

**PROJECT AGREEMENT
(Redacted Version)**

**TO DESIGN, BUILD AND FINANCE THE
PAN AM AQUATICS CENTRE, FIELD HOUSE
AND CANADIAN SPORTS INSTITUTE ONTARIO
(CSIO) PROJECT**

CONFIDENTIAL

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SCHEDULES

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Design and Construction Contract
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Assignable Subcontract Agreement for Design and Construction Contract
Schedule 6	- Independent Certifier Agreement
Schedule 7	- INTENTIONALLY DELETED
Schedule 8	- List of Project Co Parties
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Design Quality Plan and Construction Quality Plan
Schedule 12A	- Performance Guarantee of Construction Guarantor
Schedule 12B	- Performance Guarantee of Construction Parent Guarantor
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Outline Commissioning Program
Schedule 15	- Output Specifications
Schedule 16	- Legal Description of Site and Title Encumbrances
Schedule 17	- Works Report Requirements
Schedule 18	- Communications Protocol
Schedule 19	- Heritage Guidelines and Protocols
Schedule 20	- Payments and Holdbacks
Schedule 21	- Form of Assignable Subcontract Agreement
Schedule 22	- Variation Procedure
Schedule 23	- Compensation on Termination
Schedule 24	- Financial Model
Schedule 25	- Insurance and Performance Security Requirements
Schedule 26	- Record Provisions
Schedule 27	- Dispute Resolution Procedure
Schedule 28A	- Standby Letter of Credit
Schedule 28B	- Warranty Letter of Credit
Schedule 28C	- Post Games Works Letter of Credit
Schedule 29	- INTENTIONALLY DELETED
Schedule 30	- Insurance Trust Agreement
Schedule 31	- Project Co Information
Schedule 32	- Post Games Works

THIS PROJECT AGREEMENT is made as of the 28th day of June, 2012.

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

 (“**HMQ**”)

AND:

PCL AQUATICS CENTRE 2012 LTD., a corporation incorporated under the laws of Alberta

 (“**Project Co**”)

WHEREAS:

- A. HMQ wishes to procure the design, construction and financing of the Facility for the Pan American Games, Toronto 2015 and for future ownership and use by the University of Toronto (“**UofT**”) and the City of Toronto (“**City**”) or a new legal entity created by UofT and City (the “**Project**”).
- B. HMQ and Project Co wish to enter into this Project Agreement which sets out the terms and conditions upon which Project Co shall perform the Works.
- C. The overriding priorities of HMQ in entering into and implementing this Project Agreement are to achieve complete construction of the Facility in order to ensure full commercial operation of the Facility well in advance of the scheduled commencement of the Pan American Games.
- D. The Project will proceed in two general phases with the first phase completed well in advance of the scheduled commencement of the Pan American Games and the second phase completed shortly after the end of the Para Pan American Games.
- E. The Project will proceed as an alternative financing and procurement project and complies with the principles set out in MOI’s Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector (the “**IPFP Framework**”).
- F. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - 1. The public interest is paramount.
 - 2. Value for money must be demonstrable.

3. Appropriate public control/ownership must be preserved.
 4. Accountability must be maintained.
 5. All processes must be fair, transparent and efficient.
- G. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
- H. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that HMQ and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) This Project Agreement shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement:

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Design and Construction Contract
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Assignable Subcontract Agreement for Design and Construction Contract
Schedule 6	- Independent Certifier Agreement
Schedule 7	- INTENTIONALLY DELETED
Schedule 8	- List of Project Co Parties
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Design Quality Plan and Construction Quality Plan
Schedule 12A	- Performance Guarantee of Construction Guarantor
Schedule 12B	- Performance Guarantee of Construction Parent Guarantor
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Outline Commissioning Program

Schedule 15	-	Output Specifications
Schedule 16	-	Legal Description of Site and Title Encumbrances
Schedule 17	-	Works Report Requirements
Schedule 18	-	Communications Protocol
Schedule 19	-	Heritage Guidelines and Protocols
Schedule 20	-	Payments and Holdbacks
Schedule 21	-	Form of Assignable Subcontract Agreement
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Financial Model
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28A	-	Standby Letter of Credit
Schedule 28B	-	Warranty Letter of Credit
Schedule 28C	-	Post Games Works Letter of Credit
Schedule 29	-	INTENTIONALLY DELETED
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Post Games Works

- (c) The documents comprising the Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co's proposal which are incorporated by reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close the Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, HMQ or anyone else (including anyone pursuant to Schedule 27 – Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Works, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of HMQ, no consent, approval or satisfaction of HMQ or the HMQ Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.
- (g) The organization of the Output Specifications into divisions, sections and parts shall not control Project Co in dividing the Works among the Project Co Parties or in establishing the extent of the Works to be performed by a trade.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) the body of this Project Agreement;
 - (iv) Schedule 1 – Definitions and Interpretation;
 - (v) Schedule 27 – Dispute Resolution Procedure;
 - (vi) Schedule 20 – Payments and Holdbacks;
 - (vii) Schedule 15 – Output Specifications;
 - (viii) Schedule 25 – Insurance and Performance Security Requirements;
 - (ix) Schedule 22 – Variation Procedure;
 - (x) Schedule 10 – Review Procedure;
 - (xi) Schedule 14 – Outline Commissioning Program;
 - (xii) Schedule 11 – Design Quality Plan and Construction Quality Plan;
 - (xiii) Schedule 23 – Compensation on Termination;
 - (xiv) Schedule 26 – Record Provisions;
 - (xv) the other Schedules in the order in which they are listed in Section 1.1(b); and
 - (xvi) Schedule 13 – Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Works, the provision that applies to the specific part of the Works shall govern for that specific part of the Works.

