

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

1. DEFINITIONS

In this Agreement:

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

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

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

“Adjusted Estimated Market Value” has the meaning set out in Schedule 9 [Compensation on Termination];

“Adjusted Highest Compliant Bid Price” has the meaning set out in Schedule 9 [Compensation on Termination];

“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;

“Agreement” means this agreement, including any recitals, schedules, appendices and attachments to this agreement, as amended or restated from time to time;

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

“Ancillary Software Service Agreement” means:

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

“Annual Energy Target” for an Energy Year means the amount determined pursuant to Section 4.1 of Appendix 8C;

“Annual Service Plan” has the meaning set out in Section 7.6 of Schedule 4 [Services Protocols and Specifications];

“Applicant” has the meaning set out in Section 8.1 (Supervening Events);

“Apprenticeship Policy” has the meaning set out in Schedule 2 [Design and Construction Protocols];

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

“Availability Condition” has the meaning set out in Schedule 8 [Payments];

“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)), would have been saved or avoided as a result of the event or circumstance or its effects;

“Base Case Project IRR” means 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 W53 of the Outputs Summ. Sheet;

“Base Date” means March 1, 2017;

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

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

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

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

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

“CaGBC” has the meaning set out in Schedule 2 [Design and Construction Protocols];

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

“Capital Payment” has the meaning set out in Schedule 8 [Payments];

“Category 1 Equipment and Furniture” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category 2 Equipment and Furniture” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category 3 Equipment and Furniture” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category 4 Equipment and Furniture” has the meaning set out in Appendix 2E [Equipment and Furniture];

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

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

“Change Certificate” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Directive” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change in Control” means with respect to a relevant Person:

- (a) any direct or indirect change by contract or otherwise (other than as set out in (b)) which results in a Person or group of Persons having the ability to direct or cause the direction of the management, actions or policies of the relevant Person; or
- (b) any:
 - (1) 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 relevant 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
 - (2) other direct or indirect change,
which results in a Person or group of Persons, other than the equity holders of the relevant Person immediately prior to the change, directly or indirectly:
 - (3) controlling the composition of the majority of the board of directors of the relevant Person or of a general partner or manager of the relevant Person;
 - (4) controlling the decisions made by or on behalf of the relevant 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 relevant Person, a general partner of the relevant Person or a manager of the relevant Person or otherwise;
 - (5) holding equity (either beneficially or otherwise) of the relevant Person 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 the relevant Person with more than one half of the voting rights; or

- (6) having the ability to direct or cause the direction of the management, actions or policies of the relevant Person;

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

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

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

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

"Change Mark-Up" has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

"Change Report" has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

"Change Report Costs" has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

"Charge" has the meaning set out in Schedule 7 [Lands];

"City" means the City of Abbotsford;

"Commissioning Plan" has the meaning set out in 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 or any Project Co Person:

- (a) breach by the Province of any of its obligations under this Agreement;
- (b) breach of any representation or warranty by the Province under this Agreement;

- (c) wilful misconduct of the Province, a Province Person or a Facility User;
- (d) a negligent act or omission of the Province, a Province Person or a Facility User, except to the extent attributed to the Province solely by virtue of the principle of non-delegable duty;
- (e) the existence of Undisclosed Environmental Liabilities;
- (f) a Permit which is the obligation of the Province to obtain or maintain is declared invalid or defective by a court of competent jurisdiction;
- (g) the existence as at the Effective Date of any encumbrance enforceable against or affecting the Lands or the Facility other than the Encumbrances;
- (h) the discovery of any human remains, relics or other articles or structures of historical, antiquarian or archaeological interest on or adjacent to the Lands;
- (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) subject to Section 8.15 (Allocation of Risks of Participants and Trespassers), a Protest Action during the Construction Period;
- (k) a Protest Action during the Operating Period;
- (l) lawful or unlawful strike, lockout, work-to-rule or other dispute by Public Sector Employees or by the employees of any contractor (other than Project Co) engaged by the Province to provide services in the Facility;
- (m) the actions referred to in Section 11.5 (Allocation of Costs for Province Actions) as constituting a Compensation Event;
- (n) the event referred to in Section 8.4(e)(2) (Project Co's Entitlement Upon Occurrence of a Relief Event);
- (o) the event referred to in Section 8.6(d)(2) (Parties' Entitlements Upon Occurrence of a Force Majeure Event);
- (p) the event referred to in Section 6.11 (Inspection) of Schedule 2 [Design and Construction Protocols];
- (q) Project Co's compliance with a direction from the Province under Section 3.3 of Schedule 13 [Dispute Resolution Procedure] or Project Co's implementation of a Change Certificate under Section 2.15(b) of Schedule 6 [Changes, Minor Works and Innovation Proposals] when the matter in dispute is subsequently resolved, or settled, in Project Co's favour;
- (r) the execution of works, other than usual or reasonably expected works, on the Site or in respect of the Facility not forming part of this Agreement by the Province or any Person permitted to execute such works by the Province or any Province Person;
- (s) 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 a Province Event of Default as set out in Section 13.1(c) (Province Events of Default); and

- (t) 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 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;

“Compliant Bid” has the meaning set out in Schedule 9 [Compensation on Termination];

“Conditional Change Certificate” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Confidential Information” means Personal Information, and information of a party that the party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information;

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

“Construction Background Check” means:

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

“Construction CGL Policy” has the meaning set out in Schedule 5 [Insurance Requirements];

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

“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 Schedule 2 [Design and Construction Protocols];

“Construction Property Policy” has the meaning set out in Schedule 5 [Insurance Requirements];

“Contingent Funding Liabilities” means direct or indirect liabilities or contingent liabilities, if any, of the Partners in respect of financial obligations owed to Project Co, to the General Partners, to any party

under the Junior Debt or the Senior Lenders under the Senior Financing Agreements, such as, for example, the amount a Partner has agreed to contribute to Project Co, promissory notes, obligations to fund reserve accounts, guarantees, letters of credit in respect of deferred equity, subordinated debt or equity bridge loans;

“Contract Year” means each of:

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

“Cost to Date” has the meaning set out in Appendix 8B [Construction Payments];

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

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

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

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

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

“Deduction” has the meaning set out in Schedule 8 [Payments];

“Deemed Corporate Project Co” has the meaning set out in Schedule 9 [Compensation on Termination];

“Default Rate” on any day means per annum over the Prime Rate;

