section 3.3;

“Indicative Notice Period” means:

- (a) where an Indicative Step-In Notice has been given, the period commencing on the date of delivery of such Indicative Step-In Notice and ending on the earlier of:
 - (1) the Step-In Date;
 - (2) the date of delivery of an Agent’s Withdrawal Notice; and
 - (3) 60 days following the date of delivery of such Indicative Step-In Notice;
- (b) where an Indicative Transfer Notice has been given, the period commencing on the date of delivery of such Indicative Transfer Notice and ending on the earlier of:
 - (1) the date on which any transfer in accordance with Section 6.1 becomes effective;
 - (2) the date of delivery of an Agent’s Withdrawal Notice; and
 - (3) 60 days following the date of delivery of such Indicative Transfer Notice.

“Indicative Step-In Notice” has the meaning given to it in Section 3.3;

“Indicative Transfer Notice” has the meaning given to it in Section 3.3;

“Insolvency Law” means any of the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) and the *Winding-Up and Restructuring Act* (Canada) and any other applicable insolvency or other similar law of any jurisdiction, including any applicable law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it;

“Insolvency Officer” means any trustee, receiver, receiver and manager, liquidator, sequestrator, administrator or other custodian in connection with the insolvency of Project Co or any of its assets;

“Insolvency Proceedings” means:

- (a) any:
 - (1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
 - (2) appointment of an Insolvency Officer in connection with;
 - (3) order or resolution passed in connection with; or
 - (4) formal agreement reached regarding,
 - a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganisation, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Project Co (whether voluntary or involuntary) made or commenced by any party under any Insolvency Law; or
- (b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of Project Co or any other similar process or event occurring in relation to Project Co’s assets in any other jurisdiction;

“Insurance Account” has the meaning given to it in the Note Indenture;

“Insurance Trust Account” has the meaning given to it in the Note Indenture;

“Liability Report” has the meaning given in Section 3.5;

“Material Antecedent Liabilities” means Antecedent Liabilities that are:

- (a) financial liabilities; or
- (b) non-financial liabilities, the breach of which will trigger any remedy of the Province under Section 9.1 [Project Co’s Obligation to Indemnify] or Section 12 [Project Co Events of Default] of the Project Agreement;

“Note Indenture” means the note indenture dated as of the Effective Date between Project Co, the General Partner and the Agent, and any indentures supplemental thereto;

“Notice Period” means:

- (a) in respect of a Project Co Event of Default, the Termination Notice Period; and
- (b) in respect of an Event of Default, the Indicative Notice Period;

“Project Agreement” means the agreement dated March 18, 2014 between Project Co and the Province relating to the design, construction, financing, maintenance and life cycle rehabilitation of the Facility;

“Project Documents” means, collectively, the Project Agreement and any other agreement (other than this Agreement) entered into from time to time by the Province and Project Co (with or without other parties) in connection with the Project; and **“Project Document”** means any one of the foregoing;

“Reported Antecedent Liabilities” means the Antecedent Liabilities identified in the Liability Report;

“Revised Senior Debt Termination Amount” means the amount of the Senior Debt as at the Termination Date with per diem interest on amounts falling within paragraph (a) of the definition of Senior Debt, calculated at the non default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date;

“Revocation of Termination Notice” means a written notice from the Province to the Agent revoking a Termination Notice;

“Security Documents” has the meaning as set out in the Note Indenture;

“Senior Debt Discharge Date” means the date on which all amounts due and owing to the Senior Lenders under the Senior Financing Agreements have been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Lenders are under no further obligation to advance under the relevant Senior Financing Agreement;

“Senior Lenders’ Representative” means:

- (a) the Agent, or any Senior Lender;
- (b) a receiver or receiver and manager of Project Co appointed under or in connection with the Security Documents; or
- (c) any other person approved by the Province (such approval not to be unreasonably withheld or delayed);

“Step-In Date” means 5 Business Days after delivery of a Step-In Notice;

“Step-In Notice” means a notice given by the Agent to the Province pursuant to Section 4;

“Step-In Period” means, subject to Section 4.3, the period from the Step-In Date up to and including the earliest of:

- (a) the Step-Out Date;
- (b) the date of any transfer under Section 6;
- (c) the date of any termination under Section 4.5; and
- (d) the Expiry Date;

“Step-Out Date” means the date that is 20 Business Days after the date of a Step-Out Notice;

“Step-Out Notice” means a notice from the Agent or Appointed Representative to the Province pursuant to Section 5;

“Suitable Substitute Project Co” means a person approved by the Province in accordance with Sections 6.2 and 6.3 as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Project Agreement; and
- (b) employing or contracting for the services of persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of Project Co under the Project Agreement;

“Termination Notice” means a notice given by the Province to the Agent under Section 3; and

“Termination Notice Period” means the period beginning on the date of giving of a Termination Notice and ending on the earlier of:

- (a) the Step-In Date;
- (b) the date of service of a Revocation of Termination Notice; and
- (c) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a)) set out in the Termination Notice.

1.2 Construction and Interpretation

This Agreement will be interpreted according to the following provisions, save to the extent that the context or the express provisions of this Agreement otherwise require:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;

- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (c) each reference in this Agreement to "**Section**" is to a section of this Agreement;
- (d) each reference to an agreement, document or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned;
- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (j) unless the context otherwise requires, each reference to "parties" means the parties to this Agreement and each reference to a "party" means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement;
- (k) all monetary amounts are expressed in Canadian Dollars;
- (l) the words "include", "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively;
- (m) any consent contemplated to be given under this Agreement must be in writing;
- (n) general words are not given a restrictive meaning;

- (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (o) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Senior Lenders, the Agent, the Appointed Representative or any other Senior Lenders’ Representative, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit;
 - (p) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied;
 - (q) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day; and
 - (r) each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

1.3 Governing Law

This Agreement will be deemed to be made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.

1.4 Attornment

For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of British Columbia and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. CONSENT TO SECURITY

2.1 Consent

The Province acknowledges notice of, and consents to, the security interest granted by Project Co in favour of the Finance Parties under the Note Indenture and Security Documents over:

- (a) Project Co's rights under the Project Agreement and all other Project Documents;
- (b) Project Co's assets; and
- (c) Project Co's rights to Insurance Proceeds and Insurance Receivables.

2.2 No Notice of Other Security

The Province confirms that as of the date of this Agreement it has not received written notice of any other security interest granted over Project Co's rights described in Sections 2.1 other than pursuant to the Note Indenture and Security Documents.

2.3 Province Obligations

Except as specifically provided for in this Agreement, the Province has no obligations (whether express, implied, collateral or otherwise) to the Agent or the Senior Lenders in connection with this Agreement, the Project Agreement or the Project. All of the obligations and liabilities given, undertaken or arising on the part of the Province under this Agreement are given solely to the Agent on behalf of the Senior Lenders and do not confer any rights on or in favour of Project Co or any Affiliate of Project Co or any other person.

2.4 Province's Rights not Prejudiced

The parties acknowledge that nothing in the Senior Financing Agreements, this Agreement or any other agreement between any of them (including any giving by the Agent of a notice hereunder) will, except as between the Senior Lenders, the Agent and the Province as expressly set out in this Agreement, affect the rights of the Province under the Project Agreement (but an exercise by the Province of those rights will not preclude a proper exercise by the Agent of its rights under this Agreement). For greater certainty and without limiting the generality of the foregoing, nothing in this Agreement will limit, and the Province will be entitled at all times in accordance with the provisions thereof to exercise the Province's rights under Section 11.1(a) [Province's Step-in Rights] of the Project Agreement and the related exercise of its rights under Section 11.2 [Province's Rectification Rights] of the Project Agreement.

3. NOTICES

3.1 Termination Notice

The Province will not terminate or deliver any notice terminating the Project Agreement without giving to the Agent written notice (a "**Termination Notice**") stating:

- (a) that a Project Co Event of Default has occurred and the proposed Termination Date, which will be not sooner than 90 days after the Termination Notice; and
- (b) the grounds for termination in reasonable detail.

3.2 Notice of Event of Default

Concurrently with delivery by it to Project Co of any notice of an Event of Default, the Agent will provide a copy of such notice to the Province, together with reasonable details of such Event of Default.

3.3 Indicative Notice

Without prejudice to the Agent's rights under the Security Documents, at any time upon the occurrence of an Event of Default, and where relevant to such Event of Default the continuance of such Event of Default, the Agent may give notice to the Province of its intention to nominate a Senior Lenders' Representative to step-in in accordance with Section 4.1 (an "**Indicative Step-In Notice**") or to effect a transfer in accordance with Section 6.1 (an "**Indicative Transfer Notice**").

3.4 Agent's Withdrawal Notice

If at any time after the giving of an Indicative Notice or a receipt of Termination Notice, the Agent has determined that it is not, or is no longer, considering appointing a Senior Lenders' Representative or effecting a transfer of Project Co's rights and liabilities under the Project Agreement to a Suitable Substitute Project Co in accordance with this Agreement, the Agent will give notice (an "**Agent's Withdrawal Notice**") to the Province and thereafter the provisions of this Agreement will not be applicable with respect to the event that led to such Indicative Notice or Termination Notice and the Province will be at liberty to take any and all action available to it under the Project Agreement and other Project Documents.

3.5 Notice of Antecedent Liabilities

Unless an Agent's Withdrawal Notice has been given, not later than 30 days after the date of delivery by the Province of a Termination Notice or the date of delivery by the Agent of an Indicative Notice, as the case may be, the Province will give the Agent a notice (the "**Liability Report**") containing details of:

- (a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of which the Province is aware (after reasonable enquiry) that will fall due under the Project Agreement on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:
 - (1) in the case of a Termination Notice, the proposed Termination Date set out in that notice; and
 - (2) in the case of an Indicative Notice, 60 days after the date of delivery of the Indicative Notice.

3.6 Subsequent Province Notice of Liabilities

After the delivery of the Liability Report, unless an Agent's Withdrawal Notice has been given, the Province will, promptly upon becoming aware of them, notify the Agent in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

3.7 No Right to Terminate

The Province will not terminate or deliver any notice terminating the Project Agreement during any Notice Period, provided however that until the expiry of that period the Province will be entitled to require Project Co to remedy any Project Co Event of Default and will be entitled to exercise all rights under the Project Agreement other than termination of the Project Agreement.

4. STEP-IN

4.1 Step-In Notice

Subject to Section 4.3 and without prejudice to the Agent's rights under the Security Documents, the Agent may give the Province a notice (a "**Step-In Notice**") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

4.2 Contents of Step-In Notice

In the Step-In Notice, the Agent will:

- (a) state that it intends to exercise its step-in rights under this Agreement; and
- (b) identify the Appointed Representative.

4.3 One Step-In Period

There will be not more than one Step-In Period following any one Indicative Notice or Termination Notice.

4.4 Appointed Representative Rights

On the Step-In Date, the Appointed Representative will assume jointly and severally with Project Co the rights of Project Co under the Project Agreement, which rights are conditional on and may be exercised subject to performance of Project Co's obligations under the Project Agreement. During the Step-In Period, the Province will deal with the Appointed Representative and not Project Co. No Appointed Representative will be liable to the Province or Project Co for any liabilities or obligations of Project Co. An Appointed Representative who is also an Insolvency Officer will not, and will not be required to, assume or have any personal liability for any liabilities or obligations of Project Co.

4.5 Province Right to Terminate

The Province will not terminate the Project Agreement in whole or in part during the Step-In Period except as set out in this Section 4.5. The Province will be entitled to terminate the Project Agreement during the Step-In Period by written notice to Project Co, the Agent and the Appointed Representative:

- (a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to the Province on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;
- (b) if amounts, of which the Province was not aware (having made reasonable enquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:
 - (1) if notice of the liability is given to the Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date or, if the due date for payment thereof is after the Step-In Date, the due date;
 - (2) if notice of the liability is given to the Agent within 20 Business Days before the Step-In Date and such liability is material (as stated by the Province, acting reasonably, when it gives such notice or by the Agent, acting reasonably, by notice to the Province within five Business Days of receipt of the notice from the Province), 20 Business Days after the Step-In Date or, if later, the due date; or
 - (3) otherwise, 20 Business Days after delivery of the notice or, if later, the due date;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement (other than a Project Co Insolvency Event), provided that for the purposes of termination under the Project Agreement, any Deductions that arose prior to the Step-In Date will not be taken into account during the Step-In Period;
- (d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Project Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities; or
- (e) if the Service Commencement Date does not occur on or before the date that is 6 months after the Longstop Date.

5. STEP-OUT

5.1 Step-Out Notice

The Agent or the Appointed Representative may at any time during the Step-In Period deliver to the Province a Step-Out Notice which specifies the Step-Out Date.

5.2 Expiry of Step-In Period

Upon the termination or expiry of the Step-In Period:

VAN01: 3149200: v7

- (a) the rights of the Province against the Appointed Representative and the rights of the Appointed Representative against the Province will be cancelled; and
- (b) the Province will no longer deal with the Appointed Representative and will deal with Project Co in connection with the Project Agreement.

5.3 Project Co Remains Bound

Subject to Section 6.4, Project Co will continue to be bound by the terms of the Project Agreement notwithstanding the occurrence of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Agent, Appointed Representative, or the Senior Lenders or any provision of this Agreement, and for greater certainty Project Co will be liable for any obligations and liabilities arising prior to the expiry of the Step-in Period from actions or inactions of the Agent, the Appointed Representative, or Senior Lenders. Project Co will remain liable for any unpaid amounts due and payable to the Province by Project Co under the Project Agreement provided that Project Co will not be required to discharge such liability during the Step-in Period.

