

## 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 HST incurred by Project Co in respect of the supply of any good or service to the Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the 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 HST that Project Co would have recovered or been credited with prior to the applicable Change in Law;

**“Additional Recoverable Tax”** means HST incurred by Project Co in respect of the supply of any good or service to the Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the 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 HST 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 Authority 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 Authority 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 Authority 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 Authority is entitled to set-off or deduct under this Agreement; and
  - (3) an amount equal to all reasonable costs and expenses incurred by the Authority, 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 Authority 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 Authority 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 Authority 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;

"**Admission & Discharge**" or "**A&D**" has the meaning set out in Section 4.6.2.5 of Schedule 3 [Design and Construction Specifications];

"**Administration Consultation Group**" has the meaning set out in Section 4.3(a) [Design Process] of Schedule 2 [Design and Construction Protocols];

"**Administration Consultation Process**" means the process specified in Appendix 2C [Administration Consultation Protocol];

"**Administration Consultation Protocol**" has the meaning set out in Appendix 2C [Administration Consultation Protocol];

"**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 Authority and Project Co:

(a) Gas [REDACTED] and

(b) Electricity [REDACTED]

"**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;

"**Annual Repair Budget**" has the meaning given in Section 2.1.2 [Annual Repair Budget] of Appendix 4H [Service Exceptions];

"**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 4.1.2 [Annual Service Plans] of Schedule 4 [Services Protocols and Specifications];

**“Applicable Percentage”** means the applicable percentage specified in Appendix 8C [Benchmarking Information] for the relevant Benchmarked Job Classification;

**“Appointed Representative”** means the Senior Lenders’ Representative identified in a Step-In Notice;

**“Applicant”** has the meaning set out in Section 8 [Supervening Events] in this Agreement;

**“Archaeological Impact Assessment”** means the archaeological impact assessment entitled "Archaeological Impact Assessment" prepared by Terraarchaeology and dated March, 2010, as disclosed by the Authority in the Disclosed Data."

**“Archaeological Report”** means the Archaeological Impact Assessment referenced in Section 5.23 [Archaeological Report] of set out in Schedule 2 [Design and Construction Protocols];

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

**"Area of Interest" or "AOI"** has the meaning set out in Section 3.2.2.5(4) of Schedule 3 [Design and Construction Specifications];

**“Authority”** means Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Labour, Citizens’ Services and Open Government;

**“Authority Activities”** means any activities carried on or to be carried on by the Authority, or other Persons permitted by the Authority, in the Facility, related to the provision of corrections services;

**“Authority Crisis Management Plan Policy”** means the Crisis Management Plans and Principles in Authority Adult Institutions Policy and Procedures Manual, included in the Authority Policies and Procedures, as supplemented or amended from time to time and provided to Project Co in writing;

**"Authority’s Environmental Policy"** means the Authority's environmental policy;

**“Authority Event of Default”** has the meaning set out in Section 13 [Authority Events of Default] of this Agreement;

**“Authority 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;

**“Authority FM Services”** means all services and activities, provided or performed at the Facility by or on behalf of the Authority from time to time, including food services, and laundry/linen services;

**“Authority Indemnified Person”** means:

- (a) any contractor or subcontractor (of any tier) of the Authority;

- (b) any representative, agent or advisor (including legal and financial advisors) of the Authority or any Person referred to in (a) above, in each case acting in such capacity; and
- (c) any director, officer or employee of the Authority or of any Person referred to in (a) or (b) above, in each case acting in such capacity;

**“Authority Person”** means:

- (a) any director, officer, employee or agent of the Authority;
- (b) any representative, advisor (including any legal and financial advisor) of the Authority or subcontractor (of any tier) of the Authority in any such Person’s capacity as a provider of services directly or indirectly to the Authority in connection with the Project or the Facility, other than Project Co, Project Contractors or Sub-Contractors; or
- (c) any invitee of the Authority or any of the Authority Persons referred to in (a) or (b) above who enters upon the Lands;

**“Authority Policies and Procedures”** means the following policies and procedures, or portions of policies or procedures where only a portion is indicated, of the Authority 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) Government Office Standards;
- (e) Contractor Environmental Responsibilities Package;
- (f) Adult Custody Policy;
- (g) Contractor Orientation Manual;
- (h) 2009-10 2011-12 Service Plan;
- (i) Video Courts Acoustical Requirements;
- (j) Inmate Separation and Movement;
- (k) Existing Operational Staffing Model, including expansion at 150%;
- (l) Staffing Plan for Reference Design @ Design Capacity Nov 1/10; and
- (m) Surrey Pre-trial Services Centre Standard Operating Procedures,

including, as applicable from time to time, any amendments of those policies and any additional policies;

**"Authority Service Excellence Program"** means the Authority OPS Service Directive, as supplemented or amended from time to time and provided to Project Co in writing;

**"Authority's Baseline Assumptions"** means the permitted assumptions, as set out in the Disclosed Data, upon which the Design and Construction Energy Targets were based;

**"Availability Condition"** means, with respect to a Functional Unit, that the 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 Schedule 4 [Services Protocols and Specifications], and of the Room Data Sheets,

**"Average Unit Cost"** for a type of Regulated Energy, during a period, means the average cost to the Authority of each Gigajoule of the applicable type of Regulated Energy purchased by the Authority for the New Infrastructure (excluding only the upgraded and expanded Food Services Area and laundry facilities) during the applicable period, calculated by dividing:

- (a) all amounts paid or payable by the Authority in respect of the supply of the particular type of Regulated Energy, for the New Infrastructure (excluding only the upgraded and expanded Food Services Area and laundry facilities), 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:

- (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] of this Agreement), would have been saved or avoided as a result of the event or circumstance or its effects;

**"Base Case Project IRR"** means 6.84% 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 F27 of the Project\_Agreement Sheet;

**"Base Date"** means April 1, 2011;

**"Base Date Labour Rates"** means the labour rates, inclusive of wage rates and benefits (including any relocation and other allowances based on geography or market conditions), set out in Appendix 8C [Benchmarking Information] applicable as of the Base Date to the Benchmarked Job Classifications for

the relevant portions of the Plant Services, the Help Desk Services, the Utility Management Services, and the Roads, Grounds and Landscape Maintenance Services;

**"Baseline Assumptions"** means the permitted assumptions, as set out in the Disclosed Data upon which the Design and Construction Energy Target was based;

**"Benchmarked Facility Maintenance Payment"** means the payment described in Section 2.1(a) [Service Payment] of Schedule 8 [Payments];

**"Benchmarked Job Classifications"** means the job classifications listed in Appendix 8C [Benchmarking Information];

**"Benchmarked Labour Rates"** means the labour rates, inclusive of wage rates and benefits, set out in Appendix 8C [Benchmarking Information] applicable as of the Benchmarking Date and for the one year period following the Benchmarking Date to the Benchmarked Job Classifications for the relevant Plant Services, the Help Desk Services, the Utility Management Services, and the Roads, Grounds and Landscape Maintenance Services;

**"Benchmarking Date"** means April 1<sup>st</sup>, 2018 and thereafter every fifth anniversary of that date;

**"Benchmarking Exercise"** has the meaning given in Section 8.2 of Schedule 8 [Payments];

**"Benchmarking Multiplier"** means the amount calculated by multiplying the Benchmarked Labour Rates by the Applicable Percentage for each relevant Benchmarked Job Classification, and dividing that amount by the amount calculated by multiplying the Base Date Labour Rates by the Applicable Percentage for each relevant Benchmarked Job Classification;