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

“Deficiency” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Deficiency Deadline” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Demand Maintenance” means ad hoc and responsive unscheduled Maintenance;

“Demand Requisition” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

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

“Design and Construction Energy Target” has the meaning given in Appendix 2C [Design and Construction Energy Target];

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

“Design and Construction Representative” has the meaning set out in Schedule 2 [Design and Construction Protocols];

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

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

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

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

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

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

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

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

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

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

“Development Change Record” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Record Confirmation” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Development Change Register” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

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

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

and in calculating any amount of any additional Capital Expenditure, labour or similar cost claimed by Project Co under this definition of “Direct Losses”, Project Co will be entitled to add to such amounts the mark-ups referred to in Section 2.9 (Valuation of and Payment for Changes) of Schedule 6 [Changes, Minor Works and Innovation Proposals];

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

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

- (a) the Project or other similar justice administration-related projects procured and contracted on a public-private partnership basis similar to the Project;

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

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

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

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

“Distribution” means without duplication or double counting:

- (a) whether in cash or in kind, any:
 - (1) distribution to Partners or other distribution in respect of equity interests in Project Co;
 - (2) redemption or purchase of any equity interest in Project Co or reduction of partnership capital or the amount of a Partner’s contribution stated in the limited partnership certificate or any other reorganization or variation to partnership capital;
 - (3) payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);
 - (4) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof, or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business or not on commercially reasonable terms including to any current or former Partner, or any current or former Affiliate of any current or former Partner;
 - (5) conferral of any other benefit which is not conferred and received in the ordinary course of business or is not conferred or received on commercially reasonable terms, including to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co; and
 - (6) other payment to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect

of any equity interest in Project Co or other securities of or interests in Project Co if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; or

- (b) the early release of any reserves or any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

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

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

“Effective Date” means the date of this Agreement;

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

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

“Employee Information” has the meaning set out in Schedule 9 [Compensation on Termination];

“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” has the meaning set out in Schedule 7 [Lands];

“Energy” means energy used in the Facility and created by, or produced from, electricity, thermal sources, gas, oil and any other fossil-based fuel or biomass, including wood products;

“Energy Consumption” for a period means the total amount of Energy consumed at the Facility during that period, expressed in GJ as reflected by the readings for the metered utilities and as calibrated by the Independent Energy Consultant;

“Energy Dashboard” means a password protected web-accessible tool that can display real time (with up to two days lag time) Energy Consumption for a range of time increments (including hourly, daily, monthly, and yearly) and broken down by Energy type (electrical, thermal and gas at a minimum) and major end uses, with comparison to the Annual Energy Target;

“Energy Model” means an hourly energy simulation produced using whole building energy modelling from one of the following software products; eQUEST, IES-ve, Open Studio or EE4 developed by an energy modeler from CaGBC’s experienced modelers list;

“Energy Monitoring Model” means a tool or combination of tools (such as an Energy Model and a spreadsheet tool) designed to enable transparent adjustment of energy consumption data to reflect

changes in weather, occupancy patterns, and other variables affecting Energy Consumption as set out in Section 5.1 of Appendix 8C;

“Energy Targets” means the Annual Energy Target and the Design and Construction Energy Target;

“Energy Utility” means each different type of Energy that is purchased or produced for use in the Facility;

“Energy Year” means:

- (a) the 12 month period beginning on the day after the Monitoring Period;
- (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 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 7.9 of Schedule 4 [Services Protocols and Specifications];

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

“Environmental Reports” has the meaning set out in Schedule 2 [Design and Construction Protocols];

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

“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 T50 of the Outputs Summ. Sheet, having regard to Distributions made and projected to be made;

“Estimated Market Value” has the meaning set out in Schedule 9 [Compensation on Termination];

“Event” has the meaning set out in Schedule 8 [Payments];

“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 Province in accordance with this Agreement;
- (c) failure by any Utility Company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner or any unreasonable interference with the Services by any such body as a result of maintenance or other work;
- (d) 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 or Lockdown, 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;
- (h) the implementation of a Change to the extent that Project Co has identified the effect on the Services and such effect has been documented in a Change Certificate, but without duplication of relief that may be provided in a Change Certificate; and
- (i) 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) a change in taxation or change in accounting treatment pursuant to changes in Laws or GAAP or International Financial Reporting Standards;
- (b) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are solely in respect of:
 - (1) breach of representations, warranties, covenants or undertakings;
 - (2) movement of monies between the Project Accounts (as defined in the Senior Financing Agreements) in accordance with the terms of the Senior Financing Agreements;
 - (3) late or non-provision of information or consents;
 - (4) amendments to Project Contracts;

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

“Expiry Date” means September 30, 2050;

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

“Facility Change” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Facility Condition Report” has the meaning set out in Section 3.4 of Schedule 4 [Services Protocols and Specifications];

“Facility Maintenance Payment” has the meaning set out in Schedule 8 [Payments];

“Facility Operation Variances” means any material variances between the actual occupancy and usage of the Facility and the assumptions for occupancy and usage set out in the Schedule 3 [Design and Construction Specifications], the Reviewed Drawings and Specifications and the Proposal Extracts (Design and Construction) regarding the occupancy and usage of the Facility;

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

“Facility Users” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

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

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

“Financial Close” means May 30, 2018;

“Financial Model” means Project Co’s financial model for the Project, a copy of which has been delivered to the Province in electronic format, as updated or amended from time to time in accordance with the terms of this Agreement;

“Financial Submission Date” means January 25, 2018;

“Five Year Maintenance Plan” has the meaning set out in Section 7.7 of Schedule 4 [Services Protocols and Specifications];

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

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

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

“Functional Unit” has the meaning set out in Schedule 8 [Payments];

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

“General Partners” means Plenary Justice Abbotsford GP Inc. and PCL Justice Abbotsford GP Inc., and

“General Partner” means either of them;

“Geotechnical Report” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“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;

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

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

“Handback Amount” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Certificate” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Holdback” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Requirements” means the requirements set out in Appendix 4B [Handback Requirements];

“Handback Survey” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Works” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Works Plan” has the meaning set out in Appendix 4B [Handback Requirements];

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

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

- (e) for the Province, when information has come to the attention of a senior employee of the Province with responsibility for matters to which the information relates;

“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;

“Highest Compliant Bid Price” has the meaning set out in Schedule 9 [Compensation on Termination];

“High Service Failure” has the meaning set out in Schedule 8 [Payments];