6. SENIOR LENDER REPLACEMENT OF PROJECT CO

6.1 Project Co Transfer Notice

Subject to Section 6.2, at any time:

- (a) during a Termination Notice Period;
- (b) during an Indicative Notice Period; or
- (c) during a Step-In Period,

the Agent may, on 30 Business Days' notice to the Province and any Appointed Representative, take any action available to it to cause the transfer of Project Co's rights and liabilities under the Project Agreement to a Suitable Substitute Project Co in accordance with the provisions of Section 6.4.

6.2 Province Consent

The Province will notify the Agent as to whether any person to whom the Agent proposes to transfer Project Co's rights and liabilities under the Project Agreement is a Suitable Substitute Project Co, not later than 20 Business Days after the date of receipt from the Agent of all information reasonably required by the Province to decide whether the proposed transferee is a Suitable Substitute Project Co and if the Province fails to notify the Agent within such period, the proposed transferee will be deemed to be a Suitable Substitute Project Co.

6.3 Withholding of Consent

The Province will not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Co and it will, without limitation, be reasonable for the Province to withhold its consent:

- (a) if there are unremedied breaches under the Project Agreement and there is no remedial program reasonably acceptable to the Province in respect of the breaches; or
- (b) based on any of the factors set out in Section 16.3 [Factors Province May Consider] of the Project Agreement with respect to any transfer, including any assignment, to such person or Change in Control resulting from the transfer.

6.4 Terms of Transfer

Upon the transfer referred to in Section 6.1 becoming effective:

- (a) Project Co and the Province will be released from their obligations under the Project Agreement to each other, including with respect to indemnification under the Project Agreement whether arising prior to or after such transfer (the “**Discharged Obligations**”);
- (b) the Suitable Substitute Project Co and the Province will assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Project Co instead of Project Co;
- (c) the rights of Project Co against the Province under the Project Agreement and vice versa (the “**Discharged Rights**”) will be cancelled;
- (d) the Suitable Substitute Project Co and the Province will acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Project Co instead of Project Co;
- (e) any subsisting ground for termination of the Project Agreement by the Province will be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;
- (f) the Province will enter into a lenders’ remedies agreement with the Suitable Substitute Project Co and a representative of Senior Lenders lending to the Suitable Substitute Project Co on substantially the same terms as this Agreement; and
- (g) any Deductions that arose prior to that time will not be taken into account after the transfer for the purposes of Sections 11.1(b) [Province’s Step-in Rights] and 12.1(h) [Project Co Events of Default] of the Project Agreement and Section 5.8 [Increased Monitoring] and Section 5.9 [Replacement of Non-Performing Service Provider or Sub-Contractor] of Schedule 4 [Services Protocols and Specifications] to the Project Agreement.

7. INSURANCE

7.1 Release of Insurance Proceeds

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Financing Agreements, the Agent will only permit amounts to be released from the Insurance Account or the Insurance Trust Account in accordance with Section 6 [Insurance, Damage and Destruction] and Schedule 5 [Insurance Requirements] of the Project Agreement and will not exercise any rights under the Senior Financing Agreements or take any other steps to prevent amounts being released from the Insurance Account or the Insurance Trust Account in accordance with Section 6 [Insurance, Damage and Destruction] and Schedule 5 [Insurance Requirements] of the Project Agreement.

8. COVENANTS

8.1 Province Covenants

The Province agrees with the Agent that the Province will:

- (a) as soon as is reasonably practicable, at Project Co's or the Agent's expense, take whatever action the Agent, an Appointed Representative or a Suitable Substitute Project Co taking a transfer in accordance with Section 6 may reasonably require for perfecting any transfer or release under this Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Agent or Appointed Representative or Suitable Substitute Project Co reasonably requires;
- (b) not, prior to the Senior Debt Discharge Date, unless the Agent has (acting reasonably) consented in writing:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Insolvency Proceedings;
 - (3) sanction, by voting or failing to vote, any Insolvency Proceedings and will, if requested to do so by the Agent, vote against any Insolvency Proceedings;
 - (4) without prejudice to its rights of set-off under the Project Agreement, including rights to take amounts owing by Project Co into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Finance Party in respect of any monies owing to it by Project Co for or on account of Project Co's liabilities under the Project Documents in the event of any Insolvency Proceedings; or
 - (5) take any action authorising, or which might result in or is in furtherance of, any of the prohibited matters referred to in Sections 8.1(b)(1), (2), (3) or (4) above;

- (c) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between the Province and a third party, the effect of which would be reasonably likely to render the Province unable to satisfy its obligations under the Project Agreement; and
- (d) not issue a Step-In Notice or Proposed Transfer Notice under any Material Project Contractor Collateral Agreement at any time that the Senior Lenders are validly exercising under any Senior Financing Agreement any step-in rights with respect to the relevant Material Contract.

8.2 Agent Covenants

The Agent will promptly:

- (a) [not used] ;
- (b) notify the Province when it believes the Senior Debt Discharge Date will occur or has occurred, and in any event will so notify no later than 20 Business Days after its occurrence;
- (c) a reasonable time prior to the taking of any such action, notify the Province of any decision by the Senior Lenders to take action under Sections 12.1 and 12.2 of the Note Indenture, together with reasonable details of any such action;
- (d) unless notice is already provided under the above provisions, notify the Province of any decision by the Senior Lenders to:
 - (1) appoint an Insolvency Officer;
 - (2) commence any Insolvency Proceedings;
 - (3) sanction, by voting or failing to vote, any Insolvency Proceedings; or
 - (4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in Sections (1), (2) or (3) above; and
- (e) upon request by the Province, cause all security on any real or personal property comprised in the Facility to be promptly discharged and released on the date requested by the Province (which will be on or after the Termination Date).

8.3 Project Co Covenant

Project Co acknowledges and consents to the arrangements set out in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

9. STEP-IN RIGHTS UNDER MATERIAL CONTRACTS

9.1 Priority of Step-In Rights under Material Contracts

Subject to Section 9.3, notwithstanding any provision in any Material Project Contractor Collateral Agreement, the Province will not exercise any right it may have pursuant to a Material Project Contractor Collateral Agreement to step-in and assume or otherwise enforce (or cause a third party designated by the Province to step-in and assume or otherwise enforce) Project Co's rights and obligations under any of the Material Contracts (including the issuance of a step-in notice by the Province pursuant to any Material Project Contractor Collateral Agreement), or to transfer or assign a Material Contract, unless:

- (a) within 60 days of delivery by the relevant Project Contractor to the Province of a Termination Notice as contemplated in Section 2.1 of the relevant Material Project Contractor Collateral Agreement, the Province has not received a copy of a step-in notice delivered under the terms of the lenders' direct agreement in respect of such Material Contract (a "**Lenders' Step-In Notice**"); or
- (b) if (i) within 60 days of delivery by the relevant Project Contractor to the Province of a Termination Notice as contemplated in Section 2.1 of the relevant Material Project Contractor Collateral Agreement, the Province has received a copy of a Lenders' Step-In Notice but (ii) within 105 days of delivery by the relevant Project Contractor to the Province of a Termination Notice as contemplated in Section 2.1 of the relevant Material Project Contractor Collateral Agreement, the Agent has not completed either a step-in and assumption of Project Co's rights and obligations under the relevant Material Contract or a transfer or assignment thereof.

9.2 Step-in from Termination Date

Subject to Section 9.4, from the Termination Date, provided that the Province has (if applicable) complied with Section 3.7 and Section 4.5 in terminating the Project Agreement, the Province will be free to exercise its rights under any Material Project Contractor Collateral Agreement to step-in and assume (or cause a third party designated by the Province to step-in and assume) Project Co's rights and obligations under, or to transfer or assign, any Material Contract in accordance with a Material Project Contractor Collateral Agreement.

9.3 Release of Security

Subject to Section 9.4, the Agent will release and discharge (or cause to be released and discharged) at no cost to the Province, and as soon as reasonably possible, all security in respect of each of the Material Contracts in respect of which any of Project Co's rights or obligations thereunder are assumed, transferred or assigned by or to the Province (or by or to a third party designated by the Province) pursuant to a Material Project Contractor Collateral Agreement.

9.4 Retention of Security for Deficiency

Until such time as any Deficiency has been determined and an amount equal to the Deficiency has been recovered by the Finance Parties, the Finance Parties will be entitled to retain the benefit of the security

in respect of claims and losses that Project Co has as against the Project Contractor under the relevant Material Contract (or as against any guarantor of such Material Contract) that arose prior to the date of the assumption, transfer or assignment of the relevant Material Contract (or guarantee in respect of such Material Contract) by or to the Province (or by or to a third party designated by the Province) provided that:

- (a) the Finance Parties will not, and will not be entitled to, exercise any rights or enforce any security in respect of any such claim during the period from the date on which such assumption, transfer or assignment occurs to the Termination Date; and
- (b) the rights in relation to the security retained by the Finance Parties pursuant to this Section 9.4 may only be exercised if and to the extent that the Termination Payment actually paid by the Province pursuant to Section 2 [Termination for Project Co Event of Default: Re-Bidding Process] or Section 3 [Project Co Event of Default: No-Re-Bidding Process] of Schedule 9 [Compensation on Termination] to the Project Agreement is less than the Revised Senior Debt Termination Amount (the amount by which the Termination Payment is (or, in the reasonable opinion of the Agent, is likely to be) less than the Revised Senior Debt Termination Amount being herein referred to as the “**Deficiency**”).

Any amounts recovered by the Finance Parties pursuant to claims referred to in this Section 9.4, from the Termination Date to the date on which the Termination Payment and the amount of the Deficiency, if any, have been determined, will be held by the Agent in a segregated account on terms satisfactory to the Agent and the Province, each acting reasonably, and, upon determination of the Termination Payment and the amount of the Deficiency, if any, such funds will be distributed to the Agent, to the extent of the Deficiency, if any, and the balance of such funds will be paid to the Province.

9.5 Assignment of Material Contracts by Finance Parties

The Finance Parties will not transfer or assign any Material Contract except to a Suitable Substitute Project Co in conjunction with a permitted transfer or assignment of the Project Agreement to that Suitable Substitute Project Co in accordance with Section 6.

10. ASSIGNMENT

10.1 Restriction on Assignment

No party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except as provided in this Section 10.

10.2 Assignment by Agent

The Agent, in its own capacity and not as agent for the Senior Lenders, may assign or transfer its rights and obligations under this Agreement to a successor Agent in its own capacity and not as agent for the Senior Lenders, in accordance with the Senior Financing Agreements without the consent of the Province provided that the Agent delivers to the Province not less than 10 Business Days prior to such assignment or transfer a notice setting out such contact information regarding the assignee or transferee as the Province may reasonably require and provided the assignee or transferee is not a Restricted Person. For

purposes of this Section 10.2, the definition of Restricted Person will not include sub-paragraph (d) of that definition.

10.3 Assignment by Senior Lender

Any Senior Lender may assign or transfer its rights and obligations under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements without the consent of the Province provided the assignee or transferee is not a Restricted Person. For purposes of this Section 10.3, the definition of Restricted Person will not include sub-paragraph (d) of that definition.

10.4 Assignment by Province

The Province will assign or transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Project Agreement concurrently with the assignment of the Project Agreement to such assignee and the Agent and the Senior Lenders will co-operate with the Province in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by the Province.

10.5 New Agreement

If Section 10.2 applies in relation to the Agent, the Province and Project Co will, upon request by the new Agent, enter into a new lenders' remedies agreement with the new Agent on substantially the same terms as this Agreement.

11. GENERAL

11.1 Term

This Agreement will remain in effect until the earlier of:

- (a) the Senior Debt Discharge Date; and
- (b) subject to compliance with Section 6.4(f) above, the date of transfer of Project Co's rights and liabilities under the Project Agreement to a Suitable Substitute Project Co pursuant to Section 6.

11.2 Conflict or Inconsistency

If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, as between the Agent and the Province the provisions of this Agreement will prevail.

11.3 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

11.4 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

11.5 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

11.6 Confidentiality

The Agent will be bound to comply with the confidentiality obligations on the part of Project Co contained in the Project Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

11.7 Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

if to the Province:



Attention:



Fax number:



E-mail:



if to the Agent:

BNY Trust Company of Canada
320 Bay Street, 11th Floor
Toronto, ON M5H 4A6

Attention: Corporate Trust Administration

Facsimile: 416-360-1711

if to Project Co:

Plenary Justice Okanagan Limited Partnership
 400 Burrard Street, Suite 2000
 Commerce Place
 Vancouver, BC V6C 3A6

Attention:

E-mail:

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

11.8 No Partnership or Agency

Nothing in this Agreement will be construed as creating a partnership or as constituting the Senior Lenders, the Agent, the Appointed Representative, any other Senior Lenders' Representative or a Suitable Substitute Project Co as an agent of the Province. No such person will hold itself out as having any authority or power to bind the Province in any way.

11.9 Remedies Cumulative

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

11.10 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Agreement will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure, and Schedule 13 [Dispute Resolution Procedure] of the Project Agreement is deemed to be incorporated, *mutantis mutandis*, in this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

SIGNED on behalf of **HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**
by a duly authorized representative of
the **MINISTER OF TECHNOLOGY INNOVATION
AND CITIZENS SERVICES** in the
presence of:

(Witness)

Associate Deputy Minister, Ministry of Technology,
Innovation and Citizens' Services

BNY TRUST COMPANY OF CANADA, as Agent

Per: _____
Authorized Signatory

PLENARY JUSTICE OKANAGAN LIMITED PARTNERSHIP, by its general partner, PLENARY JUSTICE OKANAGAN GP INC.