**"Beneficiary"** has the meaning set out in Section 9.2 [Conduct of Third Person Claims] of this Agreement;

**"BMS Reporting Requirements"** as set forth in Section 3.6 [BMS Reporting] of Appendix 4C [Plant Services];

**"BNC"** means a bayonet type of coaxial cable connector;

**"Brookfield Partners"** means Brookfield Infrastructure Surrey Holdings Limited, Brookfield Infrastructure Surrey Holdings (Subco) Limited;

**"Brookfield Sponsor Corporate Group"** means

- (a) Brookfield Asset Management Inc. and any body corporate, partnership, Affiliate, or other entity controlled (as defined in the Business Corporations Act (British Columbia)) by Brookfield Asset Management Inc. or its Affiliates or any investment fund or other fund (other than a distressed debt fund or vulture fund) controlled or managed by Brookfield Asset Management Inc. or its Affiliates; and
- (b) Brookfield Infrastructure Partners LP and any body corporate, partnership, Affiliate, or other entity controlled (as defined in the *Business Corporations Act* (British Columbia)) by Brookfield Infrastructure Partners LP or its Affiliates or any investment fund or other fund

(other than a distressed debt fund or vulture fund) controlled or managed by Brookfield Infrastructure Partners LP or its Affiliates;

**"BSCS"** means the building security and communication system employed in the Existing Facility as of the Services Start Date.

**"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 payment described in Section 2.1(a) [Service Payment] of Schedule 8 [Payments];

**"Category 1 Equipment"** means the equipment described and listed as "Category 1" in the Equipment List (or similar equipment);

**"Category 2 Equipment"** means the equipment described and listed as "Category 2" in the Equipment List (or similar equipment);

**"Category 3 Equipment"** means the equipment described and listed as "Category 3" in the Equipment List (or similar equipment);

**"Category 4 Equipment"** means the equipment described and listed as "Category 4" in the Equipment List (or similar equipment);

**"Cell"** has the meaning set out in Section 4.6.2.1 of Schedule 3 [Design and Construction Specifications];

**"Central Control"** has the meaning set out in Appendix 3A [Functional Program] of 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 Authority 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 Authority’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 other than the equity holders of the entity having such ability or holding such equity, as the case may be 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 Laws; or
- (b) any modification (including repeal) of any Law existing on such date,

(but excluding in each such case any lawful requirements of any Governmental Authority (unless resulting from a Change in Law) and any change in the interpretation of any legislation other than a judgment of a relevant Court which changes binding precedent in British Columbia) which is binding on Project Co or the Authority;

**“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)(2)(A) [Delivery of Change Report] of Schedule 6 [Changes, Minor Works and Innovation Proposals];

**“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;

**“City”** means the City of Surrey;

**“Code”** means the current version of British Columbia Building Code;

**“Collateral Agent”** means Computershare Trust Company of Canada;

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

**“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 Authority of any of its obligations under this Agreement;
- (b) breach of any representation or warranty by the Authority under this Agreement;
- (c) misconduct of the Authority, an Authority Person or other Facility Administrator;
- (d) a negligent act or omission of the Authority, an Authority Person or a Facility Administrator;
- (e) the existence of Undisclosed Environmental Liabilities or Undisclosed Existing Facility Conditions;
- (f) a Permit which is the obligation of the Authority 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) 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;

- (i) a claim asserting infringement of aboriginal rights (including duty to consult) or aboriginal treaty rights or aboriginal title by any first nation(s);
- (j) a Protest Action;
- (k) official or unofficial 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 Authority to provide the Authority FM Services or other services in the Facility;
- (l) the actions referred to in Section 11.5 [Allocation of Costs for Authority Actions] as constituting a Compensation Event;
- (m) the event referred to in Section 8.6(d)(2) [Parties' Entitlements Upon Occurrence of a Force Majeure Event];
- (n) the event referred to in Section 5.13 [Inspection] of Schedule 2 [Design and Construction Protocols];
- (o) the event referred to in Section 8.4(e)(2) [Parties Entitlement Upon Occurrence of a Relief Event];
- (p) Project Co's compliance with a direction of the Authority 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 in Project Co's favour;
- (q) 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 Authority or any person permitted to execute such works by the Authority or any Authority Person;
- (r) a failure by the Authority to implement Good Industry Practice for the Authority FM Services in accordance with measures identified by Project Co pursuant to Section 7 [Authority FM Services] of Schedule 4 [Services Protocols and Specifications];
- (s) Change in Law between the Financial Submission Date and the Effective Date;
- (t) if part of the Facility or part of the portion of the Lands on which the Facility is situated or any interest of Project Co or any Partner is expropriated by any Governmental Authority and such expropriation is not an Authority Event of Default as set out in Section 13.1(c) [Authority Events of Default];
- (u) without limiting paragraph (r) of this definition, a failure by the Authority or any Authority Person (having regard to the interactive nature of the activities of the Authority and Project Co) to take commercially reasonable steps to perform, or cause to be performed, the Authority FM Services in a manner which minimizes undue interference with Project Co's performance of the Services;

- (v) the existence of any Utilities on, in, under or over the Site that had not been disclosed by the Authority prior to the Effective Date;
- (w) [REDACTED]
- (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 arise, 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 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 Authority requires the party making the submission to meet as part of the Re-Bidding Process, which unless otherwise agreed by Project Co and the Authority 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”** means the computerized maintenance management system for the Facility;

**“Confidential Information”** means Personal Information, and information of a party that the party has designated as confidential 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;

**“Construction”** means everything (other than Design) required to achieve Service Commencement, including the construction of the New Infrastructure and the Upgraded Infrastructure, 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 New Infrastructure and the Upgraded Infrastructure 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 [Construction Period Committee] of Schedule 2 [Design and Construction Protocols];

**“Construction Period Payment”** has the meaning set out in Appendix 8B [Construction Period Payments] to Schedule 8 [Payments];

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

**“Contingency Failure Plan”** has the meaning given in Section 4.1.2.2 [Contingency Failure Plan] of Schedule 4 [Services Protocols and Specifications];

**“Contingency/Crisis Management Plan”** has the meaning given in Section 2.5 [Contingency Planning and Crisis Management] of Schedule 4 [Services Protocols and Specifications];

**“Contract Year”** means each of:

- (a) the period from Financial Close 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;

**“Contraband Control Policy and Procedures”** means the Security Searches Policy in the Authority Adult Institutions Policy and Procedures Manual, included in the Authority Policies and Procedures, as supplemented or amended from time to time and provided to Project Co in writing;

**“Cost to Date”** as at a date means the total amounts paid or payable by Project Co to the Design-Builder under the Design-Build Agreement (including the amount of any holdback required under the *Builders Lien Act* (British Columbia) for Construction performed by the Design-Builder, as certified by the Independent Certifier, as contemplated in Section 2.4 [Payment Certificates] of Schedule 2 [Design and Construction Protocols];

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

**“CPTED”** means Crime Prevention through Environmental Design;

**“Credit Agreement”** means the credit agreement dated June 13, 2011 between, among others, Project Co, the Senior Lenders and the Collateral Agent in respect of the Senior Debt;

**“Critical”** has the meaning given in Table 1 [Response Times and Rectification Periods] of Attachment 1 of Appendix 4C [Plant Services];