“HMI Customization” means a configuration, customization, enhancement (including new functionalities), modification, addition or derivative work to or from an HMI Software Product or HMI Documentation (including a configuration, customization or enhancement of the graphical user interface or PLC programming, of the HMI Software Product) for use of the HMI Software Product or HMI Documentation at or in connection with the Facility and that is provided or procured by Project Co, a Project Contractor or a Sub-Contractor for use in connection with the Facility;

“HMI Customization Deliverable” has the meaning set forth in Section 4.17 (HMI Customizations);

“HMI Customization Enhancement” has the meaning set forth in Section 4.17 (HMI Customizations);

“HMI Customization License” has the meaning set forth in Section 4.17 (HMI Customizations);

“HMI Customization License Agreement” has the meaning set forth in Section 4.17 (HMI Customizations);

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

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

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

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

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

“HMI Software Enhancement” has the meaning set forth in Section 4.16 (HMI Software Products);

“HMI Software License” has the meaning set forth in Section 4.16 (HMI Software Products);

“HMI Software Product” means a generally commercially available, off-the-shelf human-machine interface (HMI), man-machine interface (MMI) or graphical user interface (GUI) software solution that provides a means for people to operate, control, provide input to, and receive information from the Communications and ESCS and the associated equipment, as described in Section 7.9

(Communications) and Section 7.10 (Electronic Safety and Security) of Schedule 3 [Design and Construction Specifications], including all generally commercially available fixes, corrections, patches, modifications, additions, improvements, upgrades, updates, new versions and new releases to or of the software product, provided or procured by Project Co, a Project Contractor or a Sub-Contractor for use in connection with the Facility;

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

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

"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);

"Independent Certifier" has the meaning set out in Schedule 2 [Design and Construction Protocols];

"Independent Energy Consultant" means one or more individuals who are listed on the CaGBC Experienced Modelers List and are engaged to complete the adjustments to the Design and Construction Energy Target, as described in Sections 4.3 and 4.7 of Appendix 2C [Design and Construction Energy Target], to prepare an Energy Monitoring Model during the Monitoring Period, as described in Sections 4.3 and 4.7 of Appendix 2C [Design and Construction Energy Target];

"Indenture Trustee" means AST Trust Company (Canada);

"Index Linked", with respect to an amount at any time, means that the amount is adjusted as at each April 1st commencing April 1, 2019 by:

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

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

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

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

"Individual Confidentiality Agreement" means an agreement whereby the individual agrees to keep certain information in relation to the Project confidential, to be in such form as the Province may reasonably require from time to time;

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

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

"Initiating Party" has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

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

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

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

- (a) any policy of insurance maintained by the Province solely for the benefit of the Province; and
- (b) for the purposes of Sections 6.7, 6.10 and 6.11, insurance proceeds received by Project Co or the Senior Lenders from the delay in start-up insurance described in Section 2.2(f) of Schedule 5 [Insurance Requirements];

"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:

- (a) any policy of insurance maintained by the Province solely for the benefit of the Province; and
- (b) for the purposes of Sections 6.7, 6.10 and 6.11, insurance proceeds receivable by Project Co or the Senior Lenders from the delay in start-up insurance described in Section 2.2(f) of Schedule 5 [Insurance Requirements];

"Insurance Trustee" means AST Trust Company (Canada);

"Insuring Party" has the meaning set out in 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” has the meaning set out in Schedule 2 [Design and Construction Protocols];

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

“Joint Technical Review” has the meaning set out in Section 3.4 of Schedule 4 [Services Protocols and Specifications];

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

- (a) all amounts not actually paid to Project Co by cash advance, rights entitling Project Co to a cash advance, or other consideration;
- (a) 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
- (b) capitalized interest, and interest on overdue interest;

“Key Individuals” has the meaning set out in Section 2.8 (Key Individuals);

“Landlord” has the meaning set out in Schedule 7 [Lands];

“Lands” has the meaning set out in Schedule 7 [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 Gold Certification” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“LEED Project Checklist” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“LEED Rating System” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Lender Endorsements” has the meaning set out in Schedule 5 [Insurance Requirements];

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

“Lenders’ Technical Advisor” has the meaning set out in Schedule 8 [Payments];

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

“Licence” has the meaning set out in 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 Schedule 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” has the meaning set out in Schedule 8 [Payments];

“Life Cycle Plan” has the meaning set out in Section 7.8 of Schedule 4 [Services Protocols and Specifications];

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

“Life Cycle Schedule” has the meaning set out in Section 7.5 of Schedule 4 [Services Protocols and Specifications];

“Linked Unit” has the meaning set out in Schedule 8 [Payments];

“Liquid Market” has the meaning set out in Schedule 9 [Compensation on Termination];

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

“Lockdown” means a circumstance whereby the Province directs Project Co to temporarily suspend the performance of all, or a material part, of the Design, Construction or Services, in response to a declared emergency, outbreak, pandemic, labour disruption or other major disaster;

“Longstop Date” means September 30, 2021, as adjusted in accordance with this Agreement;

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

“Low Service Failure” has the meaning set out in Schedule 8 [Payments];

“Maintained Elements” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Maintained Equipment and Furniture” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

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

“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 Province, a Material Contract Party and Project Co in the form set out in Schedule 11 [Material Contract Party Collateral Agreement], as amended 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;

“MCS” means the Ministry of Citizens’ Services;

“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 Facility Users 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 Facility Users or staff;

“Medium Service Failure” has the meaning set out in Schedule 8 [Payments];

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

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

“Mock-Ups” has the meaning given in Schedule 2 [Design and Construction Protocols];

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

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

“Net Change Value” has the meaning set out in 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 Project Agreement” means an agreement on substantially the same terms and conditions as this Agreement (including any agreements entered into pursuant to this Agreement as at the Termination Date) but with the following amendments:

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

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

“New Service Provider Start Date” has the meaning set out in Schedule 8 [Payments];

“New Service Provider Transition Period” has the meaning set out in Schedule 8 [Payments];

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

“Non-Insuring Party” has the meaning set out in Schedule 5 [Insurance Requirements];

“Note Indenture” means the note indenture dated May 30, 2018 among Project Co, the General Partners and AST Trust Company (Canada), as indenture trustee;

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

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

“Notifying Party” has the meaning set out in Schedule 5 [Insurance Requirements];

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

“Operating Background Check” means:

- (a) a search of any databases maintained by the Province of British Columbia that the BC Sheriffs consider applicable at the relevant time;