Per: _____

Authorized Signatory

SCHEDULE 11

MATERIAL PROJECT CONTRACTOR COLLATERAL AGREEMENT

for the Okanagan Correctional Centre Project

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, AS
REPRESENTED BY THE MINISTER OF TECHNOLOGY, INNOVATION AND CITIZENS' SERVICES**

[MATERIAL CONTRACT PARTY]

**PLENARY JUSTICE OKANAGAN LIMITED PARTNERSHIP, by its general partner, PLENARY
JUSTICE OKANAGAN GP INC.**

**(NTD: This Agreement will be customized for each Material Contract Party, including the Design-
Builder and the Service Provider)**

Dated: March 18, 2014

SCHEDULE 11

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION

1.1	Definitions	2
1.2	Construction and Interpretation	2
1.3	Governing Law	3
1.4	Attornment	3

2. TERMINATION NOTICE AND PROVINCE TERMINATION

2.1	Termination Notice	3
2.2	Survival of Material Contract	3
2.3	Suspension Notice.....	3

3. STEP-IN AND STEP-OUT

3.1	Step-In Notice	4
3.2	Lenders' Step-in Rights	5
3.3	Notice of Obligations and Step-In Undertaking	5
3.4	Update of Obligations	5
3.5	Delivery of Step-In Undertaking.....	5
3.6	Limits on Province Liability on Step-In	6
3.7	Non-Delivery of the Step-In Undertaking.....	6
3.8	Effect of Step-In Undertaking	6
3.9	Step-Out	6
3.10	Effect of Step-Out	7
3.11	Payment by Project Co.....	7

4. TRANSFER

4.1	Proposed Substitute	7
4.2	Consent to Transfer	7
4.3	Grant of Consent	8
4.4	Consent Withheld	8
4.5	Implementation of Transfer.....	9
4.6	Effect of Transfer	9
4.7	Termination After Transfer.....	9

5. RIGHTS AND OBLIGATIONS UNDER THE MATERIAL CONTRACT

5.1	Rights of Termination	10
5.2	Project Co's Obligations to Continue.....	10

6. REVOCATION OF NOTICES

7. ASSIGNMENT

7.1	Binding on Successors and Assigns	11
7.2	Restriction on Assignment.....	11

8. GENERAL

8.1 Notices 11

8.2 Entire Agreement..... 12

8.3 Waiver..... 12

8.4 No Partnership or Agency 12

8.5 Conflicting Agreements 13

8.6 Remedies Cumulative 13

8.7 Counterparts 13

8.8 Delivery by Fax..... 13

8.9 Joint and Several..... 13

8.10 Disputes..... 13

MATERIAL PROJECT CONTRACTOR COLLATERAL AGREEMENT

THIS AGREEMENT is dated as of March 18, 2014

AMONG:

▼,

(the "**Material Contract Party**")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, AS REPRESENTED BY THE MINISTER OF TECHNOLOGY, INNOVATION AND CITIZENS' SERVICES

(the "**Province**")

AND:

PLENARY JUSTICE OKANAGAN LIMITED PARTNERSHIP, by its general partner, PLENARY JUSTICE OKANAGAN GP INC.

("Project Co")

WHEREAS:

A. The Province and Project Co have entered into an agreement dated as of March [18], 2014 (the "**Project Agreement**") whereby Project Co has agreed to design, construct, finance and maintain the Facility (the "**Project**"), all as more particularly described in the Project Agreement;

B. Project Co and the Material Contract Party have entered into an agreement dated as of March 18, 2014 (the "**Material Contract**") whereby the Material Contract Party has agreed to carry out **[the Design and Construction/the Services]**; and

C. It is a condition of the Material Contract that the Material Contract Party enter into this Agreement with the Province and Project Co.

NOW THEREFORE in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meaning given to such terms in the Project Agreement, and:

"**Material Contract**" has the meaning set out in Recital B;

"**Parties**" means the Province, Project Co and the Material Contract Party;

"**Project**" has the meaning set out in Recital A;

"**Project Agreement**" has the meaning set out in Recital A;

"**Proposed Transfer Date**" has the meaning set out in Section 4.1;

"**Proposed Transfer Notice**" has the meaning set out in Section 4.1;

"**Proposed Step-in Date**" has the meaning set out in Section 3.1;

"**Proposed Substitute**" has the meaning set out in Section 4.1;

"**Step-in Date**" means the date the Province delivers the Step-in Undertaking;

"**Step-in Notice**" has the meaning set out in Section 3.1;

"**Step-in Period**" means the period commencing on the Step-in Date and ending on the earliest of:

- (a) the Step-out Date;
- (b) the Transfer Effective Date; and
- (c) the termination date of the Material Contract as permitted under Section 3.8.

"**Step-in Undertaking**" has the meaning set out in Section 3.5;

"**Step-out Date**" has the meaning set out in Section 3.9;

"**Termination Notice**" has the meaning set out in Section 2.1;

"**Transfer Agreement**" has the meaning set out in Section 4.5(b); and

"**Transfer Effective Date**" means the effective date of the Transfer Agreement.

1.2 Construction and Interpretation

Unless otherwise defined in this Agreement or to the extent the context requires, this Agreement will be interpreted according to the provisions set out in Sections 2 [Interpretation] and 3(c) [Priority of Agreements and Schedules] of Schedule 1 [Definitions and Interpretation] to the Project Agreement,

except that references in such section to Project Co will be also deemed to be references to the Material Contract Party.

1.3 Governing Law

This Agreement will be deemed to be made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.

1.4 Attornment

For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of British Columbia and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

2. TERMINATION NOTICE AND PROVINCE TERMINATION

2.1 Termination Notice

The Material Contract Party will not terminate the Material Contract without first giving the Province at least ▼ [NTD: insert same notice period required under the Material Contract] Business Days' notice specifying the grounds for such termination (the "Termination Notice").

2.2 Survival of Material Contract

Notwithstanding any provision of the Material Contract to the contrary, on termination of the Project Agreement by the Province, the parties agree that the Material Contract will not come to an end except in accordance with the terms of this Agreement.

2.3 Suspension Notice

[NTD: To be included only in the Design-Build Collateral Agreement and only if such agreement contains rights for the Design-Builder to suspend its performance thereof.] The Material Contract Party will not exercise any right it may have under the Material Contract to temporarily suspend its performance thereunder, unless:

- (a) the Material Contract Party first delivers a notice (a "**Suspension Notice**") to the Province detailing the event that has occurred that entitles it to exercise such right and stating that it intends to exercise such right, together with details of any sums which are due and payable but unpaid by Project Co and of any other material obligations or liabilities which should have been performed or discharged by Project Co under the Material Contract, in each case as at the date of such Suspension Notice; and
- (b) both:

- (1) the Material Contract Party has confirmed in writing to the Province that the Senior Lenders have not agreed to pay the Material Contract Party in accordance with the Material Contract for work performed by it during the period commencing on the date (the "**Suspension Date**") when it, but for the provisions of this Section, would have been entitled to suspend its performance under the Material Contract [and ending no sooner than ▼]; and
- (2) within 5 Business Days of receipt of confirmation from the Material Contract Party pursuant to Section 2.3(b)(1), the Province has not agreed, by written notice to the Material Contract Party, to pay the Material Contract Party in accordance with the Material Contract for work performed by it during the period (the "**No Suspension Period**") commencing on the Suspension Date and ending on the earliest to occur of:
 - (A) the date on which the Senior Lenders exercise any of their step-in or transfer rights pursuant to and in accordance with, respectively, Section 4 or Section 6 of the Lenders' Remedies Agreement;
 - (B) the date from which the Senior Lenders agree to pay the Material Contract Party as contemplated under Section 2.3(b)(1); and
 - (C) the Step-in Date.

except that, if the Province provides a written notice to the Material Contract Party pursuant to Section 2.3(b)(2) and thereafter fails to make payment to the Material Contract Party of any undisputed amount payable pursuant to and in accordance with the Material Contract for work performed by the Material Contract Party during the No Suspension Period, the No Suspension Period will terminate and the Material Contract Party may thereafter exercise any right it may have to temporarily suspend its performance under the Material Contract.

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

Subject to Section 3.2, if the Province has terminated the Project Agreement in accordance with its terms or if the Province has received a Termination Notice, the Province may give notice to the Material Contract Party (a "**Step-in Notice**") of the intention of the Province to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such Proposed Step-in Date is:

- (a) no later than 10 Business Days after termination of the Project Agreement if the Project Agreement was terminated by the Province; and
- (b) no later than 10 Business Days after delivery of the Termination Notice to the Province.

3.2 Lenders' Step-in Rights

The Province will not issue a Step-In Notice at any time that the Senior Lenders are validly exercising any step-in rights with respect to the Project under:

- (a) the Lenders' Remedies Agreement;
- (b) any Senior Financing Agreement; or
- (c) any direct agreement entered into between the Material Contract Party and the Senior Lenders with respect to the Material Contract,

and the running of all notice periods and timelines set out in Section 3.1 will be suspended until such time as the Senior Lenders are no longer exercising, or are no longer permitted to exercise, such rights under the Lenders' Remedies Agreement, any Senior Financing Agreement or any such direct agreement. The Material Contract Party will provide copies of all relevant notices delivered by it to, or to it by, the Senior Lenders in respect of the exercise of such rights so as to enable the Province and the Material Contract Party to determine, in accordance with this Section 3.2 the notice periods and timelines set out in Section 3.1.

3.3 Notice of Obligations and Step-In Undertaking

Not less than five Business Days prior to the Proposed Step-in Date, the Material Contract Party will give notice to the Province of any sums which are due and payable but unpaid by Project Co and of any other material obligations or liabilities, which should have been performed or discharged by Project Co under the Material Contract, in each case, as at the date of the Step-in Notice.

3.4 Update of Obligations

Not less than two Business Days prior to the Proposed Step-in Date, the Material Contract Party will give notice to the Province of any change in such sums, obligations or liabilities referred to in Section 3.3.

3.5 Delivery of Step-In Undertaking

On or before the Proposed Step-in Date, the Province may deliver to the Material Contract Party a written undertaking to the Material Contract Party (the "**Step-in Undertaking**") undertaking to the Material Contract Party to:

- (a) pay or procure the payment to the Material Contract Party, within 15 Business Days of demand by the Material Contract Party, of any sum due and payable or accruing due and payable but unpaid by Project Co to the Material Contract Party under the Material Contract before the Step-in Date provided such amounts have been notified by the Material Contract Party to the Province in accordance with Sections 3.3 and 3.4;
- (b) perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Project Co under the Material Contract which will have fallen due for performance or discharge before the Step-in Date and which have been notified by the Material Contract Party to the Province in accordance with Sections 3.3 and 3.4;

- (c) pay or procure the payment of any sum due and payable by Project Co under the Material Contract as a result of either any work or services performed during the Step-in Period or any act or omission occurring during the Step-in Period which arises from any act or omission occurring after the Step-in Date; and
- (d) perform or discharge or procure the performance or discharge of any obligations of Project Co under the Material Contract as a result of any act or omission occurring during the Step-in Period which arises from any act or omission occurring after the Step-in Date.

3.6 Limits on Province Liability on Step-In

The Province will not be required to assume any liability under a Step-in Undertaking for any outstanding obligations or liabilities of Project Co to the Material Contract Party which:

- (a) existed as at the Step-In Date; and
- (b) are not notified to the Province pursuant to Sections 3.3 and 3.4.

3.7 Non-Delivery of the Step-In Undertaking

If the Province does not deliver the Step-in Undertaking on or before the Proposed Step-in Date, the Step-in Notice will be deemed to have been withdrawn and the rights and obligations of the parties will be construed as if the Step-in Notice had not been given.

3.8 Effect of Step-In Undertaking

During any Step-in Period, the Material Contract Party will continue to observe and perform its duties and obligations under the Material Contract and will only be entitled to exercise its rights of termination under the Material Contract:

- (a) by reference to a default under the Material Contract arising during the Step-in Period (other than to the extent that a Project Co Insolvency Event constitutes such a default) provided that no event of default by Project Co under the Project Agreement will entitle the Material Contract Party to exercise such rights of termination during the Step-in Period;
- (b) if the Province fails to pay when due any amount owed to the Material Contract Party or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking; or
- (c) if such rights of termination arise in circumstances where there is no default under the Material Contract by the Province or the Material Contract Party.

3.9 Step-Out

The Province may, at any time, terminate the Step-in Period by giving the Material Contract Party at least 30 days' notice specifying the date on which the Step-in Period will terminate (the "**Step-out Date**").

3.10 Effect of Step-Out

The Province will be released from the Step-in Undertaking on the expiry or termination of the Step-in Period, provided that the Province has performed and discharged in full or procured the performance and discharge in full of any of the Province's obligations under the Step-in Undertaking arising on or before the expiry or termination of the Step in Period.

3.11 Payment by Project Co

Project Co will pay to the Province on demand any amounts notified by the Material Contract Party to the Province pursuant to Sections 3.3 and 3.4 and paid by the Province or a Proposed Substitute to the Material Contract Party pursuant to this Agreement and any such amounts will constitute amounts due and payable by Project Co to the Province under the Project Agreement and the Province will have all the same rights and remedies under the Project Agreement (including any rights of set-off) in respect of payment or non-payment of any such amounts as the Province would have for any payment or non-payment by Project Co of any other amounts that are due and payable by it to the Province under the Project Agreement.

4. TRANSFER

4.1 Proposed Substitute

At any time that the Province is entitled to give a Step-in Notice pursuant to Section 3.1 or at any time during the Step-in Period, the Province may give notice (a "**Proposed Transfer Notice**") to the Material Contract Party that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, assignment, transfer or other disposal, the rights and obligations of Project Co under the Material Contract and specifying a date (the "**Proposed Transfer Date**"):

- (a) if the Province has terminated the Project Agreement but has not given a Step-in Notice, no later than 15 Business Days after termination of the Project Agreement;
- (b) if the Material Contract Party has given a Termination Notice but the Province has not given a Step-in Notice, no later than expiry of the Termination Notice; and
- (c) if the Province has given a Step-in Notice (whether or not the Step-in Period has commenced), no later than 30 days after the date of the Proposed Transfer Notice.