**“CTS”** means Corrections Technology System;

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

**“Customer Satisfaction Report”** has the meaning given in Section 9.10.4 [Customer Satisfaction Assessments] of Schedule 4 [Services Protocols and Specifications];

**“Customer Satisfaction System”** has the meaning given in Section 9.10.1 [Customer Satisfaction Assessments] of Schedule 4 [Services Protocols and Specifications];

**“DEC”** has the meaning given in Section 8.1.8.2(1) of Schedule 3 [Design and Construction Specifications];

**“Deduction”** means a deduction from a Service Payment, calculated in accordance with Schedule 8 [Payments];

**“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 Design or Construction;

**“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 New Infrastructure for the highest rate of electricity consumption in connection with the New Infrastructure 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 by a Facility Administrator to the Help Desk or to Project Co;

**“Demarcation Boundary”** has the meaning given in Section 3.2.2.5(5) of Schedule 3 [Design and Construction Specifications];

**“Design”** means everything required for the design of the New Infrastructure and the Upgraded Infrastructure except for any design that is expressly excluded from Project Co’s responsibility under this Agreement;

**“Design and Construction Energy Targets”** mean [REDACTED] of gas per year and 8,616.4 GJ of electricity per year;

**“Design and Construction Protocols”** means the provisions of Schedule 2 [Design and Construction Protocols];

**“Design and Construction Representative”** has the meaning set out in Section 1.1 [Appointment of Representatives] of Schedule 2 [Design and Construction Protocols];

**“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 of Schedule 3 [Design and Construction Specifications];

**“Design Professionals”** means 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”** has the meaning given in Table 4 [Service Standards – Heating, Ventilation and Air Conditioning] of Appendix 4C [Plant Services] and as set out in 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 Authority, 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;

**“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 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 event or omission,

and in calculating any amount of any additional capital expenditure, labour or similar cost claimed by Project Co as a Direct Loss, 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 Authority, including 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 and not to other projects;
- (b) other similar corrections facility – related projects procured and contracted on a public-private partnership basis similar to the Project and not other projects;
- (c) Project Co or Partners and not to other Persons;
- (d) Persons that have contracted on other similar corrections facility – related projects procured and contracted with the Authority or other statutory or public body on a public-private partnership basis similar to the Project and not to other Persons;
- (e) the provision or operation of corrections facilities and not to other types of facilities; or
- (f) 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 Authority 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:



- (a) whether in cash or in kind, any:
- (1) distribution to Partners or other distribution in respect of Units;
  - (2) redemption or purchase of Units 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 and 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 and 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 class of Units 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, 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;

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

**"Early FM Annual Repair Budget"** has the meaning set out in Section 3.4.3 [Early FM Annual Repair Budget] of Appendix 4I [Services During Construction Period].

**"Early FM Annual Service Plan"** has the meaning set out in Section 2.1.2 [Early FM Annual Service Plan] of Appendix 4I [Services During Construction Period]

**“Early FM Contingency Failure Plan”** has the meaning set out in Section 2.1.2.2 [Early FM Contingency Failure Plan] of Appendix 4I [Services During Construction Period]

**“Early FM Environmental Management Plan”** has the meaning set out in Section 2.1.5 [Early FM Environmental Management Plan] of Appendix 4I [Services During Construction Period]

**“Early FM Fire and Life Safety Plan”** has the meaning set out in Section 2.1.2.11 [Early FM Fire and Life Safety Plan] of Appendix 4I [Services During Construction Period]

**“Early FM Five Year Maintenance Plan”** has the meaning set out in Section 2.1.3 [Early FM Five Year Maintenance Plan] of Appendix 4I [Services During Construction Period]

**“Early FM Fixed Payment”** has the meaning set out in Section 3.1 [Early FM Payments] of Appendix 4I [Services During Construction Period].

**“Early FM Life Cycle Plan”** has the meaning set out in Section 2.1.4 [Early FM Service Life Cycle Plan] of Appendix 4I [Services During Construction Period]

**“Early FM Period”** has the meaning set out in Section 1.1 [Application] of Appendix 4I [Services During Construction Period].

**“Early FM Period Payment”** has the meaning set out in Section 3.1 [Early FM Payments] of Appendix 4I [Services During Construction Period].

**“Early FM Period Submittal”** means any and all items, documents, plans, reports and anything else required or specified by this Agreement, in respect of the Early FM Services, to be submitted, reviewed, accepted or otherwise processed by, the Authority, whether prior to the Early FM Period or during the Early FM Period, including any and all subsequent revisions, amendments and changes thereto.

**“Early FM Policies and Procedures”** has the meaning set out in Section 2.1.6 [Project Co Early FM Policies and Procedures] of Appendix 4I [Services During Construction Period]

**“Early FM Service Commencement and Start-up Plan”** has the meaning set out in Section 2.1.1 [Early FM Service Commencement and Start-up Plan] of Appendix 4I [Services During Construction Period].

**“Early FM Services”** means Services performed by Project Co during the Early FM Period.

**“Early FM Staffing Plan”** has the meaning set out in Section 2.1.2.3 [Early FM Staffing Plan] of Appendix 4I [Services During Construction Period]

**“Early FM Transition Period”** has the meaning set out in Section 3.3.4 [Entitlement to Make Adjustments] of Appendix 4I [Services During Construction Period].

**“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:

$(\text{Total Time} - \text{Down Time}) \times 100 / \text{Total Time}$

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.

**“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 Authority may reasonably require in relation to the calculation of Employee Payments Project Contractor

**“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 collectively (i) those Charges against title to the Lands described in the land title searches attached as Appendix 7C [LTO Search]; (ii) the easement(s) and statutory right(s) of way contemplated by Section 24 of the Ground Lease; (iii) the short form of lease of the Ground Lease that is to be registered against title to part of the Lands; and (iv) any additional Charges against the Lands permitted under Schedule 7 [Lands].

**“Energy”** means electricity, 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 New Infrastructure (excluding only the upgraded and expanded Food Services Area and laundry facilities) during that period;

**“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 4.5 [Energy Management Plan] of Appendix 2D [Energy];

**“Energy Modeling”** means 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 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 Management Plan”** has the meaning set out in Section 4.1.5 [Environmental Management Plan] of Schedule 4 [Services Protocols and Specifications];

**“Environmental Management System”** or **“EMS”** means the environmental management system described in Section 4.1.2 [Environment and Sustainability] of Appendix 4C [Plant Services];

**“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 3.6 [Equipment Committee] of Appendix 2E [Equipment];

**“Equipment List”** means the list of Equipment set out in Appendix 3G [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 F28 of the Project\_Agreement Sheet, having regard to Distributions made and projected to be made;

**“ESC”** means Electronic Security Communications System as further described in Section 9.8.1 of Schedule 3 [Design and Construction Specifications];

**“ESC 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;

**“ESC Data Network”** means the network specified in Section 9.8.6 of Schedule 3 [Design and Construction Specifications];

**“ESC Network Equipment”** means a equipment that is utilized by the ESC system that is connected to the telecom cable plant;

**“Escalation Factor”** for the purpose of Section 2.8 [Failure to Achieve Energy Targets after Retest Period] of Appendix 2D [Energy], means 3% in respect of electricity and 3% in respect of gas;

**“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 4.2 [Determination of Adjusted Estimated Market Value] or 4.3 [Determination by Valuator] of Schedule 9 [Compensation on Termination];