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

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

“Operating Period Joint Committee” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

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

“Operating Period Submittal” has the meaning set out in Appendix 4G [Operating Period Review Procedure];

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

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

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

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

“Partner Loan” means any funds contributed to Project Co by a Partner or an Affiliate of a Partner in relation to the Project;

“Partners” means Plenary Justice Abbotsford GP Inc., PJA LP Inc., and PCL Justice Abbotsford GP Inc., and **“Partner”** means any of them;

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

“Payment Adjustment Report” has the meaning set out in Schedule 8 [Payments];

“Payment Period” has the meaning set out in Schedule 8 [Payments];

“Performance Indicators” means the performance indicators identified as such in Schedule 4 [Services Protocols and Specifications];

“Performance Monitoring Program” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Performance Monitoring Report” has the meaning set out in Section 11.2 of Schedule 4 [Services Protocols and Specifications];

“Permanent Repair” has the meaning set out in Schedule 8 [Payments];

“Permanent Repair Deadline” has the meaning set out in 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;
- (b) Taxes and governmental charges, salaries, related employee payments and trade payables;
- (c) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Permit, Project Contract or this Agreement; and
- (d) Debt incurred by way of Partner Loans,

but does not include any Senior Debt;

“Persistent Breach” means a breach or series of breaches by Project Co of any term, covenant or undertaking to the Province (other than a breach for which Deduction could be made) which, due to the fact that such breach has:

- (a) continued for 60 days or more after notice thereof from the Province to Project Co; or
- (b) occurred 3 or more times in the previous 12 months,

demonstrates either a persistent inability, or a persistent unwillingness, to comply with its obligations under this Agreement;

“Person” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Governmental Authority;

“Personal Information” means ‘personal information’ as defined in the *Freedom of Information and Protection of Privacy Act (British Columbia)*, which is collected, acquired, obtained by Project Co or the Province in relation to or in the course of providing the Design, the Construction or the Services under this Agreement, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual, or as otherwise defined in the *Freedom of Information and Protection of Privacy Act (British Columbia)*;

“Planned Refinancing” means a Refinancing that is identified as a Planned Refinancing in Schedule 19 [Planned Refinancing] but only to the extent and amount of a Planned Refinancing Gain for that Refinancing;

“Planned Refinancing Gain” means the extent and amount that a Refinancing Gain arising from a Planned Refinancing was fully taken into account and set out in the calculation of the Service Payments

or other payments hereunder and expressly set out in Schedule 19 [Planned Refinancing] as of the Effective Date;

“**Plans**” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“**Preliminary Change Instruction**” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“**Preliminary Estimate**” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“**Pre-Refinancing Equity IRR**” means the Equity IRR calculated immediately prior to the Refinancing but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing;

“**Prime Rate**” means the annual rate of interest announced by Canadian Imperial Bank of Commerce (or its successor), or any other Canadian chartered bank agreed to by the parties, from time to time as its “prime” rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

“**Principal Insured Risk**” means a risk that would be insured against by policies for the insurance referred to in any of Sections 2 (Construction-Related Insurance Requirements) and 3 (Operation and Maintenance-Related Insurance Requirements) of Schedule 5 [Insurance Requirements];

“**Priority Level**” has the meaning set out in Schedule 8 [Payments];

“**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 Co**” means Plenary Justice Abbotsford Limited Partnership;

“**Project Co Event of Default**” has the meaning set out in Section 12.1 (Project Co Events of Default);

“**Project Co Hazardous Substances**” means those Hazardous Substances for which Project Co is responsible pursuant to Schedule 7 [Lands];

“**Project Co Insolvency Event**” means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of Project Co; or
- (b) any proceedings with respect to Project Co being commenced under the *Companies' Creditors Arrangement Act (Canada)*, and if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days of such proceedings being instituted; or
- (c) Project Co making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act (Canada)*, or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against Project Co under the *Bankruptcy and Insolvency Act (Canada)*, or similar legislation in any jurisdiction and, if proceedings are

commenced against Project Co and are disputed by Project Co, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days of such proceedings being instituted; or

- (d) Project Co ceasing to carry on business;

“Project Co Material Breach” means:

- (a) a failure by Project Co to pay any amount due and owing to the Province under this Agreement on the due date (which amount is not being disputed in good faith) and Project Co has not remedied such failure to pay within 10 Business Days following notice from the Province;
- (b) a failure by Project Co to:
 - (1) maintain the policies of insurance required to be maintained by Project Co under this Agreement;
 - (2) maintain such policies on the terms required under this Agreement (including a failure to comply with its obligation under Schedule 5 [Insurance Requirements] to name the Province as an insured party); or
 - (3) provide evidence to the Province as required by the terms of this Agreement that such policies have been taken out, maintained, paid for and renewed in accordance with the terms of this Agreement;
- (c) a Persistent Breach;
- (d) except as provided for in (a) through (c) above, a breach, or series of breaches, by Project Co of any agreement, covenant or undertaking made to the Province (other than a breach for which a Deduction could be made) or any representation or warranty made by Project Co to the Province in this Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made, the consequence of which is:
 - (1) a risk to the safety of the public;
 - (2) a risk of material liability of the Province to third Persons;
 - (3) an adverse effect on the performance of the Design, the Construction or the Services and as a result thereof that the Province is reasonably likely to be materially deprived of the benefit of this Agreement; or
 - (4) any material provision of this Agreement being unenforceable against Project Co;
- (e) a breach by Project Co of Section 5 (Financing of the Project), other than a breach described in Section 12.1(i); or
- (f) any other fact or circumstance designated as a “Project Co Material Breach” under this Agreement, including those specified in Sections 9.4 (Failure to Comply with Work Safe BC Requirements) and 10.3 (Failure to Update Project Schedule) of Schedule 2 [Design and Construction Protocols];

“Project Co Operating CGL Policy” has the meaning set out in Schedule 5 [Insurance Requirements];

“Project Co Person” means:

- (a) any director, officer, employee or agent of Project Co in each case acting as such;
- (b) any Project Contractor, any Sub-Contractor and any representative, advisor (including any legal and financial advisor) or contractor of Project Co, in any such Person’s capacity as a provider of services, work or materials directly or indirectly to Project Co in connection with the Project; or
- (c) any invitee of Project Co or any of the Project Co Persons referred to in (a) or (b) above who enters upon the Lands;

“Project Co’s Communications Lead” means the individual listed in that capacity in Schedule 17 [Key Individuals];