Subject to Section 3, the Material Contract Party will not be entitled to terminate the Material Contract during the notice period specified in a Proposed Transfer Notice.

4.2 Consent to Transfer

If the Proposed Transfer Notice specifies the Province as the Proposed Substitute, the Material Contract Party's consent to the transfer will be deemed to have been given. If the Proposed Substitute is not the Province, a transfer in accordance with a Proposed Transfer Notice will only be effective if the Material Contract Party consents to that transfer in writing in accordance with Section 4.3 and the Province will (as soon as practicable) supply the Material Contract Party with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- (c) the names of the directors and the secretary of the Proposed Substitute;
- (d) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- (e) details of the technical competence of the Proposed Substitute and the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Material Contract.

4.3 Grant of Consent

The Material Contract Party may withhold or delay consent to a transfer only if the Proposed Substitute is not the Province and the Province has failed to show to the Material Contract Party's satisfaction (acting reasonably) that:

- (a) the Proposed Substitute has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Material Contract; and
- (b) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are sufficient to perform the obligations of Project Co under the Material Contract.

Within five Business Days of the receipt of a Proposed Transfer Notice and all information required under Section 4.2, the Material Contract Party will notify the Province in writing that it has consented to the transfer and if the Material Contract Party has not consented, an explanation of its reasons to withhold its consent.

4.4 Consent Withheld

If the Material Contract Party withholds its consent to a Proposed Transfer Notice, the Province may give one or more subsequent Proposed Transfer Notices, pursuant to the provisions of Section 4.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which the Province reasonably believes would fulfil the requirements of Sections 4.3, provided that only one Proposed Transfer Notice may be outstanding at any one time, and provided further that:

- (a) if a Step-in-Notice has not been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(a) or 4.1(b), as the case may be; and
- (b) if a Step-in Notice has been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(c).

4.5 Implementation of Transfer

If the Material Contract Party consents or is deemed to have consented to a transfer pursuant to a Proposed Transfer Notice, then on the Proposed Transfer Date:

- (a) the Proposed Substitute will become a party to the Material Contract in place of Project Co and, thereafter, will be treated as if it was and had always been named as a party to the Material Contract in place of Project Co; and
- (b) the Material Contract Party, Project Co and the Proposed Substitute will enter into a transfer agreement (the "**Transfer Agreement**") and any other requisite agreements, in form and substance satisfactory to the Material Contract Party, acting reasonably, pursuant to which:
 - (1) the Proposed Substitute will be granted all of the rights of Project Co under the Material Contract; and
 - (2) the Proposed Substitute will assume all of the obligations and liabilities of Project Co under the Material Contract.

4.6 Effect of Transfer

On and after the Transfer Effective Date:

- (a) the Material Contract Party will owe its obligations under the Material Contract whether arising before, on or after such date, to the Proposed Substitute; and
- (b) if the Province has entered into a Step-in Undertaking, the Province will be released from the Step-in Undertaking, provided that all obligations of the Province under the Step-in Undertaking which have accrued up to the Transfer Effective Date have been fully and unconditionally discharged.

The Province and the Material Contract Party will use reasonable efforts to agree to any amendments to the Material Contract reasonably necessary to reflect the fact that the Project Agreement may have terminated at the time of the Transfer Effective Date.

4.7 Termination After Transfer

After the Transfer Effective Date the Material Contract Party will only be entitled to exercise its rights of termination under the Material Contract:

- (a) in respect of any Project Co Event of Default arising after that date in accordance with the Material Contract; or
- (b) if the Proposed Substitute does not discharge the obligations and liabilities referred to in Section 4.5(b)(2) assumed by it under the Transfer Agreement which relate to matters arising prior to the end of any Step-in Period within 15 Business Days following the Transfer Effective Date.

5. RIGHTS AND OBLIGATIONS UNDER THE MATERIAL CONTRACT

5.1 Rights of Termination

If:

- (a) no Step-in Notice or Proposed Transfer Notice is given before a Termination Notice expires or within 15 Business Days after termination of the Project Agreement by the Province;
- (b) a Step-in Undertaking is not issued on or before the Proposed Step-in Date;
- (c) the Step-In Notice is withdrawn or, pursuant to Section 3.7, is deemed to have been withdrawn;
- (d) the Step-In Period ends before the occurrence of the Transfer Effective Date;
- (e) in the absence of a Step-in Undertaking, the Material Contract Party reasonably withholds its consent to a transfer pursuant to a Proposed Transfer Notice, in accordance with Section 4.3, and does not subsequently grant consent to a transfer in accordance with Section 4.4 on or before the Proposed Transfer Date;
- (f) in the absence of a Step-in Undertaking, a Transfer Agreement is not entered into on the Proposed Transfer Date;
- (g) the Material Contract Party is entitled to terminate the Material Contract under Section 3.8 or 4.7; or
- (h) the Province exercises its right to Step-out under Section 3.9, then on the Step-out Date,

the Material Contract Party may:

- (i) exercise all of its rights under the Material Contract and act upon any and all grounds for termination available to it in relation to the Material Contract whenever occurring; and
- (j) pursue any and all claims and exercise any and all rights and remedies against Project Co.

5.2 Project Co's Obligations to Continue

Until completion of a transfer pursuant to Section 4.5, Project Co will continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Material Contract notwithstanding:

- (a) the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking;
- (b) the service of a Proposed Transfer Notice; or

(c) any other provision of this Agreement.

6. REVOCATION OF NOTICES

A Termination Notice and a Step-in Notice may each be revoked (in writing to the recipient) by the party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the parties will be construed as if the relevant notice had not been given.

7. ASSIGNMENT

7.1 Binding on Successors and Assigns

This Agreement will be binding on and will enure to the benefit of the parties and their respective successors and permitted assigns.

7.2 Restriction on Assignment

No party will assign or transfer any part of its respective rights or obligations under this Agreement without the prior consent of the others (such consent not to be unreasonably withheld or delayed), provided that:

- (a) the Province will be entitled, without the consent of any other party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with the Project Agreement; and
- (b) the Material Contract Party will assign or transfer all its rights and obligations under, this Agreement to any person to whom it, respectively, assigns, or transfers all its rights and obligations under, the Material Contract in accordance with the terms of the Material Contract and the Project Agreement.

8. GENERAL

8.1 Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

Attention:
 Fax number:
 E-mail:

if to the Material Contract Party:

Attention:
 Email:

if to Project Co:

Plenary Justice Okanagan Limited Partnership
400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

Attention:

E-mail:

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

8.2 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

8.3 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

8.4 No Partnership or Agency

Nothing in this Agreement will be construed as creating a partnership or as constituting the Material Contract Party as an agent of the Province. The Material Contract Party will not hold itself out as having any authority or power to bind the Province in any way.

8.5 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

8.6 Remedies Cumulative

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

8.7 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

8.8 Delivery by Fax

Any party may deliver an executed copy of this Agreement by fax but that party will immediately dispatch by delivery in person to the other parties an originally executed copy of this Agreement.

8.9 Joint and Several

If the Material Contract Party is comprised of more than one legal entity, the obligations and liabilities of the Material Contract Party under this Agreement will be the obligations and liabilities of each legal entity comprising the Material Contract Party, jointly and severally with each other such legal entity.

8.10 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Agreement or any disagreement between any of the parties with respect to any matter that, by the express terms of this Agreement, is to be agreed upon by the parties will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure, provided that, for greater certainty, the parties acknowledge that, during a Step-in Period or after the Transfer Effective Date, any dispute with respect to any of the subject matters of the Material Contract will be resolved in accordance with the applicable dispute resolution procedure thereunder.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

[MATERIAL CONTRACT PARTY]

Per: _____
Authorized Signatory

SIGNED on behalf of **HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**
by a duly authorized representative of
the **MINISTER OF TECHNOLOGY INNOVATION
AND CITIZENS SERVICES** in the
presence of:

(Witness)

Associate Deputy Minister, Ministry of Technology, Innovation and Citizens' Services

PLENARY JUSTICE OKANAGAN LIMITED PARTNERSHIP, by its general partner, PLENARY JUSTICE OKANAGAN GP INC.

Per: _____
Authorized Signatory

SCHEDULE 12

PROJECT CO'S OWNERSHIP INFORMATION

Project Co Information:

Project Co represents and warrants that the following information regarding Project Co is true and complete as of the date of the Agreement:

A. Plenary Justice Okanagan Limited Partnership

1. Name: Plenary Justice Okanagan Limited Partnership
2. Date of Registration: February 27, 2014
3. Registered number: LP627993
4. General Partner: Plenary Justice Okanagan GP Inc.
5. Limited Partner: Plenary Justice Okanagan LP Inc.
6. Partnership Interests: 99.999983365% – Plenary Justice Okanagan GP Inc.
0.000016635% – Plenary Justice Okanagan LP Inc.
7. Subsidiaries at the date of this Agreement: None
8. Authorized and issued share capital at the date of this Agreement: N/A
9. Loans at the date of this Agreement (other than under the Senior Financing Agreements) issued as follows: None
10. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co. See the amended & restated limited partnership agreement of Project Co

B. Plenary Justice Okanagan LP Inc.

1. Name Plenary Justice Okanagan LP Inc.
2. Date of Incorporation February 18, 2014
3. Incorporation Number BC0994131

4. Directors:

NameAddress

Paul Dunstan

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

A. Phillip Dreaver

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

5. Officers:

NameAddress

Paul Dunstan (President)

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

A. Phillip Dreaver (Vice President)

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

Rajan Bains (Chief Financial Officer, Secretary)

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

6. Subsidiaries at the date of this agreement: None

7. Authorized and issued share capital at the date of this Agreement:

Name and address of registered holderNumber and class heldAmount paid upPlenary Justice Okanagan GP Inc.
400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

\$0.01 per share

8. Loans at the date of this agreement issued as follows: None

- | | | |
|-----|--|--------------|
| 9. | Other outstanding securities (including description of type of securities, name and address of holder and amount): | None |
| 10. | Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co. | See articles |

C. Plenary Justice Okanagan GP Inc.

- 1. Name Plenary Justice Okanagan GP Inc.
- 2. Date of Incorporation February 18, 2014
- 3. Incorporation Number BC0994125

4. Directors:

<u>Name</u>	<u>Address</u>
Paul Dunstan	400 Burrard Street, Suite 2000 Commerce Place Vancouver, BC V6C 3A6
A. Phillip Dreaver	400 Burrard Street, Suite 2000 Commerce Place Vancouver, BC V6C 3A6

5. Officers:

<u>Name</u>	<u>Address</u>
Paul Dunstan (President)	400 Burrard Street, Suite 2000 Commerce Place Vancouver, BC V6C 3A6
A. Phillip Dreaver (Vice President)	400 Burrard Street, Suite 2000 Commerce Place Vancouver, BC V6C 3A6
Rajan Bains (Chief Financial Officer, Secretary)	400 Burrard Street, Suite 2000 Commerce Place Vancouver, BC V6C 3A6

- 6. Subsidiaries at the date of this agreement: Plenary Justice Okanagan LP Inc.

- 7. Authorized and issued share capital at the date of this Agreement:

<u>Name and address of registered holder</u>	<u>Number and class held</u>	<u>Amount paid up</u>
Plenary Investments XII (Canada) Ltd. 400 Burrard Street, Suite 2000 Commerce Place Vancouver, BC V6C 3A6		\$1.00 per share

- 8. Loans at the date of this agreement issued as follows: None

- | | | |
|-----|--|--------------|
| 9. | Other outstanding securities (including description of type of securities, name and address of holder and amount): | None |
| 10. | Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co. | See articles |

D. Plenary Investments XII (Canada) Ltd.

1. Name Plenary Investments XII (Canada) Ltd.
2. Date of Incorporation February 18, 2014
3. Incorporation Number BC0994119

4. Directors:

NameAddress

Paul Dunstan

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

A. Phillip Dreaver

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

5. Officers:

Paul Dunstan (President)

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

A. Phillip Dreaver (Vice President)

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

Rajan Bains (Chief Financial Officer, Secretary)

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

6. Subsidiaries at the date of this agreement: Plenary Justice Okanagan GP Inc.
7. Authorized and issued share capital at the date of this Agreement:

Name and address of registered holderNumber and class heldAmount paid upPlenary Group Concessions Ltd.
400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6\$1.00 per
share

8. Loans at the date of this agreement issued as follows: None

- | | | |
|-----|--|--------------|
| 9. | Other outstanding securities (including description of type of securities, name and address of holder and amount): | None |
| 10. | Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co. | See articles |

E. Plenary Group Concessions Ltd.

1. Name Plenary Group Concessions Ltd.
2. Date of Incorporation October 26, 2011
3. Incorporation Number BC0923696

4. Directors:

NameAddress

Paul Dunstan

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

A. Phillip Dreaver

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

5. Officers:

NameAddress

Paul Dunstan (President)

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

A. Phillip Dreaver (Vice President)

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6Rajan Bains (Chief Financial Officer and
Secretary)400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

Mike Marasco (Chief Executive Officer)

400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6

6. Subsidiaries at the date of this agreement:

Plenary Investments XII (Canada)
Inc.