**“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 and Project Co is not entitled to relief for such continuation due to a Supervening Event other than as set out in this paragraph (a), 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 Authority 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) 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;
- (e) a Change in Law;
- (f) the outbreak or effects of any Medical Contamination, Lockdown or riot, to the extent it does not constitute a Compensation Event;
- (g) 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; and
- (h) any other event which is expressly stated in this Agreement to constitute an Excusing Event,

except to the extent that any of such events arise or are 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 any Project Co Person;

**“Exempt Refinancing”** means a Refinancing resulting from:

- (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 as at Financial Close;
  - (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;
  - (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;
  - (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 Authority 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; or
  - (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;

**“Existing Facility”** means those buildings, facilities, structures, systems, pieces of equipment, site services, Utility connections, landscaping, roadways, parking areas and other improvements constituting, or required to support, the Surrey Pretrial Services Centre located on the Lands and existing as of the Effective Date;

**“Expiry Date”** means October 31, 2043;

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

**“Event of Default”** has the meaning set out in the Credit Agreement;

**“Facility”** and **“Facilities”** means the Existing Facility, all Upgraded Infrastructure, and the New Infrastructure;

**“Facility Administrator”** means the Authority, Authority Persons, visitors and volunteers using or present at the Facility;

**“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 3.3 [Joint Technical Review] of Schedule 4 [Services Protocols and Specifications];

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

**“Facility Threat and Risk Assessment”** has the meaning set out in Section 3.9 [Facility Threat and Risk Assessment] 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 Credit Agreement;

**“Financial Close”** means June 13, 2011;

**“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;

**“Financial Submission Date”** means February 15, 2011;

**“Fire and Life Safety Plan”** means the plan set out in Section 4.1.2.13 [Fire and Life Safety Plan] of Schedule 4 [Services Protocols and Specifications];

**“Five Year Maintenance Plans”** has the meaning set out in Section 4.1.3 [Five Year Maintenance Plan] of Schedule 4 [Services Protocols and Specifications];

**“FM General Manager”** has the meaning given in Section 2.7 [Supervision] of Schedule 4 [Services Protocols and Specifications];

**“FMG Loss Prevention Date Sheet”** means engineering guidelines published by FM Global to help reduce the chance of property loss due to fire, weather conditions and failure of electrical or mechanical equipment;

**“Food Services Area”** means the commercial kitchen area Designed and Constructed in accordance with the requirements 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 Financial Close 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;

**"Forum Partner"** means FEP Surrey Limited Partnership;

**"Forum Sponsor Corporate Group"** means Forum Equity Partners Holdings Inc. and any body corporate, partnership, Affiliate, or other entity controlled (as defined in the *Business Corporations Act* (British Columbia)) by Forum Equity Partners Holdings Inc. or its Affiliates or any investment fund or other fund (other than a distressed debt fund or vulture fund) controlled or managed by Forum Equity Partners Holdings Inc. or its Affiliates;

**"Functional Program"** means the written document to inform the development of a building or major alteration to a building as found in Appendix 3A of Schedule 3 [Design and Construction Specifications];

**"Functional Unit"** means a room or space which is specified as such in Appendix 8A [Functional Units] 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;

**"Geotechnical Report"** means the reports described in Section 5.9 [Geotechnical Reports] of Schedule 2 [Design and Construction Protocols], including all Appendices, attachments and referenced documents;

**"GHG Emission Design Target"** means the project quantity of Green House Gas emissions as determined by the projected energy consumption for the New Infrastructure (excluding only the upgraded and expanded Food Services Area and laundry facilities) expressed as a quantity of Green House Gas Equivalent of carbon dioxide per annum. The GHG Emission Design Target for the New Infrastructure (excluding only the upgraded and expanded Food Services Area and laundry facilities) shall be 25kg CO<sub>2</sub>e/m<sup>2</sup>/year;

**“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;

**“Green House 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;

**“Ground Lease”** has the meaning set out in Section 1.2 [Terms Affecting Licence Grant] of Schedule 7 [Lands];

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

**“H & S Conviction”** has the meaning set out in Section 12 [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 5.2.1 [Notice from the Authority] of Appendix 4B [Handback Requirements];

**“Handback Holdback”** has the meaning given in Section 4.1.1.2 [Performance of Handback Work] of Appendix 4B [Handback Requirements];

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

**“Handback Survey”** has the meaning given in Section 3.1 [Handback Survey] of Appendix 4B [Handback Requirements];

**“Handback Works”** has the meaning given in Section 3.2.1 [Results of Survey] of Appendix 4B [Handback Requirements];

**“Handback Works Plan”** has the meaning given in Section 3.2.2 [Results of Survey] of Appendix 4B [Handback Requirements];

**“Has Knowledge”** or **“Have Knowledge”** or **“Having Knowledge”** means:

- (a) for an individual, when information is acquired by the individual under the circumstances in which a reasonable individual would take cognizance of it;
- (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,
  - (3) under circumstances in which a reasonable person would take cognizance of it;
- (c) for a partnership, including Project Co, 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 Authority, when information has come to the attention of:
  - (1) a director or officer of the Authority; or
  - (2) a senior employee of the Authority with responsibility for matters to which the information relates,

under circumstances in which a reasonable person would take cognizance of it;

**“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;

**“Healthcare Unit”** has the meaning given in Sections 3.2.1.1(2) 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 4D [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;

**“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), S.B.C. 2002, c. 57, as at the date of this Agreement;

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

**“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 Party Claims] of 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”**, means

- (a) with respect to the Benchmarked Facility Maintenance Payment at any time before the first Benchmarking Date, the Benchmarked Facility Maintenance Payment is adjusted as at April 1<sup>st</sup> commencing April 1<sup>st</sup>, 2011 by:
  - multiplying it by the Inflation Index in respect of the immediately preceding January; and
  - dividing it by the Inflation Index in respect of the month that is 3 months prior to the Base Date; and

- (b) with respect to Benchmarked Facility Maintenance Payment at any time after the first Benchmarking Date, the Benchmarked Facility Maintenance Payment is adjusted as at April 1<sup>st</sup> commencing in the Contract Year immediately after the year in which the relevant Benchmarking Date occurs by:
- multiplying it by the Inflation Index in respect of the immediately preceding January; and
  - dividing it by the Inflation Index in respect of the month that is 3 months prior to the immediately preceding Benchmarking Date; and
- (c) with respect to any other amount at any time, the amount is adjusted as at April 1<sup>st</sup> commencing April 1<sup>st</sup>, 2011 by:
- multiplying it by the Inflation Index in respect of the immediately preceding January; and
  - dividing it by the Inflation Index in respect of the month that is 3 months prior to the Base Date;

**“Indirect Losses”** means 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, exemplary or punitive damages or any consequential loss or indirect loss of any nature, (but does not include any losses (including loss of revenue or loss of profit) of Project Co under, or in connection with, this Agreement or of any Project Contractor under any Project Contract or Sub-Contractor under any Sub-Contract) claimed, suffered or allegedly suffered by:

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

**“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;

**“Informational Questions”** has the meaning given in Section 9.10.1.2 [Customer Satisfaction Assessments] of Schedule 4 [Services Protocols and Specifications];

**“Initiating Party”** has the meaning set out in Section 1.6 [Arbitration] of Schedule 13 [Dispute Resolution Procedure];