“Project Co’s Design and Construction Representative” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Project Co’s Lead” means the individual listed in that capacity in Schedule 17 [Key Individuals];

“Project Co’s Operating Period Representative” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Project Co’s Quality Consultant” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Project Co’s Rights” has the meaning set out in Section 8.13 (Equivalent Project Relief);

“Project Contractor” means the Design-Builder or the Service Provider and **“Project Contractors”** means any 2 or more of them;

“Project Contractor Breakage Costs” means the amount payable by Project Co to a Project Contractor under the terms of a Project Contract as a direct result of the termination of such Project Contract as a consequence of the termination of this Agreement but reduced (without duplication) to the extent that:

- (a) Project Co, the Project Contractors and any Sub-Contractors fail to take all reasonable steps to mitigate such amount;
- (b) such amount relates to any agreements or arrangements entered into by Project Co, the Project Contractors or the Sub-Contractors other than in the ordinary course of business and on commercial arm’s length terms
- (c) such amount is a Distribution; and
- (d) such amount includes any loss of overhead or profit of the Service Provider or its 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, including the COTS Software Products, HMI Software Products and HMI Customizations, but does not include the Financial Model;

“Project Risk Premium” has the meaning set out in Schedule 9 [Compensation on Termination];

“Project Schedule” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Property Loss” means any and all direct physical loss or damage to the Facility resulting from any one cause and howsoever caused;

“Proposal Extracts (Design and Construction)” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Proposal Extract (Services)” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“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:

- (a) the carrying out of any part of the Project (including the construction of the Facility); or
 - (b) the construction or operation of justice administration facilities in general,
- occurring after the Effective Date,

but excluding any lawful or unlawful strike, lockout, go-slow or labour or other industrial relations dispute or job action;

“Province” means Her Majesty the Queen in Right of the Province of British Columbia, as represented by MCS;

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

“Province Event of Default” has the meaning set out in Section 13 (Province Events of Default);

“Province Funded Rectification” means:

- (e) any Property Loss of more than \$10,000 (Index Linked); or
- (f) any Malicious Damage of more than \$1,500 (Index Linked) except for Malicious Damage caused in whole or in part by Project Co or any Project Co Person,

that occurs during the Operating Period, provided that:

- (g) ordinary maintenance, planned capital replacement or normal wear and tear; and
- (h) the cost of making good faulty or improper material, faulty or improper workmanship, or faulty or improper design,

shall not be Province Funded Rectification, provided further however, that the following shall be included as Province Funded Rectification, even if they result from the matters set out in paragraph (d):

- (1) the cost of making good resultant damage to the Facility; and
- (2) the cost, without duplication, of:
 - (A) debris removal;
 - (B) prevention of ingress/egress;
 - (C) civil authority access interruption;
 - (D) off premises service interruption;
 - (E) contamination clean-up or removal;
 - (F) joint loss agreement;
 - (G) no co-insurance;
 - (H) firefighting expenses;
 - (I) valuable papers;
 - (J) professional fees; and
 - (K) by-laws including increased costs of construction and demolition;

“Province Indemnified Person” means:

- (a) the Province’s Representatives in their capacity as such under this Agreement;
- (b) any agent or professional advisor (including legal and financial advisors) of the Province (excluding Project Co, Project Co Person, and any person for whom Project Co is in law responsible); and
- (c) any minister, elected representative, official, director, officer or employee of the Province, or of any person falling within subsection (b) of this definition;

“Province Person” means:

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

“Province Policies and Procedures” means the following policies and procedures, or portions of policies or procedures where only a portion is indicated, of the Province as at the Effective Date, copies of which have been provided to Project Co:

- (a) BC Climate Action Plan;
- (b) BC Energy Plan;
- (c) Energy Efficient Buildings Strategy;
- (d) Energy Efficient Buildings: A Plan for BC; and
- (e) Contractor Environmental Responsibilities Package;

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

“Province’s Design and Construction Representative” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Province’s Operating Period Representative” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Prudent Coverage Amount” has the meaning set out in Schedule 5 [Insurance Requirements];

“PST” means the Tax imposed pursuant to the Provincial Sales Tax Act (British Columbia);

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

“Qualified Governmental Entity” means any of the following:

- (a) the Province of British Columbia, or any ministry or department of the Province of British Columbia; and
- (b) any Person having the legal capacity, power and authority to become a party to and to perform the Province’s obligations under this Agreement, the duties, obligations and liabilities of which are guaranteed by the Province of British Columbia or any ministry or department of the Province of British Columbia;

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

“Qualifying Bank Transaction” means:

- (a) the disposition by a Senior Lender to a Qualifying Institution of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender to a Qualifying Institution of any rights of participation in respect of the Senior Financing Agreements; or
- (c) the disposition or grant by a Senior Lender to a Qualifying Institution of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of Project Co, whether by way of security or otherwise;

“Qualifying Institution” means any of the following, provided it is not a Restricted Person, and provided none of its Affiliates is a Restricted Person for any reason other than by reason of section (d) of the definition of Restricted Person:

- (a) a bank listed in Schedule I, II or III of the *Bank Act (Canada)*;
- (b) a Canadian trust company, insurance company, investment company, pension fund or other institution which has or manages at least \$500 million in securities, including entities wholly owned by any of the foregoing;
- (c) a bank regulated by the Board of Governors of the Federal Reserve System of the United States, a U.S. bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that has or manages at least \$500 million in assets and would be a “qualified institutional buyer” under U.S. securities legislation, including entities wholly owned by any of the foregoing;
- (d) an institution which is recognised or permitted under the law of any member state of the European Economic Area (“EEA”) to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
- (e) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, the “OECD”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company or pension fund and which has or manages at least \$500 million in assets, including entities wholly owned by any such institution; or
- (f) any other institution consented to in writing by the Province as a “Qualifying Institution”;

“Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing or a Planned Refinancing, except to the extent that any Planned Refinancing gives rise to a Refinancing Gain over and above the Planned Refinancing Gain, and in such case only to the extent of such additional Refinancing Gain;

“Quality Assurance Plan” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Quality Assurance Program” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Quality System” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Re-Bidding Costs” has the meaning set out in Schedule 9 [Compensation on Termination];

“Re-Bidding Process” has the meaning set out in Schedule 9 [Compensation on Termination];

“Re-Bidding Process Monitor” has the meaning set out in Schedule 9 [Compensation on Termination];