Others

7. Authorized and issued share capital at the date
of this Agreement:Name and address of registered holderNumber and class heldAmount paid up

Plenary Group (Canada) Ltd.
 400 Burrard Street, Suite 2000
 Commerce Place
 Vancouver, BC V6C 3A6

\$1.00 per share

- | | | |
|-----|--|--------------|
| 8. | Loans at the date of this agreement issued as follows: | N/A |
| 9. | Other outstanding securities (including description of type of securities, name and address of holder and amount): | N/A |
| 10. | Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co. | See articles |

F. Plenary Group (Canada) Ltd.

- | | | |
|----|--|---|
| 1. | Name | Plenary Group (Canada) Ltd. |
| 2. | Date of Incorporation | September 29, 2005 |
| 3. | Incorporation Number | Canada 645594-8 |
| 4. | Directors: | |
| | <u>Name</u> | <u>Address</u> |
| | Paul Dunstan | 400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6 |
| | A. Phillip Dreaver | 400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6 |
| | John O'Rourke | Level 29, 140 William Street
Melbourne, VIC 3000 |
| | Paul Oppenheim | Level 29, 140 William Street
Melbourne, VIC 3000 |
| 5. | Officers: | |
| | <u>Name</u> | <u>Address</u> |
| | Paul Dunstan (President) | 400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6 |
| | A. Phillip Dreaver (Vice President) | 400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6 |
| | Rajan Bains (Chief Financial Officer and Secretary) | 400 Burrard Street, Suite 2000
Commerce Place
Vancouver, BC V6C 3A6 |
| 6. | Subsidiaries at the date of this agreement: | Plenary Group Concessions Ltd.

Others |
| 7. | Authorized and issued share capital at the date of this Agreement: | N/A |
| 8. | Loans at the date of this agreement issued as follows: | N/A |

- | | | |
|-----|--|-----|
| 9. | Other outstanding securities (including description of type of securities, name and address of holder and amount): | N/A |
| 10. | Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co. | N/A |

SCHEDULE 13

DISPUTE RESOLUTION PROCEDURE

1. DISPUTE RESOLUTION 1

1.1 Procedure 1

1.2 Dispute Notice 1

1.3 Negotiation..... 1

1.4 Fast Track Referee Process..... 1

1.5 Commencement of Proceedings 3

1.6 Arbitration 4

1.7 Litigation 5

2. GENERAL 5

2.1 Other Remedies 5

2.2 Strict Compliance with Time Limits..... 5

2.3 Interim Decision..... 6

APPENDIX 13A REFEREE AGREEMENT

SCHEDULE 13

DISPUTE RESOLUTION PROCEDURE

1. DISPUTE RESOLUTION

1.1 Procedure

Unless both parties otherwise agree, all Disputes will be resolved in accordance with the provisions of this Schedule (the “**Dispute Resolution Procedure**”) provided that the decision of the Independent Certifier that Service Commencement has been achieved is final and binding on the parties, and such decision will not be the subject of a Dispute and will not be subject to the Dispute Resolution Procedure. Except for the foregoing decision as to achievement of Service Commencement, all other decisions of the Independent Certifier, including as to any deficiencies, may be the subject of a Dispute and may be subject to the Dispute Resolution Procedure.

1.2 Dispute Notice

The Dispute Resolution Procedure may be commenced by either party by giving notice to the other party (the “**Dispute Notice**”) briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought.

1.3 Negotiation

Within 5 Business Days of one party receiving a Dispute Notice from the other, or such longer period as the parties may agree, a Representative of each party will meet and make good faith efforts to resolve the Dispute by without prejudice negotiations.

1.4 Fast Track Referee Process

If the Dispute is not resolved pursuant to Section 1.3 [Negotiation] of this Schedule to the mutual satisfaction of the parties within 5 Business Days (or such longer period as the parties may agree) following the receipt of the Dispute Notice by the receiving party, either party may by notice to the other (a “**Referee Notice**”), request the appointment of a referee (“**Referee**”) as provided under the terms of this Section 1.4 [Fast Track Referee Process] of this Schedule. The Referee will be appointed as an expert to resolve the Dispute and will participate in the resolution of the Dispute as set out below:

- (a) if the Referee Notice is given during the Construction Period, then the Independent Certifier will as of the end of the 2nd Business Day following the delivery of the Referee Notice be deemed the Referee unless:
 - (1) within 2 Business Days of the delivery of the Referee Notice either the parties agree that another person would be more suitable considering the nature of the Dispute, or either party gives written notice that it objects to the Independent Certifier acting as Referee in relation to the Dispute; or
 - (2) for any reason the Independent Certifier is unable to perform the duties of the Referee,

and in either such case the Referee will be appointed in the manner described in Section 1.4(b) [Fast Track Referee Process] of this Schedule;

- (b) if the Dispute Notice is given during the Operating Period or Section 1.4(a) [Fast Track Referee Process] of this Schedule requires that this Section 1.4(b) [Fast Track Referee Process] applies, the parties will appoint a Referee in the following manner:
- (1) within 2 Business Days of the delivery of a Referee Notice, each party will submit in writing to the other party, the names of no more than 2 candidates for Referee who are independent of the parties, experienced in the resolution of similar disputes and immediately available to perform the role of Referee in respect of the Dispute at hand;
 - (2) if a party has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other party;
 - (3) if for any reason within 3 Business Days of the delivery of a Referee Notice, a Referee has not been appointed, then either party may apply to the British Columbia International Commercial Arbitration Centre for an arbitrator to be promptly appointed under its "Domestic Commercial Arbitration Rules of Procedure" to act as a Referee under this Agreement in relation to the Dispute.
- (c) the parties will enter into an agreement with the Referee to act as Referee generally in the form attached as Appendix 13A (the "**Referee Agreement**"), such agreement to be entered into no later than 2 Business Days after the Referee's appointment. The Referee's fees and expenses will be shared equally by the Province and Project Co. The Province will pay the full amount of the Referee's fees and expenses on the day that such fees and expenses are due (including any advances on fees and expenses) in accordance with the Referee Agreement and Project Co will reimburse the Province, for Project Co's share of all such fees and expenses within 5 Business Days of receipt of a written demand from the Province, failing which the Province will be entitled to deduct the amount of Project Co's share of the Referee's fees and expenses from amounts otherwise due to Project Co under the provisions of this Agreement;
- (d) the Referee will conduct an impartial review of the Dispute in such manner as the Referee thinks fit, including carrying out on site inspections and interviews with any persons that the Referee thinks fit. The parties will comply with all reasonable requests from the Referee for additional information, documents and access to personnel which the Referee considers necessary for the review. Any submission or documentation in respect of the Dispute provided to the Referee by a party will also be provided to the other party;
- (e) the Referee may, with the written approval of both parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by either party for him to retain such other professional persons or experts;

- (f) the Referee will not be obliged to conduct his enquiries in the presence of the parties or receive submissions from the parties, except to the extent that the Referee thinks fit, and may render his decision notwithstanding the failure of a party to participate in the proceedings;
- (g) the Referee will render a brief, written, reasoned and impartial decision on the Dispute, with copies to both parties within 5 Business Days of the signing by the Referee and both parties of the Referee Agreement referred to in Section 1.4(c) [Fast Track Referee Process] of this Schedule, or such longer period as agreed to in writing by both parties. The Referee's decision will be in the form of a proposed determination of the rights of the parties having regard to the Referee's understanding of the relevant contractual provisions, the applicable law and the facts as agreed by the parties or as best the Referee is able to determine them;
- (h) each party acknowledges the value of having the Referee render a timely decision regarding the Dispute. If the Referee is unable to render his decision within the time set or as extended by mutual agreement of the parties, then the parties will request that the Referee provide to the parties within such time such analysis of the Dispute as the Referee is able to make within that time and describe the further work the Referee recommends would be required in order to arrive at a reasoned decision;
- (i) subject to the provisions of Section 2.3 [Interim Decision] of this Schedule, a decision of a Referee is not binding on the parties but is intended to assist the parties to reach agreement with respect to the Dispute;
- (j) the proceedings under this Section 1.4 [Fast Track Referee Process] of this Schedule will be confidential and all information, data or documentation disclosed or delivered by either party to the Referee as a result or in connection with his duties as Referee will be treated as confidential and neither the parties nor the Referee will, except as would be permitted under Section 17 [General], disclose to any Person any such information, data or documentation unless the parties otherwise agree in writing. Nothing contained in this provision will prevent the submission in any subsequent proceedings of any evidence other than evidence that came into existence for the express purpose of submission to, or assistance of, the Referee; and
- (k) the proceedings by or before a Referee will be without prejudice in any subsequent proceedings.

1.5 Commencement of Proceedings

If the Dispute is not completely resolved by agreement between the parties within 10 Business Days of the receipt of the Referee's decision or analysis pursuant to Section 1.4 [Fast Track Referee Process] of this Schedule (or such longer period as the parties may agree) or within 10 Business Days of the date on which the Referee's decision or analysis ought to have been received under Section 1.4 [Fast Track Referee Process] of this Schedule then either party may commence proceedings to have the Dispute finally settled, either by arbitration under Section 1.6 [Arbitration] of this Schedule or by litigation as

contemplated in Section 1.7 [Litigation] of this Schedule. In any such proceedings the scope of issues will not be limited strictly to the terms of the Dispute Notice but may extend to include directly related matters for the purpose of completely resolving the Dispute.

1.6 Arbitration

If a party is entitled under Section 1.5 [Commencement of Proceedings] of this Schedule to commence proceedings to have a Dispute finally resolved, then:

- (a) the party may give the other party notice ("**Notice of Intention to Arbitrate**") of its intention to submit the Dispute to binding arbitration; and
- (b) if the other party does not deliver a notice of objection (the "**Notice of Objection to Arbitration**") within 5 Business Day of receipt of the Notice of Intention to Arbitrate then either party may refer the Dispute to be finally resolved by arbitration as follows:
 - (1) the "Domestic Commercial Arbitration Rules of Procedure" of the British Columbia International Commercial Arbitration Centre will apply to the arbitration, as modified by this Schedule or as otherwise agreed by the parties;
 - (2) arbitration proceedings will be commenced by a party (the "**Initiating Party**") giving notice to the other party (the "**Responding Party**");
 - (3) the arbitrator(s) will have the authority to award any remedy or relief that a court or judge of the Supreme Court of British Columbia could order or grant in accordance with the Agreement, including specific performance of any obligation created under the Agreement, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process;
 - (4) meetings and hearings of the arbitrator(s) will take place in the City of Vancouver or in such other place as the parties agree and such meetings and hearings will be conducted in the English language unless otherwise agreed by such parties;
 - (5) the arbitrator(s) may at any time fix the date, time and place of meetings and hearings in the arbitration, upon reasonable notice to the parties;
 - (6) subject to any adjournments permitted by the arbitrator(s) the final hearing will be continued on successive Business Days until it is concluded;
 - (7) all meetings and hearings will be in private unless the parties agree otherwise and either party may be represented at any meetings or hearings by legal counsel;
 - (8) either party may examine, and re-examine, all its own witnesses at the arbitration and may cross-examine all of the other party's witnesses;

- (9) the arbitration will be kept confidential and the existence of the proceeding and any element of it (including any pleadings, briefs or other documents submitted or exchanged, and testimony or other oral submission and any awards) will not be disclosed to any party other than the arbitrators, the parties (and their respective directors, officers, shareholders and legal counsel), the Senior Lenders and such other persons as may be necessary to the conduct of the proceeding or required by law; and
- (10) the arbitrator(s) will deliver a decision in writing within 15 Business Days after the conclusion of the hearing and, unless the parties agree otherwise, will set out reasons for the decision.

1.7 Litigation

If either party is entitled under Section 1.5 [Commencement of Proceedings] of this Schedule to commence proceedings to have a Dispute finally resolved and:

- (a) no Notice of Intention to Arbitrate has been delivered by one party to the other; or
- (b) a Notice of Objection to Arbitration has been delivered by one party to the other in response to a Notice of Intention to Arbitrate;

then either party may commence proceedings in respect of the Dispute in the courts of British Columbia and for purposes of certainty, the provisions of Section 17.5 [Law of Agreement] will apply to such litigation. If a party has commenced such proceedings but has not served the other party as required for such proceedings prior to the other party delivering a Notice of Intention to Arbitrate, the party commencing such proceedings will either give the Notice of Objection to Arbitrate or serve such party the required notice within the time required under Section 1.6(b) [Arbitration] of this Schedule, failing which the Dispute will be resolved by arbitration under Section 1.6 [Arbitration] of this Schedule.

2. GENERAL

2.1 Other Remedies

Nothing contained in this Schedule will preclude a party from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining an effective emergency or provisional remedy to protect its rights as necessary in the circumstances, including obtaining temporary and preliminary injunctive relief and other orders, whether before or after the Dispute has been initiated by a Dispute Notice.

2.2 Strict Compliance with Time Limits

The parties acknowledge that timely resolution of Disputes is mutually beneficial and the time limits set out in this Schedule, or as otherwise agreed by the parties, will therefore be strictly complied with and enforced.

2.3 Interim Decision

If a Dispute occurs then the Province and Project Co will in good faith carry out their respective obligations under this Agreement pending resolution of the Dispute pursuant to the Dispute Resolution Procedure. Prior to resolution of the Dispute, the Province may in its discretion by notice to Project Co direct Project Co to proceed in respect of the matter in Dispute or any related matter and Project Co will comply with and implement the direction. Such direction will be without prejudice to Project Co's rights to compensation or other rights under the Agreement. Nothing in this Schedule will limit the Province's right to require a Change.

**APPENDIX 13A
REFEREE AGREEMENT**

BETWEEN:

[Name and address of Referee]
(the "Referee")

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
AS REPRESENTED BY THE MINISTER OF TECHNOLOGY, INNOVATION AND
CITIZENS' SERVICES**
(the "Province")

AND:

**PLENARY JUSTICE OKANAGAN LIMITED PARTNERSHIP, by its general partner,
PLENARY JUSTICE OKANAGAN GP INC.**
(“Project Co”)

We write to confirm your appointment as a Referee under the Project Agreement dated March [18], 2014 between the Province and Project Co (the "Project Agreement"). The terms of your appointment are as contained in Section 1.5 [Commencement of Proceedings] of Schedule 13 [Dispute Resolution Procedure] to the Project Agreement.