**“Inmate”** means an individual incarcerated at the Facility;

**"Inmate Programs Unit"** has the meaning given in Section 4.6.2.8 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;

**"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;

**"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 Authority solely for the benefit of the Authority;

**"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 Authority solely for the benefit of the Authority, but which have not been received;

**"Insurance Trustee"** means Computershare Trust Company of Canada;

**"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;

**“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 140001 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 3.3 [Joint Technical Review] 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;

**"Key Individuals"** has the meaning set out in Section 2.8 [Key Individuals] of this Agreement;

**"Landlord"** means the City of Surrey;

**"Lands"** means collectively:

- (a) those lands in the Province of British Columbia currently legally described as Parcel Identifier: 028-351-754 Lot 1 Section 9 Township 2 New Westminster District Plan BCP46372; and
- (b) the Statutory Right of Way Area (as described in the SRW);

but excluding that part shown in cross-hatch in Appendix 7A [Excluded Tunnels] (although the doors to such areas are included in the Lands);

**"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 Boundary"** has the meaning set out in Section 3.6 [LEED Gold Certification] of Schedule 2 [Design and Construction Protocols];

**"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 Authority, 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;



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

**“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 payment described in Section 2.1(a) [Service Payment] of Schedule 8 [Payments];

**“Life Cycle Plan”** has the meaning set out in Section 4.1.4 [Life Cycle Plan] of Schedule 4 [Services Protocols and Specifications];

**“Life Cycle Report”** has the meaning set out in Section 4.7 [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;

**“Linked Unit”** means a room or an area which is designated in Appendix 8A [Functional Units] as being linked to a Functional Unit;

**“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 Authority 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 given in Section 4.6.2.2 of Schedule 3 [Design and Construction Specifications];

**“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 Authority 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 October 31, 2014, as adjusted in accordance with this Agreement;

**“Long Stop Return Date”** has the meaning set out in Section 4.10 [Long Stop Return Date] of Schedule 8 [Payments];

**“Low Service Failure”** means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in Schedule 8 [Payments] as a Low Service Failure, or a Service Failure which has not been designated as a Medium Service Failure or High Service Failure;

**“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), the Non-Upgraded Infrastructure and all elements of the Facility and Site constructed, installed, renovated, replaced, refurbished, reconditioned, expanded, modified or upgraded 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, for purposes of Schedule 4 [Services Protocols and Specifications] (including all appendices thereto), the commissioning, testing, servicing, maintenance, repair, renewal or replacement of the Maintained Elements, but for purposes other than this Appendix also includes the Grounds Maintenance and Landscaping Services

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

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

**“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;

**“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;

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

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

**“Miscellaneous Maintenance”** has the meaning given in Section 7.1.1 [Miscellaneous Maintenance Services] of Appendix 4C [Plant Services];

**“Mock-Ups”** has the meaning given in Section 4.5 [Mock Ups and Prototype Rooms] of Schedule 2 [Design and Construction Protocols];

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

**“Neighbourhoods”** has the meaning given in Section 4.6.2.2(3) of Schedule 3 [Design and Construction Specifications];

**“Net Change Value”** has the meaning set out in Section 1.9 [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;

**“New Infrastructure”** means the buildings, facilities, structures, systems, pieces of equipment, site services, Utility connections, landscaping, roadways, parking areas and other improvements to be

constructed or installed on the Lands pursuant to this Agreement, including the upgraded and expanded Food Services Area and laundry facilities, but excluding any Upgraded Infrastructure;

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

**“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 Authority 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 Authority 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 Authority 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 Authority;

**“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 3.14 [Service Failures Related Solely to Unavailability] of Schedule 8 [Payments];

**“NIC”** means Noise Isolation Class which is a single-number rating that provides an estimate of the sound isolation between two enclosed spaces that are more acoustically connected by one or more paths;

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

**“Non-Benchmarked Facility Maintenance Payment”** means the payment described in Section 2.1(a) [Service Payment] of Schedule 8 [Payments];

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

**“Non-Upgraded Infrastructure”** means those portions of the Existing Facility which are not Upgraded Infrastructure;

**“Non-Upgraded Infrastructure Entrance Room”** means an Entrance Room that is not required to be upgraded;

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

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

**“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;

**“One-Year Scheduled Maintenance Plan”** means the plan described in Section 4.1.2.7 [One-Year Scheduled Maintenance Plan] of Schedule 4 [Services Protocols and Specifications];

**“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 3.2 [Operating Period Committee] of Schedule 4 [Services Protocols and Specifications];

**“Operating Period Representative”** has the meaning set out in Section 3.1 [Operating Period Representatives] of Schedule 4 [Services Protocols and Specifications];

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

**“Operating Period Submittal”** has the meaning set out in Section 1.1 [Operating Period Submittals] of Appendix 4G [Operating Period Review Procedure];

**“Operating Period Submittal Schedule”** has the meaning set out in Section 2.2 [Operating Period Submittal Schedule] of Appendix 4G [Operating Period Review Procedure];

**“Operational Policies and Procedures”** means Project Co's operating policies and procedures as described in Section 4.1.6 [Project Co Operational Policies and Procedures] of Schedule 4 [Services Protocols and Specifications];

**“Operating Period Quality Assurance Program”** means the quality assurance program described in Section 4.1.2.5 [Operating Period Quality Assurance Program] of Schedule 4 [Services Protocols and Specifications];

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

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

**“Partners”** means Brookfield Infrastructure Surrey Holdings Limited, Brookfield Infrastructure Surrey Holdings (Subco) Limited and FEP Surrey Limited Partnership;

**“Partner Loan”** means any funds contributed to Project Co by a Partner in relation to the Project;

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

**“Payment Period”** means a calendar month;

**“Performance Indicators”** means the performance indicators identified as such in Schedule 4 [Services Protocols and Specifications] (including all appendices thereto);

**“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 9.1 [Project Co Performance Monitoring] of Schedule 4 [Services Protocols and Specifications];

**“Performance Monitoring Report”** has the meaning set out in Section 9.2.1 [Periodic Reporting] of Schedule 4 [Services Protocols and Specifications];

**“Periodic Payment”** means the amount that is the aggregate of the Life Cycle Payment, the Non-Benchmarked Facility Maintenance Payment, the Benchmarked Facility Maintenance Payment, and the Capital Payment, as adjusted in accordance with Section 2.2 [Adjustments to Periodic Payments] of Schedule 8 [Payments];

**“Permanent Repair”** means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 3.10 [Multiple Events] of Schedule 8 [Payments];

**“Permanent Repair Deadline”** has the meaning set out in Section 3.10(a) [Multiple Events] 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;

**“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 by Project Co of any term, covenant or undertaking to the Authority (other than a breach for which Deduction could be made) which, due to the fact that such breach has continued for 60 days or more or that the same breach has 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 Information”** means ‘personal information’ as defined in the *Freedom of Information and Protection of Privacy Act (British Columbia)*, R.S.B.C. 1996, c. 165, which is collected, acquired, obtained by Project Co or the Authority 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)*, R.S.B.C. 1996, c. 165;

**“Pest Control Services”** means the Services and requirements described in Section 6 [Pest Control] of Appendix 4C [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, but not in respect of any portion of any Refinancing Gain for such Planned Refinancing that is greater than such amount expressly set out in Schedule 19 [Planned Refinancing] as of the Effective Date;