“Receiving Party” has the meaning set out in Section 9.3 (General Obligation to Pursue Third Person Recovery);

“Rectification” means, following the occurrence of an Event, making good the Event so that the subject matter of the Event complies with the levels of performance required pursuant to this Agreement,

including (a) restoring all functional capability; and (b) ensuring that all affected Functional Units comply with the Availability Condition; “**Rectify**” and “**Rectified**” will be construed accordingly;

“**Rectification Period**” for an Event means the amount of time specified as such for that Event in Appendix 4H [Performance Indicators] and in each case measured:

- (a) in the case of an Event that is classified as Routine in accordance with Schedule 1 [Definitions and Interpretation], from 8 am on the Business Day immediately following the day on which the Event is reported to the Help Desk or is otherwise reported to or discovered by Project Co;
- (b) in the case of an Event that is not classified as Routine in accordance with Schedule 1 [Definitions and Interpretation], from the time that the Event is reported to the Help Desk or is otherwise reported to or discovered by Project Co;
- (c) in the case of an Event that has not been Rectified within one or more earlier Rectification Periods, from the end of the immediately preceding Rectification Period;

“**Referee**” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“**Referee Agreement**” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“**Referee Notice**” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“**Refinancing**” means:

- (a) Project Co incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;
- (b) any transaction in which the Province, with the consent or at the request of agreement of Project Co, grants rights to any Person under an agreement similar to the Lenders’ Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such Person, other than the Lenders’ Remedies Agreement entered into on the Effective Date;
- (c) any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement;
- (d) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;
- (e) 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; or
- (f) any other arrangement put in place by Project Co or another Person which has an effect which is similar to any of (a) through (e) above or which has the effect of limiting Project Co’s ability to carry out any of the actions referred to in (a) through (e) above,

but excluding any financing pursuant to Section 10.2 (Financing of Lump Sum Payment Amounts);

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

A = the Net Present Value of Distributions (calculated on an after tax basis at the level of Project Co in a manner consistent with the Financial Model) projected immediately prior to the Refinancing (taking into account all effects (including the costs and expenses of the Province pursuant to Section 5.8) of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing;

B = the Net Present Value of Distributions (calculated on an after tax basis at the level of Project Co in a manner consistent with the Financial Model) projected immediately prior to the Refinancing (but taking into account only those effects of the Refinancing that were fully reflected in the Financial Model as of the Effective Date and no other effects (including the costs and expenses of the Province pursuant to Section 5.8) of the Refinancing, and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR calculated as a single payment to be paid as a Distribution on the date of the Refinancing;

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

“Reinstatement Plan” has the meaning set out in Section 6.4(c) (Project Co's Obligations –Material Damage or Destruction);

“Reinstatement Works” has the meaning set out in Section 6.4(a) (Project Co's Obligations –Material Damage or Destruction);

“Relevant Change in Law” means a Change in Law (other than a Discriminatory Change in Tax Law):

- (a) which affects the *Sheriff Act*, RSBC 1996, c. 425, the *Provincial Court Act*, RSBC 1996, c. 379, or the *Supreme Court Act*, RSBC 1996, c. 443; or
- (b) which specifically applies to
 - (1) the Project or justice administration- related projects whose design, construction, financing, maintenance and service provision are procured on a public-private partnership basis similar to that of the Project and not other projects;
 - (2) Project Co, its General Partners or Project Contractors or Persons that have contracted on similar justice administration- related projects procured and contracted with the Province or other statutory or public body on a public-private partnership basis similar to the Project and not other Persons; or
 - (3) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar justice administration- related projects procured and contracted on a public-private partnership basis similar to the Project and not other Persons; or
- (c) which specifically applies to the provision or operation of justice administration facilities or premises and not other premises,

and compliance with which would require a variation (as applicable) in the design, quality, scope, methodology or cost of the Design, the Construction or the Services;

“Relevant Works Change in Law” means a Change in Law during the Operating Period (other than a Relevant Change in Law or a Discriminatory Change in Tax Law) which causes Project Co to incur Capital Expenditures to perform works affecting the Facility (being any work of alteration, addition, demolition or extension or variation in the quality or function of the Facility) which is not work which Project Co would otherwise be required to perform under this Agreement;

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

- (a) fire, explosion, lightning, storm (including snow storm), flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquake or any act of God similar to the foregoing, in each case to the extent it does not constitute a Force Majeure Event;
- (b) during the Construction Period, failure by any Utility Company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner or any unreasonable interference with the Construction by any such body as a result of maintenance and other work;
- (c) lawful or unlawful strike, lockout, work-to-rule, job action or other labour dispute generally affecting the construction, building maintenance or facilities management industry or a significant sector thereof;
- (d) any delay of more than three days in respect of any critical path matter in the Project Schedule caused by compliance by Project Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (e) a Change in Law during the Construction Period;
- (f) unreasonable delay in the payment of any Insurance Receivables;
- (g) accidental loss or damage to the Facility or any roads servicing the Site;
- (h) blockade or embargo 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;

“Remediation Plan” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Renovation” means an alteration of the Facility, or an addition, re-construction or demolition of a portion of the Facility, undertaken at any time after the Service Commencement Date other than pursuant to the Life Cycle Requirements;

“Repair” means a repair to the Facility undertaken at any time after the Service Commencement Date, except for the completion of Deficiencies and other than pursuant to the Life Cycle Requirements;

“Reporting Error” has the meaning set out in Section 11.6 of Schedule 4 [Services Protocols and Specifications];

“Representative” means, as the case may be, a Design and Construction Representative or an Operating Period Representative;

“Respond” and **“Response”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Responding Party” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Response Time” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Restricted Person” means any Person who (or any member of a group of Persons acting together, any one of which):

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in the promotion, support or carrying out of terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanours) less than 5 years prior to the date at which the determination of whether the individual falls within this definition is being made;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to any claim of the Province 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 Province's view, in either case, be reasonably likely to materially affect the ability of Project Co to perform its obligations under this Agreement;
- (f) has a material interest in the production of tobacco products;
- (g) has been convicted of an offence under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)*, or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence under the *Criminal Code (Canada)*; or

- (h) has an Affiliate that is a Restricted Person for any reason other than by reason of (d) above, provided that this paragraph (h) only applies if such Person Has Knowledge that the Affiliate is a Restricted Person other than by reason of (d);

“**Return Date**” has the meaning set out in Schedule 8 [Payments];

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

“**Room Data Sheets**” has the meaning set out in Schedule 3 [Design and Construction Specifications];