We confirm our agreement for you to review the Dispute(s) described in the Dispute Notice in accordance with the provisions of the Project Agreement, and to perform the functions of a Referee as described in Section 1.5 [Commencement of Proceedings] of Schedule 13 [Dispute Resolution Procedure] to the Project Agreement. A copy of the Project Agreement and related materials, will be forwarded to you shortly.

We confirm that your daily/hourly rate for fees is \$ [redacted]. In addition to your invoiced fees, the Province will pay any and all reasonable disbursements incurred in providing your services.

Please submit your invoices on a monthly basis directly to [redacted] **[Insert name of Province's Design and Construction or Operating Period Representative as applicable]** (the "Province's Representative"). The Province will make payment within 30 calendar days of receipt.

Please confirm your agreement to the terms as set out in this letter by signing a copy of the enclosed letter and returning it to the Province's Representative.

Yours truly,

_____ Authorized Signatory of the Province	_____ Date
_____ Authorized Signatory of Project Co	_____ Date
_____ Referee	_____ Date

VAN01:3149210:v7

Execution Copy
Okanagan Correctional Centre Project
Appendix 13A – Referee Agreement
Date: March 18, 2014

SCHEDULE 14

RECORDS AND REPORTS

TABLE OF CONTENTS

1. GENERAL REQUIREMENTS..... 1

2. RECORDS TO BE KEPT 3

SCHEDULE 14

RECORDS AND REPORTS

1. GENERAL REQUIREMENTS

- (a) Project Co will retain and maintain all the records (including superseded records) referred to in Section 2 [Records to be Kept] of this Schedule as follows:
- (1) in accordance with this Schedule and other applicable terms of this Agreement;
 - (2) in an organized manner;
 - (3) in a form that is capable of audit;
 - (4) in accordance with the requirements of Good Industry Practice;
 - (5) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner for British Columbia;
 - (6) in accordance with Project Co's normal business practices; and
 - (7) in accordance with GAAP.
- (b) Wherever practical and unless otherwise agreed, Project Co will retain and maintain original records in hard copy form. Project Co will also maintain all electronic data and records in readable and accessible form.
- (c) Any drawings or plans required to be made or supplied pursuant to this Agreement will be of a size appropriate to show the detail to be depicted clearly without magnifying aids. If by prior agreement with Project Co the Province has agreed to accept microfilm, microfiche or other electronic storage media (which must include secure back up facilities), Project Co will make or supply, or have made or supplied, drawings and other documents in such agreed upon form.
- (d) Project Co will retain and maintain all records referred to in Section 2 [Records to be Kept] of this Schedule, all in sufficient detail, in appropriate categories and generally in such a manner to enable each party to comply with its obligations and exercise its rights under this Agreement.
- (e) Project Co will maintain all records for the period specified for such records in Section 2 [Records to be Kept] of this Schedule and if no period is specified, for not less than 15 years.
- (f) Prior to destroying or disposing of any records required to be maintained under Section 2 [Records to be Kept] of this Schedule, Project Co will give the Province 60 days' notice of Project Co's intention to destroy or dispose of records. If within such 60 day period the Province gives notice to Project Co that the Province wishes to receive any of the

records, then Project Co will, at the cost and expense of the Province, deliver up such records to the Province in the manner and at the location or locations as the Province specifies, acting reasonably.

- (g) Project Co will provide a comprehensive computerized information management system which will include:
- (1) records and information related to the Design, the Construction, the Facility and all Services delivered under this Agreement;
 - (2) access by the Province (through online web access or other access acceptable to the Province) to all such information such that the Province will be able to read, copy, download and search all such records without licence or payment;
 - (3) hardware and software which operate the information management and communications systems and which interface with the Province's information technology systems, provided that any changes required and resulting from an upgrade to, or change by, the Province to its system will be paid for by the Province;
 - (4) backup and storage in safe custody of the data, materials and documents in accordance with Good Industry Practice; and
 - (5) records and details of specific license requirements.
- (h) Within 30 days after the end of each Contract Year, Project Co will deliver to the Province a report, as reasonably requested by the Province in connection with the Province's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against the Province or that may be owing by the Province to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report will not limit either party's rights or remedies against the other party as contemplated by this Agreement.
- (i) Project Co will provide to the Province not later than 120 days after the end of each fiscal year of Project Co, a copy of Project Co's audited financial statements prepared in accordance with GAAP, consistently applied, together with copies of all related directors' and auditors' reports and all other notices and circulars to shareholders or partners, all of which documents will be treated by the Province as Confidential Information of Project Co.
- (j) The Province and its employees, agents and other representatives may at any time at the Province's expense conduct an audit, examination or investigation of all the records (including superseded records) referred to in this Schedule and Project Co will make available its facilities and records and provide reasonable assistance, including providing

copies, in the conduct of, and without limiting Schedule 6 [Changes, Minor Works and Innovation Proposals] implement any recommendations from the Province arising from, the audit, examination or investigation.

2. RECORDS TO BE KEPT

Project Co will retain, and will require its Project Contractors to retain, the following:

- (a) this Agreement, its Schedules, the Project Contracts, Senior Financing Agreements and all other documents and instruments in respect of any financing, including all amendments to such agreements for a period of six years after the Termination Date;
- (b) the Financial Model, including the following in respect of the Financial Model:
 - (1) all prior versions;
 - (2) all amendments and modifications;
 - (3) all related or incidental reports; and
 - (4) written operating instructions in sufficient detail to allow the Province to access and review all formulas, coding, data and other inputs;
- (c) the as-built drawings, plans, records and other Construction documentation described in Schedule 2 [Design and Constructions Protocols] and Schedule 3 [Design and Construction Specifications] for a period of six years after the Termination Date, including any revisions or amendments to such documents (copies of all such documents will be kept at the Facility and made accessible to the Province at all times), including up-to-date CAD drawings for the Facility and all Services, linked to, and compatible with, the Province's information systems;
- (d) all documents relating to the appointment and supervision of Project Co's Design and Construction Representative and the Independent Certifier for a period of six years following the Service Commencement Date;
- (e) all documents relating to all Permits, including applications, refusals and appeals, for a period of six years after the expiry date of the relevant Permit;
- (f) all notices, reports, test reports, results and certificates relating to Design and Construction, the Site and any other relevant Lands, including as described in Schedule 2 [Design and Construction Protocols] or in Schedule 3 [Design and Construction Specifications] and completion of all commissioning activities for a period of six years after the Service Commencement Date;
- (g) all records relating to any inspections of the Facility conducted under applicable Laws or by or for any Governmental Authority;

- (h) all orders or other requirements issued to Project Co by any Governmental Authority for a period of six years after such order or requirement has been satisfied by Project Co;
- (i) all operation and maintenance manuals, procedures, guidelines, policies and other similar records in respect of the Facility until the Termination Date including all information electronically and manually recorded by the BMS and the CMMS for the Facility for a period of six years after such information was recorded;
- (j) all testing certificates in respect of all building elements, components, systems and equipment and appropriate documentation and records (in particular those relating to any aspects of safety or statutory compliance) relating thereto;
- (k) all notices delivered to the Help Desk and all responses from the Help Desk in respect of such notices for a period of six years after such notice was delivered;
- (l) all electronically and manually recorded information with respect to the provision of the Services including Events, Availability Conditions, Unavailability Events and Service Failures for a period of six years after such information was recorded;
- (m) all electronically and manually recorded information with respect to actions initiated by Project Co to respond to and rectify Events, Availability Conditions, Unavailability Events and Service Failures for a period of six years following rectification of such matters;
- (n) all electronically or manually recorded reports and information related to safety and security of Facility Administrators, including the date and time of such incidents, for a period of six years after each such event;
- (o) a comprehensive electronic inventory control system and asset register that provides up-to-date records for all building elements, components, systems and equipment;
- (p) comprehensive maintenance and overhaul records for the Facility including the date, time and scope of each such activity until the Termination Date;
- (q) all Performance Monitoring Reports and the information and data used to prepare such reports for a period of six years following the date of each such report;
- (r) detailed records and reports related to use and consumption of Utilities and Energy;
- (s) invoices and payments, including calculation thereof;
- (t) all certificates, licences, registrations or warranties related to the provision of the Services for a period of six years after their expiration;
- (u) all documents relating to Supervening Events and the consequences thereof for a period of six years after the relevant event occurred, or in the case of a matter in Dispute, for a period of six years after a determination has been made with respect thereto;

- (v) all notices delivered to or received from the Province's Representative for a period of six years after receipt;
- (w) all documents relating to a referral to the Dispute Resolution Procedure for a period of six years after a determination has been made with respect thereto;
- (x) all documents submitted in connection with any Change;
- (y) all documents relating to a Change in Control of Project Co;
- (z) all documents relating to a Refinancing (other than an Exempt Refinancing) until the Termination Date;
- (aa) all tax invoices, assessments, returns and other records applicable to the Project (other than any income tax records for Project Co or records pertaining to other taxes personal to Project Co) for a period of seven years after the Termination Date or such longer period as may be required by Law;
- (bb) all records required by Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Design, the Construction and the Services;
- (cc) all documents relating to insurance and insurance claims for a period of 12 years after the relevant claim is settled;
- (dd) financial accounts of Project Co referred to in Section 1(i) [General Requirements] of this Schedule;
- (ee) records of recommendations and decisions of the Operating Period Joint Committee referred to in Section 2.2.8 [Operating Period Committee] of Schedule 4 [Services Protocols and Specifications];
- (ff) all other records, notices or certificates required to be produced or maintained by Project Co pursuant to the express terms of this Agreement or any Project Contract; and
- (gg) all records to demonstrate compliance with requirements of this Agreement and will promptly provide the Province with proof of such compliance upon request.

SCHEDULE 16
COMMUNICATION ROLES
TABLE OF CONTENTS

1. GENERAL	1
2. CATEGORIES OF COMMUNICATIONS.....	2
3. LEAD AND SUPPORTING ROLES.....	2
4. LEAD RESPONSIBILITIES	3
5. SUPPORTING RESPONSIBILITIES	3
6. ALLOCATION OF LEAD AND SUPPORTING ROLES.....	4
7. PROVINCE RIGHT TO STEP IN AT PROJECT CO'S COST.....	5

SCHEDULE 16

COMMUNICATION ROLES

The Province and Project Co will, throughout the Term, share responsibilities for communications, including community relations, stakeholder consultation, media relations and emergency communications on the terms set out in this Schedule.

1. GENERAL

- 1.1 Project Co will be guided by the Province's best practices regarding communications. Unless otherwise specified by the Province, the governing document relating to best practices will be the disclosure guidance document entitled "Procurement Related Disclosure for Major Infrastructure Projects" posted at www.Partnershipsbc.ca.
- 1.2 Project Co will consult and cooperate with the Province regarding communications activities relating to the Project.
- 1.3 The desired outcome of communications activities is to inform and involve the public and other stakeholders about the progress, value and benefits of the Project and to develop and maintain support for the Project.
- 1.4 Communications strategies and plans involving the interests of both parties are to be prepared on a joint basis, with one party taking a lead role and the other a supporting role, as described in this Schedule.
- 1.5 Where communications strategies and plans involve the interests of both parties, each party will give the other a reasonable opportunity (taking into account the need for timely communications) to consider communications strategies and plans initiated by the other and, if information is supplied by a party, it should include or be accompanied by sufficient explanatory or other material to enable the information to be properly considered.
- 1.6 Project Co will consider and, acting reasonably, take into account, public and other stakeholder input in regard to its plans for the Design, the Construction and the Services.
- 1.7 This Schedule is a guideline and may be amended by mutual agreement. Except for non-compliances with this Schedule by Project Co that constitute Persistent Breach, non-compliance with this Schedule by Project Co will not constitute a Project Co Material Breach and non-compliance with this Schedule by the Province will not constitute a breach by the Province.
- 1.8 No communication regarding the subject matter of a Dispute, including one resolved under the Dispute Resolution Procedure, will be made without the prior written consent of the Province or Project Co, as the case may be, unless otherwise ordered under the Dispute Resolution Procedure.
- 1.9 Project Co acknowledges that the *Freedom of Information and Protection of Privacy Act* (British Columbia) applies to the Province, that nothing in this Schedule limits any requirements for

compliance with that Act and that the Province may be required to make disclosure of information under that Act.

- 1.10 Project Co acknowledges that the Province will be free to disclose (including on Websites) this Agreement and any and all terms hereof, except for those portions that would not be required to be disclosed under the *Freedom of Information and Protection of Privacy Act* (British Columbia). The Province will consult with Project Co prior to such disclosure.
- 1.11 Except for Section 1.10 [General] of this Schedule, this Schedule is subject to the parties' obligations in respect of Confidential Information and Personal Information pursuant to Sections 17.1 [Confidentiality], 17.2 [Personal Information] and 17.4 [Public Communications].

2. CATEGORIES OF COMMUNICATIONS

The following categories of communications are covered by this Schedule and each category applies during the Construction Period and the Operating Period:

- (a) **Communications Planning:** developing plans and strategies in support of the Project, including integrating the categories of communication listed in Section 6 [Allocation of Lead and Supporting Roles] of this Schedule;
- (b) **Community Relations:** keeping all key audiences (as identified in communications plans) informed, including providing overall Project information, including information about schedule, design, construction (including traffic management), facilities management and other services, using any and all appropriate communications tools and tactics;
- (c) **Consultation:** engaging in discussions with Project stakeholders throughout each period;
- (d) **Media Relations:** providing media with Project updates and responding to issues raised by the media; and
- (e) **Emergency Communications:** preparing and implementing crisis communications planning and preparedness.

3. LEAD AND SUPPORTING ROLES

- 3.1 Within each category of communications set out in Section 6 [Allocation of Lead and Supporting Roles] of this Schedule, Project Co will play either a lead or supporting role, working with the Province to achieve the desired communications outcomes. These roles may be different for the different periods of the Project.
- 3.2 For all categories of communication, and whether communication occurs as part of a lead or supporting role, no advertising that involves payment, by Project Co, to a third party may include the Province or the Project unless Project Co obtains the prior consent of the Province, not to be unreasonably withheld or delayed.