**“Plans”** means the Service Commencement and Startup 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 4C [Plant Services], including Demand Maintenance and Scheduled Maintenance;

**“Plant Services Information Management System”** has the meaning set out in Section 3.9 [Plant Services Information Management System] of Appendix 4C [Plant Services];

**“Pod Control”** has the meaning given in Section 4.6.2.3 of Schedule 3 [Design and Construction Specifications];

**“Pod Lobby”** has the meaning given in Section 4.6.2.4 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 New Infrastructure when the ratio of usable power consumption to reactive power consumption in connection with the New Infrastructure 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;

**“Primary High Voltage Distribution Building”** or **“PHVDB”** means a building that houses all high voltage 12.5/25 KV rated distribution equipment, bussing, cabling as necessary for providing Facility with electrical power;



**“Prime Rate”** means the annual rate of interest announced by Royal Bank of Canada (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;

**“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;

**“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 Authority and Project Co as of the 13<sup>th</sup> day of June, 2011, 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 Brookfield Infrastructure Partnerships Surrey;

**“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 [Project Co Events of Default] of this Agreement;

**“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), R.S.C. 1985, c. C-36, 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 admitting in writing its inability to pay its debts generally as they become due, filing a notice of intention to make a proposal, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy and Insolvency Act (Canada), R.S.C. 1985, c. B-3, 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), R.S.C. 1985, c. B-3, 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 Authority 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 Authority;
- (b) a failure by Project Co to maintain the policies of insurance required to be maintained by Project Co under this Agreement and to comply with its obligation under Schedule 5 [Insurance Requirements] to name the Authority as an insured party;
- (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 Authority (other than a breach for which a Deduction could be made) or any representation or warranty made by Project Co to the Authority 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 Authority to third Persons;
  - (3) an adverse effect on the performance of the Design, the Construction or the Services to the extent that the Authority 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) except as provided in the definition of a Project Co Insolvency Event, Project Co committing an act of bankruptcy or becoming insolvent;

- (f) 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 Qualifying Refinancing] or Section 5.4 [Refinancing Process] of this Agreement; or
- (g) any other fact or circumstance designated as a “Project Co Material Breach” under this Agreement;

“**Project Co Operating CGL Policy**” has the meaning set out in Section 2.1 [Project Co Commercial Liability Policy] 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) 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 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] of this Agreement;

“**Project Contractor**” means the Design-Builder or the Service Provider and “**Project Contractors**” means either 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 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;

**“Project Risk Premium”** means [REDACTED] (being the difference between [REDACTED] and [REDACTED] being the linear interpolation of the yields as determined by the parties at financial close on the Government of Canada 5.75% Bond maturing June 1, 2029 and the Government of Canada 4.00% Bond maturing June 1, 2041 ; in accordance with the Financial Model as shown in Cell F29 of the Project\_Agreement Sheet;

**“Project Schedule”** has the meaning set out in Section 9.1 [Initial Project Schedule] of Schedule 2 [Design and Construction Protocols];

**“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];

**“Proposed Step-in Date”** has the meaning set out in Section 3.1 [Step-In Notice] of Schedule 11 [Material Project Contract Collateral Agreement];

**“Proposed Substitute”** has the meaning set out in Section 4.1 [Proposed Substitute] of Schedule 11 [Material Project Contract Collateral Agreement];

**“Proposed Transfer Date”** has the meaning set out in Section 4.1 [Proposed Substitute] of Schedule 11 [Material Project Contract Collateral Agreement];

**“Proposed Transfer Notice”** has the meaning set out in Section 4.1 [Proposed Substitute] of Schedule 11 [Material Project Contract Collateral Agreement];

**“Protest Action”** means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, including any action taken or threatened to be taken by any Person or Persons protesting or demonstrating against the carrying out of any part of the Project (including the construction of the Facility) or against the construction or operation of corrections facilities in general, occurring after the Effective Date, but excluding any such action by the Inmates and any lawful or unlawful strike, lockout, go-slow or labour or other industrial relations dispute or job action;

**“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];

**“Public Sector Employees”** means those unionized Persons employed by the Authority and engaged at the Facility;

**“Qualified Insurers”** means reputable insurers of good standing in North America, the United Kingdom, Europe, Australia or Canada having a credit rating of (1) A- or better with AM BEST or (2) the equivalent thereof by any other recognized insurance rating agency;

**“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 Authority’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.

**“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:

- (a) a bank listed in Schedule I, II or III of the *Bank Act (Canada)*, S.C. 1991, c. 46;
- (b) a bank regulated by the Board of Governors of the Federal Reserve System of the United States;
- (c) 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;
- (d) a U.S. bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that manages at least \$500 million in securities and would be a “qualified institutional buyer” under U.S. securities legislation, including entities wholly owned by any of the foregoing;
- (e) 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;

- (f) 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
- (g) any other institution consented to in writing by the Authority as a “Qualifying Institution”.

**“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain, but excludes:

- (a) an Exempt Refinancing; and
- (b) a Planned Refinancing to the extent and amount of the applicable Planned Refinancing Gain, provided however that if a Planned Refinancing is proposed to result in, or results in, a Refinancing Gain that exceeds the amount of a Planned Refinancing Gain for that Planned Refinancing, the Refinancing to the extent and amount that the Refinancing Gain exceeds the Planned Refinancing Gain will be a Qualifying Refinancing;

**“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 9.10.1.2 [Customer Satisfaction Assessments] of Schedule 4 [Services Protocols and Specifications];

**“Re-Bidding Costs”** means the reasonable costs incurred by the Authority in connection with the Re-Bidding Process or the calculation of the Estimated Market Value;

**“Re-Bidding Process”** means the process by which the Authority 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 3.9 [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] of this Agreement;

**“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:

- (a) for an Unavailability Event:
  - (1) the amount of time specified as such for that Event in Schedule 4 [Services Protocols and Specifications]; or
- (b) for a Service Failure:
  - (1) for which a time has been specified as the “Rectification Period” in Schedule 4 [Services Protocols and Specifications], the time so specified;
  - (2) for which “N/A” has been specified as the “Rectification period” in Schedule 4 [Services Protocols and Specifications], there is no Rectification Period; and
  - (3) relating to reports or other documentation required to be delivered by Project Co, 24 hours,

in each case calculated as follows:

- (c) from the time that the Event is reported to the Help Desk or is otherwise reported to or discovered by Project Co; or
- (d) 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];

**“Reference Design”** means the design, based on the requirements of the Functional Program, the Design and Construction Specifications and information regarding the Existing Facility, that has been prepared by the Authority and included in the Disclosed Data;

**“Refinancing”** means:

- (a) any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement or any refinancing of Senior Debt;
- (b) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or 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;
- (d) 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
- (e) any other arrangement put in place by Project Co or another Person which has an effect which is similar to any of (a) through (d) 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] of this Agreement;

**"Refinancing Gain"** means an amount equal to the greater of zero and  $[(A - B) - C]$ , where:

A = the Net Present Value of the after tax Distributions projected immediately prior to the Refinancing (taking into account the effect (including the costs of and the Authority's expenses pursuant to Section 5.8 [The Authority's Expenses]) 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 the after tax Distributions projected immediately prior to the Refinancing (but without taking into account the effect (including the costs of and the Authority's expenses pursuant to Section 5.8 [The Authority's Expenses]) 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;

**"Regulated Energy"** means electricity and gas;

**"Reinstatement Plan"** has the meaning set out in Section 6.4 [Project Co's Obligations –Material Damage or Destruction] of this Agreement;