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

“**Security Level Classification**” means the level of security to which the Facility shall be designed to;

“**Security Sensitive Design Work**” means all planning and design work related to the following systems:

- (a) IMIT networks (LAN/VLAN/WAN):
 - (1) BC Government Network (BCGN);
 - (2) BCGN public Dogwood wireless;
 - (3) courtroom private and secure network; and
 - (4) Building videoconferencing, including subnets;
- (b) Communications;
- (c) Building Security and Communications Systems (BSCS) and all related subsystems;
- (d) Building Management System (BMS);
- (e) Closed Circuit Television (CCTV);
- (f) Digital Video Management System ((DVMS) (Avigilon));
- (g) Access Control System (ACS);
- (h) Public Prosecution Service of Canada (PPSC) federal government network;
- (i) Intrusion alarm;
- (j) Sheriff radio system:
 - (1) UHF; and
 - (2) Cellular;
- (k) Intercom; and
- (l) Paging;

“**Senior Debt**” means:

- (a) all amounts of principal and interest outstanding, including interest and default interest accrued, from Project Co to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by Project Co for any reason other than a failure by Project Co to pay any amount when due;
- (b) cost of early termination of interest rate or currency hedging arrangements and other breakage costs or make-whole amounts payable by Project Co to the Senior Lenders as a result of a prepayment under the Senior Financing Agreements; and
- (c) all other fees, costs and expenses for which Project Co is responsible under the Senior Financing Agreements;

“Senior Debt Service Amount” means, for any period, the principal and interest payable by Project Co to the Senior Lenders in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements;

“Senior Debt Termination Amount” has the meaning set out in Schedule 9 [Compensation on Termination];

“Senior Financing Agreements” means:

- (a) the Note Indenture;
- (b) the Note Purchase Agreements (as defined in the Note Indenture);
- (c) the security agreements entered into pursuant to the Note Indenture;
- (d) the Senior Notes (as defined in the Note Indenture);
- (e) any Supplemental Indenture (as defined in the Note Indenture); and
- (f) any other document or agreement which the Indenture Trustee, Project Co and the Province agree in writing is a Senior Financing Agreement,

certified copies of each of which have been delivered by Project Co to the Province, and as amended from time to time in accordance with the terms of this Agreement;

“Senior Lenders” means lenders to whom Senior Debt is owed;

“Service Commencement” means that all of the following have been achieved in relation to the Facility:

- (a) the Architect has certified that "substantial performance" of the Facility, as defined in the *Builders' Lien Act* (British Columbia), has been achieved;
- (b) 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 Province for the Province Activities relating to the Facility;
- (c) Project Co has delivered to the Province the LEED Project Checklist and written opinion as required by and in accordance with Section 4.7 of Schedule 2 [Design and Construction Protocols];

- (d) Project Co has delivered to the Province a report from the commissioning agent retained by Project Co under Section 12.1 (Testing and Commissioning) of Schedule 2 [Design and Construction Protocols] confirming completion of all commissioning activities scheduled in the Commissioning Plan to be completed before Service Commencement;
- (e) Project Co has completed the training of Province staff as required by Section 12.2 (Equipment and Systems Operation and Training) of Schedule 2 [Design and Construction Protocols], except such training of Province staff that has been scheduled after Service Commencement upon mutual agreement; and
- (f) Project Co has delivered to the Province a Life Cycle Schedule and Start-up and Transition Plan as required by Section 7 (Operating Period Plans) 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]; and
- (b) the last Target Service Commencement Date;

“Service Commencement Deficiency” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Service Failure” has the meaning set out in Schedule 8 [Payments];

“Service Failure Deduction” has the meaning set out in Schedule 8 [Payments];

“Service Payment” has the meaning set out in Schedule 8 [Payments];

“Service Provider” means Johnson Controls Canada LP or any assignee or replacement permitted under this Agreement;

“Service Provider Lead” means the individual set out in that capacity in Schedule 17 [Key Individuals];

“Services” means everything other than Design and Construction that Project Co is required to do to satisfy its obligations under this Agreement, including the Operations and Maintenance Services, the Help Desk Services, the Roads, Grounds and Landscape Services, the Cleaning and Waste Management Services, the Utility Management Services, the IMIT Services, the Life Cycle Requirements and any Reinstatement Works;

“Services Change” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Services Contract” means the agreement between Project Co and the Service Provider, a certified copy of which has been delivered by Project Co to the Province, as amended 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];

“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” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Site Weather Data” means the weather data for the location most applicable to this site (Abbotsford International Airport) obtained from (or calculated based on) Environment Canada’s “National Climate Data and Information Archive” including daily mean, minimum and maximum temperatures;

“Source Code Materials” means in relation to an item of computer software (including an HMI Customization): (a) a complete copy of the source code (human readable code) for the software item stored on CD ROM or other commercially available permanent media; and (b) all developer documentation (including instructions, programmer specifications, notes, explanations, general flow-charts, input and output layouts, field descriptions, volumes and sort sequences, data dictionaries, file layouts, calculation formulae, details of algorithms and software or developer’s tools) as may be reasonably necessary to permit a reasonably skilled programmer having a reasonable level of experience with the relevant computer environment and software applications to understand and Use the Source Code Materials to maintain, modify and enhance the software item and compile and generate a machine-executable (object code) and acceptable form of the software item from the source code;

“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 11.9 of Schedule 4 [Services Protocols and Specifications];

“Submittal” has the meaning set out in Appendix 2B [Review Procedure];

“Submittal Schedule” has the meaning set out in 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(a) (Procedures Upon the Occurrence of a Supervening Event);

“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;

“**Taxable Shareholder Portion**” has the meaning set out in Schedule 9 [Compensation on Termination];

“**Temporary Alternative Accommodation**” has the meaning set out in Schedule 8 [Payments];

“**Temporary Alternative Accommodation Notice**” has the meaning set out in Schedule 8 [Payments];

“**Temporary Availability Condition**” has the meaning set out in Schedule 8 [Payments];

“**Temporary Repair**” has the meaning set out in Schedule 8 [Payments];

“**Temporary Repair Proposal**” has the meaning set out in Schedule 8 [Payments];

“**Term**” has the meaning set out in Section 2.1 (Term and Termination);

“**Termination Date**” means the earlier of the Expiry Date or the date of earlier termination referred to in Section 2.1 (Term and Termination);