4. LEAD RESPONSIBILITIES

The following is an overview of the responsibilities associated with lead roles:

- (a) developing a communication plan to include all activities for which the party is identified as lead. Communications plans should be updated annually from the Effective Date, having regard for the input of the supporting party, approving communication plans and tactics in response to specific circumstances, unless otherwise indicated in this Schedule;
- (b) implementing its role in approved plans;
- (c) achieving the outcomes set out in the annual strategic communication plans;
- (d) maintaining constructive and positive relationships with the public and other stakeholders;
- (e) providing information, as required by the supporting party and its team members, to support communication and consultation activities;
- (f) as relevant to its lead role, organizing, attending and participating in community and other stakeholder consultation meetings and carrying out other communication activities to consult with and report back to the community and other stakeholders, including open houses, information updates, public displays, advertising, website creation, maintenance updates, construction notices, milestone celebration events, news releases and tours, and directing inquiries to the supporting party as appropriate;
- (g) assuming responsibility for costs related to carrying out lead responsibilities, in the amounts and in the manner outlined in approved plans;
- (h) monitoring whether the Design, the Construction and the Services are conducted in a manner consistent with strategic communication plans and advising the parties of any material inconsistency; and
- (i) having a trained media relations spokesperson available 24/7 to respond to media requests.

5. SUPPORTING RESPONSIBILITIES

The following is an overview of the responsibilities associated with supporting roles

- (a) obtaining approval for plans and tactics before implementation;
- (b) assisting with the development and implementation of plans, including providing the necessary resources to support successful communication outreach activities, including the development of specific technical drawings/renderings for public communications, as directed by the lead party;
- (c) implementing its role in approved plans;

- (d) maintaining constructive and positive relationships with the public and other stakeholders;
- (e) providing information, as required by the lead party and its team members, to support communication and consultation activities;
- (f) as relevant to its supporting role, organizing, attending and participating in community and other stakeholder consultation meetings and carrying out other communication activities to consult with and report back to the community and other stakeholders, including open houses, information updates, public displays, advertising, website creation, maintenance updates, construction notices, milestone celebration events, news releases and tours, and directing inquiries to the lead party as appropriate;
- (g) assuming responsibility for costs related to carrying out supporting responsibilities, in the amounts and in the manner outlined in approved plans; and
- (h) having a local, trained media relations spokesperson available 24/7 to respond to media requests.

6. ALLOCATION OF LEAD AND SUPPORTING ROLES

The lead and supporting roles will be allocated as set out in the following table, unless otherwise required by the Province in consultation with Project Co.

PERIOD	CATEGORY	LEAD	SUPPORTING
Construction Period	Communications Planning	Province	Project Co
	Community Relations	Province	Project Co
	Consultation	Province	Project Co
	Media Relations	Province	Project Co
	Emergency Communications	Province	Project Co
	Construction	Project Co	Province
	Traffic	Project Co	Province
	Noise	Project Co	Province
Operating Period	Communications Planning	Province	Project Co
	Community Relations	Province	Project Co
	Consultation	Province	Project Co
	Media Relations	Province	Project Co
	Emergency Communications	Province	Project Co

7. PROVINCE RIGHT TO STEP IN AT PROJECT CO'S COST

If Project Co is required to take a lead role but fails to comply with its obligations under this Schedule in any material respect, the Province may give reasonable notice to Project Co that it intends to undertake and assume the lead role obligations of Project Co, at the expense of Project Co, including all direct costs of engaging third party assistance with communication responsibilities and all Direct Losses of the Province in connection with fulfilling Project Co's obligations under this Schedule.

SCHEDULE 17

KEY INDIVIDUALS

Name of Key Individual	Capacity	Applicable Period of Term
Project Co:		
	Project Co's Lead	Construction Period and Operating Period
	Project Co's Corrections Advisor	Construction Period and two years following the Service Commencement Date
	Project Co's Communications Lead	Construction Period and Operating Period
	Project Co's Design and Construction Representative	Construction Period and one year following the Service Commencement Date
	Project Co's Operating Period Representative	One year before Target Service Commencement and Operating Period
Design-Builder:		
	Design-Builder's Project Lead	Construction Period
	Design-Builder's Design Lead	Construction Period
	Design-Builder's Construction Lead	Construction Period
	Design-Builder's Technology Lead	Construction Period
	Design-Builder's Commissioning Lead	Construction Period and one year following the Service Commencement Date
Service Provider:		
	Service Provider Lead	Construction Period and Operating Period

SCHEDULE 18

COMPLETION DOCUMENTS

1. GENERAL

In this Schedule “certified” will mean that the relevant document is certified (for and on behalf of the relevant corporation or other entity and without personal liability) by an officer, director or authorized signatory of the relevant corporation or other entity as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate.

2. DOCUMENTS TO BE DELIVERED BY PROJECT CO

Unless an original document is specifically referred to below, Project Co will deliver to the Province a certified copy of each of the following documents in accordance with Section 2.2(b) [Document Deliveries]:

- (a) an original of this Agreement executed by Project Co;
- (b) the agreement or agreements between the equity holders of Project Co relating to Project Co, including any agreement relating to the subscription of equity (or other funding) by such parties in Project Co, executed by the parties to such agreements;
- (c) the Senior Financing Agreements, executed by the parties to such agreements;
- (d) certification from Project Co that:
 - (1) the agreement or agreements referred to in item 2(b) [Documents to be Delivered by Project Co] of this Schedule are unconditional in accordance with their terms, accompanied by evidence of the same and that the subscriptions of equity (and other funding) under such agreement or agreements have been made, accompanied by evidence of the same;
 - (2) the Senior Financing Agreements are unconditional; and
 - (3) all conditions to the availability of funds to Project Co under the Senior Financing Agreements have been satisfied or waived, accompanied by evidence of the same;
- (e) the Lenders' Remedies Agreement, executed by the parties to such agreement (other than the Province);
- (f) the Design-Build Agreement, executed by the parties to such agreement;
- (g) the Services Contract, executed by the parties to such agreement;
- (h) the following documents executed by the parties thereto:
 - (1) Design-Build Agreement:

- (A) performance bond in relation to the Design-Build Agreement;
 - (B) if applicable, a letter of credit in respect of the Design-Builder's obligations to complete the Design and Construction and a letter of credit in respect of the Design-Builder's obligations relating to LEED Gold Certification; and
 - (C) guarantee from the Design-Builder's parent with respect to the Design-Build Agreement;
- (2) Services Contract:
- (A) guarantee from the Service Provider's parent with respect to the Services Contract;

In each case the performance and other security will provide for a novation or assignment to the Province if the Province exercises its rights under the Design-Builder's Material Project Contractor Collateral Agreement or Service Provider's Material Project Contractor Collateral Agreement, as applicable;

- (i) an original of the Design-Builder's Material Project Contractor Collateral Agreement, executed by the parties to such agreement (other than the Province);
- (j) an original of the opinion of counsel to the Design-Builder in respect of the Design-Build Agreement and the Design-Builder's Material Project Contractor Collateral Agreement, such opinion to be in a form acceptable to the Province and its counsel, acting reasonably;
- (k) an original of the opinion of counsel to the parent of the Design-Builder in respect of the guarantee given in support of the Design-Build Agreement such opinion to be in a form acceptable to the Province and its counsel, acting reasonably;
- (l) an original of the Service Provider's Material Project Contractor Collateral Agreement, executed by the parties to such agreement (other than the Province);
- (m) an original of the opinion of counsel to the Service Provider in respect of the Services Contract and the Service Provider's Material Project Contractor Collateral Agreement, such opinion to be in a form acceptable to the Province and its counsel, acting reasonably;
- (n) an original of the opinion of counsel to the parent of the Service Provider in respect of the guarantee given in support of the Services Contract, such opinion to be in a form acceptable to the Province and its counsel, acting reasonably;
- (o) interface agreement between Material Contract Parties and Project Co, executed by the parties to such agreement;

- (p) an original of the Independent Certifier Agreement, executed by the parties to such agreement (other than the Province);
- (q) a certificate of an officer of General Partner certifying true copies of the following:
 - (1) an authorizing resolution of the board of directors of General Partner;
 - (2) incumbency of the officers of General Partner;
 - (3) the constating documents of General Partner;
- (r) a certificate of an officer of the Design-Builder and the parent company of the Design-Builder certifying true copies of the following:
 - (1) an authorizing resolution of the board of directors of the Design-Builder and its parent company;
 - (2) incumbency of the officers of the Design-Builder and its parent company;
 - (3) the constating documents of the Design-Builder and its parent company;
- (s) a certificate of an officer of the Service Provider and the parent company of the Service Provider certifying true copies of the following:
 - (1) an authorizing resolution of the board of directors of the Service Provider and its parent company;
 - (2) incumbency of the officers of the Service Provider and its parent company;
 - (3) the constating documents of the Service Provider and its parent company;
- (t) certificate of good standing for the General Partner;
- (u) Limited Partnership Report (or equivalent) for Project Co;
- (v) [Not used.]
- (w) a copy of an insurance binder or certificates of insurance for all policies required to be taken out by Project Co for the Construction Period in accordance with this Agreement;
- (x) an original notice of appointment of Representatives to be appointed by Project Co under this Agreement;
- (y) an original of the opinion from counsel to Project Co that Project Co and its general partner exist, have the power and capacity to enter into this Agreement, the Senior Financing Agreements, the Lenders' Remedies Agreement, the Independent Certifier Agreement, the Design-Builder's Material Project Contractor Collateral Agreement and the Service Provider's Material Project Contractor Collateral Agreement and the interface agreement between the Material Contract Parties and Project Co, and that such

documents have been duly authorized, executed and delivered by Project Co, create valid and binding obligations, and are enforceable against Project Co in accordance with their terms, in a form acceptable to the Province and its counsel, acting reasonably, and including originals of relevant certificates and other documents relied upon by Project Co's counsel;

- (z) a certificate from Project Co certifying Schedule 15 [Financial Model], and the electronic version of the same, are true and correct copies of the Financial Model;
- (aa) audit of the Financial Model; and
- (bb) such other documents as the parties may agree, each acting reasonably.

3. DOCUMENTS TO BE DELIVERED BY THE PROVINCE

Unless an original document is specifically referred to below, the Province will deliver to Project Co a certified copy of each of the following documents in accordance with Section 2.2(a) [Document Deliveries]:

- (a) an original of this Agreement executed by the Province;
- (b) an original copy of the Lenders' Remedies Agreement, executed by the Province;
- (c) an original of the Design-Builder's Material Project Contractor Collateral Agreement, executed by the Province;
- (d) an original of the Service Provider's Material Project Contractor Collateral Agreement, executed by the Province;
- (e) an original of the Independent Certifier Agreement, executed by the Province;
- (f) an original notice of appointment of the Representatives to be appointed by the Province under this Agreement;
- (g) a copy of the letter from the Risk Management Branch of the Ministry of Finance, approving the indemnities given by the Province in this Agreement;
- (h) an original certificate of fact of the Deputy Minister of Technology, Innovation and Citizens' Services;
- (i) a copy of an insurance binder for all policies required to be taken out by the Province for the Construction Period in accordance with this Agreement; and
- (j) such other documents as the parties may agree, each acting reasonably.

SCHEDULE 19
PLANNED REFINANCING

Not Used

Schedule 20

HMI License Covenant

This HMI License Covenant is made as of [insert date] by [insert name of Software Vendor] (“Vendor”) to and for the benefit of Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Technology, Innovation and Citizens' Services (the “Province”).

Background

Vendor has entered into a [insert name of software license agreement] with [insert name of Project Co] (“Project Co”) dated [insert date of software license agreement] (the “Software License Agreement”) to provide the Software (defined below) to Project Co for use in connection with a correctional facility located at [insert address] (the “Facility”) owned by the Province. Vendor has agreed to enter into this HMI License Covenant to confirm the Province’s right and license to use the Software.

Agreement

FOR GOOD AND VALUABLE CONSIDERATION (the receipt and sufficiency of which is acknowledged by Vendor), Vendor hereby COVENANTS AND AGREES with the Province as follows:

1. **Definitions:** In this Covenant: (a) “**Documentation**” means [see below]; (b) “**Software**” means [see below]; and (c) “**Use**”, “**Used**” and “**Using**” means any and all means and methods of use and exploitation, including copying, loading, installing, accessing, configuring, implementing, executing, operating, hosting, supporting, maintaining, modifying, enhancing, translating, adapting, storing, backing-up, archiving, and creating derivative works, for any and all operational, training, development, testing and enhancement purposes, but in all cases subject to the limitations and restrictions expressly set forth in this Covenant.

Note: If the Software is an HMI Software Product, then use the following definition of software:

“**Documentation**” means documentation (including user manuals, training materials and developer documentation) relating to Software, including all updates to any of the documentation, provided by Vendor to Project Co for use in connection with the Software

“**Software**” means the commercially available, off-the-shelf computer software product known as [insert name and version of software], in object (compiled) code format, including all fixes, corrections, patches, modifications, additions, improvements, upgrades, updates, new versions and new releases to or of the computer software, provided by Vendor to Project Co for use in connection with the Facility

Note: If the Software is an HMI Customization, then use the following definition of software:

“**Documentation**” means documentation (including user manuals, training materials, developer documentation and source code materials) relating to Software, including all updates to any of the documentation, provided by Vendor to Project Co for use in connection with the Software

“Software” means all configurations, customizations and enhancements (including modifications and additions), in both object code and source code formats, to or from the commercial off-the-shelf computer software product known as [insert name of HMI Software] (the **“HMI Software”**) for the use of the HMI Software Product in connection with the Facility and that are provided by Vendor to Project Co for use in connection with the Facility.