**“Reinstatement Works”** has the meaning set out in Section 6.4 [Project Co's Obligations –Material Damage or Destruction] of this Agreement;

**“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), S.B.C. 2004, c.46; or
- (b) which specifically applies to:
  - (1) the Project and not to other projects except as set out in (2) below;
  - (2) corrections projects whose design, construction, financing, maintenance and service provision are procured on a basis similar to the Project and not to other projects;
  - (3) Project Co and not to other persons;
  - (4) persons that have contracted with the Authority, a municipality or other statutory or public body to provide services similar to those contemplated under this Agreement (whether in relation to the Facility or other public facility assets); or
  - (5) the design, construction, finance, maintenance or service provision of the Facility or the holding of shares or other evidences of ownership in Persons whose principal business is providing services the same as or similar to the Design, the Construction and the Services; 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 (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) official or unofficial strike, lockout, work-to-rule 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 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 to the extent it does not constitute a 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 arise or are 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 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;

**“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, or in the case of the Upgraded Infrastructure and the Non-Upgraded Infrastructure, at any time after the Services Start Date, except for the completion of Deficiencies and other than pursuant to the Life Cycle Requirements;

**“Reported Antecedent Liabilities”** means the Antecedent Liabilities identified in the Liability Report;

**“Reporting Error”** has the meaning set out in Section 9.5 [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;

**“Responding Party”** has the meaning set out in Section 1.6 [Arbitration] of Schedule 13 [Dispute Resolution Procedure];

**“Respond”** and **“Response”** means, with respect to all Services, the appropriate Project Co Person providing: (i) a verbal response confirming the details of the Event; and (ii) a plan, acceptable to the Authority acting reasonably, for the Rectification of the Event;

**“Response Time”** means the period of time following a Demand Requisition or other electronic report or recording by the BMS during which Project Co must Respond, each as indicated as a **“Response Time”** for the relevant Service in the Performance Indicators;

**“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) is, or has been, involved in the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of 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; or
- (e) is subject to any material claim of the Authority or the Province of British Columbia 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 Authority's view, in either case, be reasonably likely to materially affect the ability of Project Co to perform its obligations under this Agreement;

**“Retest Period”** has the meaning set out in Section 2.6 [Retest Period] of Appendix 2D [Energy];

**“Return Date”** has the meaning set out in Section 4.3(d) [Notice Requirements] of Schedule 8 [Payments];

**“Reviewed Drawings and Specifications”** has the meaning set out in Section 5 [Reviewed Drawings and Specifications] of Appendix 2B [Review Procedure];

**“Revocation of Termination Notice”** means a written notice from the Authority to the Collateral Agent revoking a Termination Notice;

**“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 Section 2.1 [Roads, Grounds and Landscape Maintenance Services] of Appendix 4F [Roads, Grounds and Landscape Maintenance Services];

**“Room Data Sheets”** means the room data sheets prepared by Project Co pursuant to Section 4.3 [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”** has the meaning given in Table 1 [Response Times and Rectification Periods] of Attachment 1 [Failure or Request for Service Categories] of Appendix 4C [Plant Services];

**“S&OU”** has the meaning given in Section 3.2.1.1(2) and 4.6.2.6 of Schedule 3 [Design and Construction Specifications];

**“Scheduled Maintenance”** means planned and preventive Maintenance;

**“Secure Emergency Perimeter”** has the meaning given in Section 3.2.2.5(2) of Schedule 3 [Design and Construction Specifications];

**“Secure Perimeter”** has the meaning given in Section 3.2.2.5(1) of Schedule 3 [Design and Construction Specifications];

**“Security Documents”** has the meaning as set out in the Credit Agreement;

**“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 all or any part of the Design, Construction, Services or other obligations of Project Co pursuant to the Project Agreement which: (i) the Authority designates as “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 New Infrastructure, the Upgraded Infrastructure, or the Existing Facility;
- (b) access all or a material part of the design of the ESC or the ESC Data Network;
- (c) access, control or modify any part of the ESC or the ESC Data Network;

- (d) access an area of the Facility which is located, or will once the Facility is completed be located, in a non-public space; or
- (e) have direct contact with, communicate directly or indirectly with, or pass contraband directly or indirectly to, an Inmate,

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.

**"Segregation and Observation Unit"** or **"S&OU"** has the meaning given in Section 4.6.2.6 of Schedule 3 [Design and Construction Specifications];

**"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 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 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) Credit Agreement; and
- (b) Security Documents,

certified copies of each of which have been delivered by Project Co to the Authority, 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 Lenders’ Representative”** means:

- (a) the Collateral 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 Authority (such approval not to be unreasonably withheld or delayed);

**“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)*, S.B.C. 1997, c. 45, has been achieved;
- (b) an occupancy permit has been issued for the Facility or the City has issued a temporary occupancy permit or other written permission that is sufficient for occupancy of the Facility by the Authority for the Authority Activities;
- (c) Project Co has delivered to the Authority a Life Cycle Report as required by Section 4.7 [Life Cycle Report] of Schedule 2 [Design and Construction Protocols];
- (d) Project Co has delivered to the Authority a Service Commencement and Startup Plan as required by Section 4.1.1 [Service Commencement and Start-up Plan] of Schedule 4 [Services Protocols and Specifications];
- (e) Project Co has completed the training of Authority staff as required by Section 11.2 [Equipment and Systems Operation and Training] of Schedule 2 [Design and Construction Protocols]; and
- (f) Project Co has delivered to the Authority written confirmation as required by Section 3.7 [LEED Project Checklist] of Schedule 2 [Design and Construction Protocols].

**“Service Commencement and Start-up Plan”** means the plan described in Section 4.1.1 [Service Commencement and Start-up Plan] of Schedule 4 [Services Protocols and Specifications];

**“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) November 1, 2013; 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 2.1 [Service Payment] of Schedule 8 [Payments];

**“Service Provider”** means Honeywell Limited or any assignee or replacement permitted under this Agreement;

**“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 Authority, 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];

**“Services Start Date”** means January 3, 2012;

**“Setup, Testing and Commissioning Computer”** or **“STCPC”** means a computer used to perform setup and programming functions of ESC systems;

**“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”** means all the areas of the Facility that are not inside the Secure Perimeter;

**“SLC Secure”** means all the areas of the Facility that are inside the Secure Perimeter and accessible by Inmates;

**"SRW"** has the meaning set out in Section 1.2 [Terms Affecting Licence Grant] of Schedule 7 [Lands];

**“Staffing Plan”** means the plan described in Section 4.1.2.3 [Staffing Plan] of Schedule 4 [Services Protocols and Specifications];

**"Step-in Date"** means the date the Authority delivers the Step-in Undertaking;

**"Step-in Notice"** has the meaning set out in Section 3.1 [Step-In Notice] of Schedule 11 [Material Project Contract Collateral Agreement];

**"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 [Effect of Step-In Undertaking] of Schedule 11 [Material Project Contract Collateral Agreement];

**"Step-in Undertaking"** has the meaning set out in Section 3.5 [Delivery of Step-In Undertaking] of Schedule 11 [Material Project Contract Collateral Agreement];

**"Step-out Date"** has the meaning set out in Section 3.9 [Step-Out] of Schedule 11 [Material Project Contract Collateral Agreement];