“**Termination Date Benchmark Canada Bond Yield**” has the meaning set out in Schedule 9 [Compensation on Termination];

“**Termination Date Discount Rate**” has the meaning set out in Schedule 9 [Compensation on Termination];

“**Termination Payment**” means the amount owing by the Province to Project Co pursuant to Schedule 9 [Compensation on Termination];

“**Termination Payment Date**” means the date on which the Province must make the Termination Payment as provided for in Schedule 9 [Compensation on Termination];

“**Threshold Equity IRR**” means _____, being the Equity IRR as set out in the Financial Model;

“**Total Unavailability**” has the meaning set out in Schedule 8 [Payments];

“**Transfer Date**” means the Termination Date, subject to extension for the period of transitional arrangements under Section 14.3 (Transitional Arrangements);

“**Transfer Restriction Date**” has the meaning set out in Section 16.1(d) (Limitations on Assignment of Project by Project Co);

“**Transition**” has the meaning set out in Schedule 8 [Payments];

“**Unavailable**” and “**Unavailability**” have the meanings set out in Schedule 8 [Payments];

“**Unavailability Deduction**” has the meaning set out in Schedule 8 [Payments];

“**Unavailability Event**” has the meaning set out in Schedule 8 [Payments];

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

“**Uninsurable**” means, in relation to a risk:

- (a) insurance as required under this Agreement is not available in respect of the Project with Qualified Insurers; or

- (b) the insurance premium payable or the terms and conditions for insuring such risk at the levels and on the terms required by this Agreement are such that contractors, concessionaires, owners or others having a substantially similar interest in a project such as the Project in Canada are not generally insuring against such risk with Qualified Insurers;

“**Uninsurable Risk**” has the meaning set out in Section 6.15 (Consequences of Risks Becoming Uninsurable);

“**Unit Deduction Amounts**” has the meaning set out in Schedule 8 [Payments];

“**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 Schedule 2 [Design and Construction Protocols];

“**Use**”, “**Used**” and “**Using**” means any and all means and methods of use and exploitation, including copying, loading, installing, accessing, configuring, implementing, executing, operating, hosting, supporting, maintaining, modifying, enhancing, translating, adapting, storing, backing-up, archiving, and creating derivative works, for any and all operational, training, development, testing and enhancement purposes, but in all cases subject to the limitations and restrictions expressly set forth in this Agreement;

“**User Consultation Process**” has the meaning set out in Appendix 2B [Review Process];

“**Utility**” or “**Utilities**” means energy/power supplies and waste recovery, including electricity, telephone, cable/satellite television, natural gas/fuel oil, water, sanitary waste, bulk medical gas compounds and propane;

“**Utility Company**” means any company or companies designated by Project Co to provide Utilities;

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

“**Weather Monitoring Station**” means the weather monitoring station operated by Environment Canada located at Abbotsford International Airport or, if data from the weather monitoring stations is unavailable, such other properly located and calibrated weather monitoring stations acceptable to each of the Province and Project Co, acting reasonably, or otherwise determined pursuant to Schedule 13 [Dispute Resolution Procedure].

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, Appendix or Attachment is a reference to a Section of, Schedule to, Appendix to a Schedule to this Agreement or each Attachments to an Appendix, and each Appendix is uniquely designated by using the number of the Schedule to which the Appendix is attached followed 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. An Appendix includes all the Attachments attached to that Appendix;
- (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, replaced, novated or assigned, and a reference to an “amendment” and similar terms (including “amend” and “amended”) include a reference to supplement, alteration, substitute, variation, change and any other modification and similar terms;
- (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) unless the context otherwise requires, each reference to the “main body” of this Agreement refers to the portion of this Agreement starting with the title page through to and including the execution page or pages of this Agreement;
- (g) each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be;
- (h) words importing the singular include the plural and vice versa;
- (i) words importing a particular gender include all genders;
- (j) 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;
- (k) 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;
- (l) all monetary amounts are expressed in Canadian Dollars;
- (m) 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;
- (n) the Province will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the Province's Representative) who have responsibilities in connection with the conduct of the Services or the Project;
- (o) 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;
- (p) 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;
- (q) the words "include", "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively;
- (r) 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;
- (s) any consent contemplated to be given under this Agreement must be in writing;
- (t) 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;
- (u) words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- (v) the expression "all reasonable efforts" and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party's obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person's own benefit, provided that the foregoing will not require the Province to:

- (1) take any action which is contrary to the public interest, as determined by the Province in its discretion; or
- (2) undertake any mitigation measure that might be available arising out of its status as a public body that would not normally be available to a private commercial party;
- (w) 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;
- (x) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied;
- (y) 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;
- (z) 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;
- (aa) 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
- (bb) each release, waiver of liability and indemnity in this Agreement expressed to be given in favour of a party is and will be interpreted as having been given in favour of and may be enforced by that party and, in the case of the Province, by the Province Indemnified Persons, and, in the case of Project Co, by Project Co Persons.

3. PRIORITY OF AGREEMENTS AND SCHEDULES

In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Agreement, the provisions will prevail in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the provisions establishing the higher quality, manner or method of performing the Design, Construction or Services, using the more stringent standards, will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, reliability, durability, performance and service will prevail;
- (b) the provisions of the main body of this Agreement will prevail over any of the Schedules hereto other than Schedule 11 [Material Contract Party Collateral Agreement] or Schedule 10 [Lenders’ Remedies Agreement];

- (c) the provisions of the Lenders' Remedies Agreement will prevail over the Material Contract Party Collateral Agreement;
- (d) the provisions of this Agreement (other than the provisions of Appendix 2G [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)]) will prevail over the provisions of Appendix 2G [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)]; provided however that in determining whether an ambiguity, conflict or inconsistency exists between Appendix 2G [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)] and any other provisions in this Agreement, to the extent that Appendix 2G [Proposal Extracts (Design and Construction)] and Appendix 4A [Proposal Extracts (Services)] include additional requirements for higher standards of quality or performance or additional requirements for more extensive scope of design, work or services than otherwise required, no such ambiguity, conflict or inconsistency will be deemed to exist and Project Co's obligations hereunder will include compliance with all such additional requirements; and
- (e) if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Design, Construction or Services, the provision that applies to the specific part of the Design, Construction or Services shall prevail for that specific part of the Design, Construction or Services.

4. FINANCIAL MODEL

Except where expressly referred to, the Financial Model and its contents will not be used to interpret, and will not affect the meaning of, this Agreement.