2. **Acknowledgement:** Vendor acknowledges that Project Co. has procured the Software and Documentation for Use in connection with the Facility, and agrees that upon request by the Province Project Co will deliver the Software and Documentation to the Province for Use pursuant to this Covenant.

3. **License:** Vendor hereby grants and agrees to grant to the Province and its successors, assigns and licensees a non-exclusive, royalty-free and fully paid-up, irrevocable and perpetual license (the **“License”**) to Use and authorize other persons to Use the Software and Documentation on an enterprise basis (without any restriction or limitation as to the number or identity of locations, sites, systems, installations, copies, users, platforms, interfacing software, equipment, hardware or otherwise) solely in connection with the Facility.

[Note: If the Software is an HMI Software Product, then insert the following wording]

The Province and its successors, assigns and licensees will not reverse engineer, decompile or disassemble any of the Software or otherwise attempt to access or derive the source code for the Software, except that the foregoing does not apply to any components of the Software that are provided by the Vendor in source code format.

4. **HMI Service Providers:** For greater certainty, pursuant to the License the Province may in its discretion: (i) engage independent contractors and subcontractors (each an **“HMI Service Provider”**), to assist the Province to Use the Software and Documentation and to provide services (including maintenance and technical support) to the Province regarding the Software; and (ii) disclose and provide the Software and Documentation to HMI Service Providers and authorize HMI Service Providers to Use the Software and Documentation for those purposes, provided that the Province is fully responsible for HMI Service Providers' Use of the Software and Documentation.

5. **Enhancements:** For greater certainty, the Province and its successors, assigns and licensees may create, or engage persons other than Vendor to create, customizations, enhancements (including new functionalities), modifications, additions and derivative works to or from Software and Documentation (each an **“Enhancement”**), provided that an Enhancement is Used solely in connection with the Facility.

6. **Perpetual:** This Covenant and the License are and will remain perpetual and irrevocable and will survive indefinitely after the expiration or termination of the Software License Agreement or any other agreement between Vendor and Project Co or the Province. Vendor will not terminate, revoke or rescind this Covenant or the License for any reason or cause whatsoever. If the Province commits any breach (whether fundamental or not) of this Covenant, and whether the breach is or is not capable of being cured, Vendor's sole rights and remedies in respect of the breach are limited to the Vendor's rights and remedies other than termination, revocation or rescission of this Covenant or the License. For greater certainty, nothing in this Covenant restricts or limits Vendor's remedies of damages and injunctive relief to

restrain any Use of Software or Documentation in breach of this Covenant. No breach of this Covenant by the Province will constitute a repudiation of this Covenant by the Province.

7. **No Locks:** Vendor represents and warrants that no item of Software or Documentation contains any “time bomb”, “logic bomb”, “back door”, “drop-dead device” or any other disabling or limiting code, design or routine that may be used to interrupt, lock, disable, erase, limit the functionality of, limit or prevent access to or Use of, or otherwise adversely affect, or facilitate unauthorized access to, the item of Software or Documentation, any other Software or Documentation, or any computer system, hardware, software, equipment on which the Software or Documentation is installed or operated or any related data.

8. **No Confidentiality:** Notwithstanding any other provision of the Software License Agreement or any other express or implied agreement between Vendor and Project Co, the provisions (if any) in the Software License Agreement or any other express or implied agreement between Vendor and Project Co relating to Vendor’s confidential information do not apply to the Software or Documentation or any related information and do not in any way restrict, impair or otherwise prejudice the right and ability of the Province and its successors, assigns and licensees to retain, Use and authorize other persons to Use the Software and Documentation in accordance with the License or impose on the Province or its successors, assigns and licensees or any other person any obligations, restrictions or requirements regarding the Use of the Software and Documentation which are in addition to those set out in the License.

9. **Representation/Warranty:** Vendor represents and warrants to the Province that Vendor has all rights, title and interests required to enter into and perform Vendor’s obligations under this Covenant and grant the License.

10. **Governing Law/Disputes:** This Covenant and all related matters will be governed by, and construed in accordance with, the laws of the Province of British Columbia, Canada and applicable federal laws of Canada, excluding any law implementing the United Nations Convention on Contracts for the International Sale of Goods and any rules of private international law or the conflict of laws that would lead to the application of any other laws. All disputes between Vendor and the Province arising from, connected with or relating to this Covenant or any related matter will be determined by the courts of British Columbia sitting in the City of Vancouver, Canada, and Vendor hereby irrevocably submits and attorns to the original and exclusive jurisdiction of that court for those purposes and irrevocably waives all rights to trial by jury.

11. **General:** This Covenant is binding upon Vendor and its successors and permitted assigns. This Covenant is for the benefit of the Province and its successors, assigns and licensees. The Province may in its discretion and without any notice to Vendor assign this Covenant (including the License) to any person who acquires ownership of the Facility or is engaged by the Province to operate the Facility. Vendor may not assign this Covenant without the Province’s express prior written consent. Vendor and the Province are non-exclusive independent contracting parties, and nothing in this Covenant or done pursuant to this Covenant will create a partnership, joint venture, agency, employment, sponsorship, or other similar relationship between the parties. Vendor will execute any further documents and do any further acts that may be necessary to implement and carry out the intent of this Covenant. If any provision of this Covenant is determined by a court of competent jurisdiction to be unenforceable or invalid for any reason, then that provision will be deemed severed from this

Covenant and the remaining provisions will continue in full force and effect without being impaired or invalidated in any way, unless as a result of the severance this Covenant would fail in its essential purpose. No consent or waiver by the Province to or of any breach by Vendor of its obligations under this Covenant will be effective unless in writing and signed by the Province or be deemed or construed to be a consent to or waiver of a continuing breach or any other breach by Vendor. This Covenant sets forth the entire agreement between Vendor and the Province regarding the subject matter of this Covenant, and may be modified only by a written instrument signed by both parties.

12. **Responsibility:** If the Province authorizes another person to Use the Software or Documentation pursuant to this Covenant, then the Province will require the other person to comply with the restrictions and requirements set forth in this Covenant regarding Use of the Software and Documentation.

Acknowledged and agreed to by **[insert name of Software Vendor]**.

By: _____

Title: _____

Date: _____

SCHEDULE 21

PRIVACY PROTECTION

TABLE OF CONTENTS

	Page
1. PURPOSE	1
2. COLLECTION OF PERSONAL INFORMATION	1
3. ACCURACY OF PERSONAL INFORMATION	1
4. REQUESTS FOR ACCESS TO PERSONAL INFORMATION	1
5. CORRECTION OF PERSONAL INFORMATION	2
6. PROTECTION OF PERSONAL INFORMATION	2
7. STORAGE AND ACCESS TO PERSONAL INFORMATION	2
8. RETENTION OF PERSONAL INFORMATION	2
9. USE OF PERSONAL INFORMATION	2
10. DISCLOSURE OF PERSONAL INFORMATION	3
11. INSPECTION OF PERSONAL INFORMATION	3
12. COMPLIANCE WITH THE ACT AND AUTHORIZATIONS	3
13. NOTICE OF NON-COMPLIANCE	4
14. INFORMATION OFFICER	4
15. INTERPRETATION	4

SCHEDULE 21

PRIVACY PROTECTION

1. Purpose

1.1 The purpose of this Schedule is to:

- (a) enable the Province to comply with its statutory obligations under the *Freedom of Information and Protection of Privacy Act* (British Columbia) ("FOIPPA") with respect to Personal Information; and
- (b) ensure that, as a service provider of a public body as defined in FOIPPA, Project Co is aware of and complies with its statutory obligations under FOIPPA with respect to Personal Information.

2. Collection of Personal Information

2.1 Unless this Agreement otherwise specifies, Project Co may only collect or create Personal Information that is necessary for the performance of Project Co's obligations, or the exercise of Project Co's rights, under this Agreement.

2.2 Unless this Agreement otherwise specifies or the Province otherwise authorizes in writing, Project Co must collect Personal Information directly from the individual the information is about.

2.3 Unless this Agreement otherwise specifies or the Province otherwise authorizes in writing, Project Co must advise an individual from whom Project Co collects Personal Information:

- (a) the purpose for collecting it;
- (b) the legal authority for collecting it; and
- (c) the title, business address and business telephone number of the person designated by the Province to answer questions concerning Project Co's collection of Personal Information.

3. Accuracy of Personal Information

3.1 Project Co must make every reasonable effort to ensure the accuracy and completeness of any Personal Information to be used by Project Co or the Province to make a decision that directly affects an individual the information is about.

4. Requests for Access to Personal Information

4.1 If Project Co receives a request from a person for access to that person's Personal Information, Project Co must promptly and without charge provide such access.

- 4.2 If Project Co receives a request, from a person other than the Province, for access to personal information that is not the Personal Information of the person making the request, Project Co must promptly advise the person to make the request to the Province, and, if the Province has advised Project Co of the name or title and contact information of an official of the Province to whom such requests are to be made, Project Co must also promptly provide that official's name or title and contact information to the person making the request.
- 4.3 If Project Co receives a request, from a person other than the Province, for access to Personal Information that includes both the Personal Information of the person making the request and the Personal Information of another person or persons, Project Co must respond in accordance with Section 4.1 of this Schedule with respect to the Personal Information of the person making the request, and act in accordance with Section 4.2 of this Schedule with respect to the Personal Information of the person or persons other than the person making the request.

5. Correction of Personal Information

- 5.1 Within 5 Business Days of receiving a request from a person to correct any of that person's Personal Information, Project Co must correct or annotate the Personal Information.
- 5.2 Within 5 Business Days of correcting or annotating any Personal Information in accordance with Section 5.1 of this Schedule, Project Co must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made, Project Co disclosed the information being corrected or annotated.

6. Protection of Personal Information

- 6.1 Project Co must protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in this Agreement.

7. Storage and Access to Personal Information

- 7.1 Unless the Province otherwise authorizes in writing, Project Co must not store Personal Information outside Canada or permit access to Personal Information from outside Canada.

8. Retention of Personal Information

- 8.1 Unless this Agreement otherwise specifies, Project Co must retain Personal Information until authorized by the Province in writing to dispose of it or deliver it as specified in the authorization.

9. Use of Personal Information

- 9.1 Unless the Province otherwise authorizes in writing, Project Co may only use Personal Information if that use is for the performance of the Project Co's obligations, or the exercise of Project Co's rights, under this Agreement.

10. Disclosure of Personal Information

- 10.1 Unless the Province otherwise authorizes in writing, Project Co may only disclose Personal Information inside Canada to any person other than the Province if the disclosure is for the performance of Project Co 's obligations, or the exercise of Project Co 's rights, under this Agreement.
- 10.2 Unless this Agreement otherwise specifies or the Province otherwise authorizes in writing, Project Co must not disclose Personal Information outside Canada.

11. Inspection of Personal Information

- 11.1 In addition to any other rights of inspection the Province may have under this Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to Project Co, enter on Project Co 's premises to inspect any Personal Information in the possession of Project Co or any of Project Co 's information management policies or practices relevant to its management of Personal Information or its compliance with this Schedule and Project Co must permit, and provide reasonable assistance in respect to, any such inspection.

12. Compliance with the Act and Authorizations

- 12.1 Project Co understands and acknowledges that it is a service provider of a public body as defined in FOIPPA.
- 12.2 Project Co acknowledges that it is familiar with the requirements of FOIPPA governing Personal Information that are applicable to it as a service provider.
- 12.3 Project Co must in relation to Personal Information comply with:
 - (a) the requirements of FOIPPA applicable to Project Co as a service provider, including any applicable order of the commissioner under FOIPPA; and
 - (b) any authorization given by the Province under this Schedule.
- 12.4 Project Co expressly acknowledges and agrees that it is subject to the laws of British Columbia and Canada and is likely as such not subject to any orders, directives, rulings, requirements, judgments, injunctions, awards or decrees, decisions or other requirements for the disclosure of Personal Information ("Orders") issued pursuant to the USA Patriot Act except only for "associates" (as defined in FOIPPA) of Project Co which Project Co warrants will have no access to Personal Information. Project Co shall immediately inform the Province if it receives any Orders or any other directives or requests or foreign demands for disclosure. Project Co shall not provide and shall ensure that the Sub-Contractors do not provide any Personal Information to any "associate" (as defined in FOIPPA) of Project Co that is or may reasonably become subject to any Orders, and shall ensure that no such "associate" has access to any Personal Information.
- 12.5 Project Co shall immediately inform the Province if it becomes subject to the laws or jurisdiction of the United States, which require the disclosure of Personal Information contrary

to the provisions of this Schedule, for any reason (whether or not there are any Orders for disclosure) and shall inform the Province of the circumstances giving rise to same.

13. Notice of Non-Compliance

- 13.1 If for any reason Project Co does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, Project Co must promptly notify the Province of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

14. Information Officer

- 14.1 Project Co must employ an Information Officer who must meet the professional competency standards and professional conduct expectations established for an IP Professional set out in the Canadian Access and Privacy Association Information and Privacy Professional (IPP), Professional Standards/ Competencies, March 27, 2007.

15. Interpretation

- 15.1 Any reference to "Project Co" in this Schedule includes any "associate" as defined in FOIPPA and Project Co must ensure that all such persons comply with this Schedule.
- 15.2 The obligations of Project Co in this Schedule will survive the termination or expiry of this Agreement.
- 15.3 If a provision of this Agreement (including any authorization given by the Province under this Schedule) conflicts with a requirement of FOIPPA or an applicable order of the Information and Privacy Commissioner under FOIPPA, the conflicting provision of this Agreement (or authorization) will be inoperative to the extent of the conflict.
- 15.4 Project Co must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or the law of any jurisdiction outside Canada.
- 15.5 Nothing in this Schedule requires Project Co to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with FOIPPA.