**“STC”** means Sound Transmission Class for sound transmission rating;

**“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 9.8.1 [Replacement of Non-Performing Sub-Contractor] of Schedule 4 [Services Protocols and Specifications];

**“Sub Telecom/ESC Room”** means a room connected to the Main Telecom/ESC Room via backbone cables used to terminate structured cabling and house telecom equipment;

**“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] of the Agreement;

**“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 9.10.1.1 [Customer Satisfaction Assessments] of Schedule 4 [Services Protocols and Specifications];

**“Synchronized Clock System”** means a combination of clocks and master central time source that synchronises all clocks within a group to display the same time;

**“Target Service Commencement Date”** means the date, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Project Co estimates Service Commencement will occur;

**“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 Authority by Project Co as a substitute for any Unavailable Temporary Alternative Functional Unit pursuant to Section 4.1 [Project Co Option to Provide] of Schedule 8 [Payments];

**“Temporary Alternative Accommodation Functional Unit”** means the Functional Units described under the headings of Food Services and Central Services – Laundry Service in Appendix 8A [Functional Units];

**“Temporary Alternative Accommodation Notice”** has the meaning set out in Section 4.1 [Project Co Option to Provide] of Schedule 8 [Payments];

**“Temporary Availability Condition”** has the meaning set out in Section 3.11(a)(2) [Temporary Repairs] 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 3.11(a)(2) [Temporary Repairs] of Schedule 8 [Payments];

**"Term"** has the meaning set out in Section 2.1 [Term and Termination] of this Agreement;

**"Termination Date"** means the earlier of the Expiry Date or the date of earlier termination referred to in Section 2.1 [Term and Termination] of this Agreement;

**"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 Notice"** has the meaning set out in Section 2.1 [Termination Notice] of Schedule 11 [Material Project Contract Collateral Agreement];

**"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 [Termination Notice] of Schedule 10 [Lenders' Remedies Agreement]) set out in the Termination Notice.

**"Termination Payment"** means the amount owing by the Authority to Project Co pursuant to Schedule 9 [Compensation on Termination];

**"Termination Payment Date"** means the date on which the Authority 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"** has the meaning given in Section 3.2.2.5(3) of Schedule 3 [Design and Construction Specifications];

**"Threshold Equity IRR"** means [REDACTED]

**"Tool Control Policy and Procedures"** means the Security of Tools, Equipment and Materials Policy in the Authority's Adult Institutions Policy and Procedures Manual, included in the Authority's Policies and Procedures, as supplemented or amended from time to time and provided to Project Co in writing;

**“Total Suspended Solids”** means the particulate weight of a specific size as listed in the tables;

**“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;
- (b) 25% or more of the washrooms in the Facility are Unavailable at the same time and a Rectification Period has expired with respect to each such washroom; or
- (c) 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 Authority has not approved a mitigation plan put forward by Project Co;

**“Transfer Agreement”** has the meaning set out in Section 4.5(b) [Implementation of Transfer] of Schedule 11 [Material Project Contract Collateral Agreement];

**“Transfer Date”** means the Termination Date, subject to extension for the period of transitional arrangements under Section 14.3 [Transitional Arrangements] of this Agreement;

**“Transfer Effective Date”** means the effective date of the Transfer Agreement;

**“Transfer Restriction Date”** has the meaning set out in Section 16.1 [Limitations on Assignment of Project by Project Co] of this Agreement;

**“Transition”** means the tolerance level for the making of Deductions in respect of Service Failures as described in Section 3.15 [Transition Periods – Service Failures] of Schedule 8 [Payments];

**“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

- (a) in respect of New Infrastructure, an incident or state of affairs which causes one or more Functional Units to be Unavailable; and
- (b) in respect of Upgraded Infrastructure and Non-Upgraded Infrastructure an incident or state of affairs which causes one or more Functional Units to be Unavailable, unless and to the extent that the provisions of Schedule 4H apply;

**“Undisclosed Environmental Liabilities”** means all Hazardous Substances located in, on, below or adjacent to the Lands, other than Project Co Hazardous Substances;

**“Undisclosed Existing Facility Conditions”** means the structural capacity and underslab piping locations encountered by Project Co that differ materially from those identified on the following drawings in the Disclosed Data:

- (a) S00 - S33, Choukalos Woodburn McKenzie Maranada, 1988
- (b) M1 - M24, Reid Crowther, 1988
- (c) P1 - P13, Reid Crowther, 1988
- (d) P1 - E49, R.A.Duff, 1988

**“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] of this Agreement;

**“Unit Deduction Amounts”** means:

- (a) for a Priority Level 1 Functional Unit, \$225 Index Linked;
- (b) for a Priority Level 2 Functional Unit, \$115 Index Linked;
- (c) for a Priority Level 3 Functional Unit, \$75 Index Linked;
- (d) for a Priority Level 4 Functional Unit, \$50 Index Linked; and
- (e) for a Priority Level 5 Functional Unit, \$45 Index Linked.

**“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];

**“Upgraded Infrastructure”** means those portions of the Existing Facility to be renovated, replaced, refurbished, reconditioned, expanded, modified or upgraded in order to achieve Service Commencement pursuant to this Agreement.

**"UPS"** means uninterruptible power supplies;

**"Urgent"** has the meaning given in Table 1 [Response Times and Rectification Periods] of Attachment 1 to Appendix 4C [Plant Services];

**"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; and
- (g) telephone and data cabling;

**"Utility Company"** means any company designated by the Authority to provide Utilities to the Facility;

**"Utility Management Services"** means the services and requirements described in Appendix 4E [Utility Management Services];

**"Video Visitation (VV) System"** means the systems described in Section 9.7.5 of Schedule 3 [Design and Construction Specifications].

**"Visiting Areas"** means designated areas in the Facility where public are permitted to meet with Inmates as defined in Section 4.6.2.10 of Schedule 3 [Design and Construction Specifications];

**"Waste Management and Recycling Services"** means the services and requirements as described in Part 5 [Waste Management and Recycling] of Appendix 4C [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;

**"Work Plan"** has the meaning set out in Section 5.11 [Connections and Integration to Existing Facility] in Schedule 2 [Design and Construction Protocols];

**"Valuator"** means a firm of chartered accountants as represented by a fully qualified member of the Canadian Institute of Chartered Business Valuators; and

“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;

## 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 4B [Handback Requirements] means the second 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 Authority 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 Authority’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 Authority to:
  - (1) take any action which is contrary to the public interest, as determined by the Authority 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 Authority, by the Authority Indemnified Persons, and, in the case of Project Co, by Project Co Persons.

### **3. PRIORITY OF AGREEMENTS AND SCHEDULES**

If there is any conflict between:

- (a) the main body of this Agreement and any of the Schedules hereto other than Schedule 11 (Material Project Contract Collateral Agreement) or Schedule 10 (Lenders' Remedies Agreement), the provisions of the main body of this Agreement will prevail;
- (b) this Agreement and any Material Project Contractor Collateral Agreement or the Lenders' Remedies Agreement, as between the Authority and Project Co the provisions of such Material Project Contractor Collateral Agreement or the Lenders' Remedies Agreement will prevail, and among such agreements, the Lenders' Remedies Agreement will be paramount; and
- (c) Appendix 2G [Proposal Extracts (Design and Construction)] or Appendix 4A [Proposal Extracts (Services)] and any other provision of this Agreement, the other provision of this Agreement will prevail.

### **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.