- (c) If any ambiguity, conflict or inconsistency is not readily resolved by Section 1.2(a) and 1.2(b), then Project Co or HMQ, upon discovery of same, shall immediately give notice to the HMQ Representative. The HMQ Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) HMQ and Project Co shall comply with the determination of the HMQ Representative pursuant to this Section 1.2 unless HMQ or Project Co disputes the decision of the HMQ Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

1.3 Conflict of Documents

- (a) In the event of any ambiguities, conflicts or inconsistencies between this Project Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail. Notwithstanding the forgoing, if there is any right or remedy in favour of HMQ set out in the Lenders’ Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency.
- (b) No review by HMQ of the Lending Agreements shall constitute an acceptance of or acquiescence to any of the Lending Agreements or any term or condition thereof by HMQ, and this Project Agreement and the Lenders’ Direct Agreement shall not be subject to any of the terms and conditions of the Lending Agreements.

1.4 Legal Requirements

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

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1.1, 1.2, 1.4, 2.1, 2.2, 2.3, 2.4, 3.1, 4.16 to 4.22, 5 to 15, 16.5, 17 to 23, 25 to 29, and 39 to 51 and Schedules 1, 2, 8 to 13, 16, 18, 19, 22, and 24 to 28A of this Project Agreement will come into effect on the date of this Project Agreement (“**Commercial Close**”). All other provisions and schedules will come into effect only on Financial Close.

2.2 Standby Letter of Credit

- (a) On the date of this Project Agreement, Project Co shall deliver, or cause to be delivered, to HMQ an irrevocable standby letter of credit (the “**Standby Letter of Credit**”) in the amount of [REDACTED] substantially in the form of Schedule 28A – Standby Letter of Credit.

- (b) Unless the Standby Letter of Credit is drawn by HMQ in accordance with the provisions of this Project Agreement, HMQ shall release and deliver the Standby Letter of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to HMQ drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the Financial Close Target Date:
 - (i) Project Co shall deliver to HMQ the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
 - (ii) HMQ shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If Project Co fails to deliver to HMQ any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by HMQ of its obligations under Section 2.3(b)(ii)) and HMQ does not waive such requirement, HMQ will be entitled to draw on the Standby Letter of Credit immediately and to retain the lesser of (A) the full amount of the Standby Letter of Credit, and (B) the difference between the Guaranteed Price and the price that HMQ is able to obtain from another contractor for the Works, together with all costs reasonably incurred by HMQ to enter into binding agreements with such other contractor, and to retain the proceeds thereof as liquidated damages, and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not HMQ incurs or mitigates its damages, and that HMQ shall not have any obligation to mitigate any such damages.
- (d) As contemplated under Section 10.3.2 of the Request for Proposals, Project Co shall, no later than 10 days following the receipt of written instructions from HMQ given on or after Financial Close, pay the Design and Bid Fee amount plus, for clarity, any applicable HST, to each of the eligible unsuccessful Proponents (as that term is defined in the Request for Proposals) as directed by HMQ. If Project Co is directed to pay the Design

and Bid Fee to fewer than two Proponents, then Project Co shall revise the Financial Model prior to Financial Close to reflect such reduction.

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

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, HMQ may in its sole discretion either:
 - (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
 - (ii) direct Project Co to assign to HMQ and HMQ will assume:
 - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
 - (B) those contracts between Project Co and any Project Co Party which HMQ elects to be assigned.
- (c) If HMQ exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Section 2.4(b) (ii) (A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals [REDACTED]. HMQ's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to HMQ, that such fee represents full and final satisfaction of any obligation or liability of HMQ, City, UofT, IO, the Government of Ontario and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals process.

3. GUARANTEED PRICE

3.1 Guaranteed Price and Adjustments

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

3.2 Cash Allowances

- (a) Project Co shall deposit the Cash Allowance Amount into the Cash Allowance Account on the dates (or such earlier dates as agreed) and in the amounts set out in the Financial Model at Financial Close and shall manage the Cash Allowance Account in accordance with this Section 3.2.
- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:

- (i) Project Co will deposit the Cash Allowance Amount into the Cash Allowance Account on the dates (or such earlier dates as agreed) and in the amounts set out in the Financial Model at Financial Close;
 - (ii) Project Co will hold and manage all monies in the Cash Allowance Account and shall ensure that such monies earn a rate of interest that is no less than the rate of interest that is quoted or published by Schedule I Banks in Canada as payable on interest bearing Canadian dollar demand deposit accounts;
 - (iii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account;
 - (iv) Project Co shall provide a reconciliation of the Cash Allowance Account to HMQ on a monthly basis;
 - (v) subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section 3.2(b)(i), HMQ shall make deposits into the Cash Allowance Account in the event that the payment requirements, including applicable HST, for invoices approved by HMQ for Cash Allowance Items exceed the then balance of the Cash Allowance Account prior to approving any such invoices;
 - (vi) if, on the earlier of (A) Final Completion and (B) the Termination Date, there exists a positive balance in the Cash Allowance Account, such balance will be paid by Project Co to HMQ or as HMQ directs; and
 - (vii) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (c) Project Co shall provide monthly reports to the HMQ Representative that include the following information:
- (i) itemized and aggregate amounts committed to date for all Cash Allowance Items;
 - (ii) itemized and aggregate amounts spent to date for all Cash Allowance Items as well as the itemized and aggregate amounts spent in the immediately preceding month for all Cash Allowance Items; and
 - (iii) the projected cost of each remaining Cash Allowance Item and the projected effect of such costs on the Cash Allowance Account.
- (d) In addition to the monthly report described in Section 3.2(c), Project Co shall, on a monthly basis, provide to the HMQ Representative a request for payment approval (each, a "**Request for Payment Approval**") that includes the following information:

- (i) details of all vendor or Project Co Party invoices related to Cash Allowance Items that are due for payment that month, including relevant supporting documentation, which shall include copies of all vendor and Project Co Party invoices;
 - (ii) evidence that the commitment by Project Co to purchase the Cash Allowance Items has been approved by HMQ; and
 - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items.
- (e) HMQ shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such Request for Payment Approval is approved. HMQ shall only be permitted to withhold its approval if HMQ determines that the Request for Payment Approval does not contain the information that HMQ requires, acting reasonably, to discharge its obligations under this Section 3.2. If HMQ withholds its approval pursuant to this Section 3.2(e) and subsequently receives the information that HMQ requires, acting reasonably, to discharge its obligations under this Section 3.2, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, HMQ's approval for the invoices set out in the aforementioned Request for Payment Approval.
- (f) If HMQ approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or Project Co Parties in accordance with this Section 3.2. To the extent the invoices and/or payments approved by HMQ in accordance with this Section 3.2 in respect of Cash Allowance Items are in excess of the then current balance in the Cash Allowance Account HMQ shall, in accordance with, and subject to, Section 3.2(b)(v), pay such excess amount to the relevant vendor or Project Co Party that has provided the relevant Cash Allowance Item.
- (g) Project Co acknowledges and agrees that:
- (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Items;
 - (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co or any Project Co Party in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
 - (iii) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account; and

- (iv) the Cash Allowance Amount will be deposited and the Cash Allowance Account will be managed in accordance with the Works Schedule and any costs, expenses or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

4. PAYMENT

4.1 General

- (a) Subject to the provisions of the Project Agreement, Section 3.1(d), the provisions of Schedule 20 – Payments and Holdbacks, and in accordance with and subject to Applicable Law respecting holdbacks, HMQ shall make the payments set out in this Article 4.

4.2 Acknowledgement by Project Co

- (a) Project Co acknowledges and agrees with HMQ that, subject to the provisions of Section 8.3 of the Lenders' Direct Agreement, HMQ is not responsible for the payment of any base progress payments pursuant to the Design and Construction Contract nor any legislative holdbacks in respect thereof.

4.3 Interim Payments, Substantial Completion Payment and PGW Substantial Completion Payment

- (a) Subject to Sections 4.4 and 4.9, HMQ covenants and agrees to pay to Project Co the Substantial Completion Payment and the applicable HST` on the Substantial Completion Payment Date.
- (b) HMQ covenants and agrees to pay to Project Co the First Interim Payment and the Second Interim Payment, plus the applicable HST for each, as follows:
 - (i) the First Interim Payment on the First Scheduled Interim Payment Date, provided that Project Co has satisfied all of the Interim Payment Requirements applicable to the First Interim Payment, or on a later date when Project Co has satisfied all of the Interim Payment Requirements applicable to the First Interim Payment; and
 - (ii) the Second Interim Payment on the Second Scheduled Interim Payment Date, provided that Project Co has satisfied all of the Interim Payment Requirements applicable to the Second Interim Payment, or on a later date when Project Co has satisfied all of the Interim Payment Requirements applicable to the Second Interim Payment.

HMQ may, in its sole discretion, waive any of the Interim Payment Requirements and make the First Interim Payment on the First Scheduled Interim Payment Date, or the Second Interim Payment on the Second Scheduled Interim Payment Date, as applicable, in the event that Project Co has not

satisfied all Interim Payment Requirements prior to the First Scheduled Interim Payment Date or the Second Interim Payment Date, as applicable.

- (c) HMQ shall pay to Project Co the PGW Substantial Completion Payment in accordance with Schedule 32 – Post Games Works.

4.4 Direction of Substantial Completion Payment

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

4.5 Payment of Legislative Holdback

- (a) Subject to Section 4.9, HMQ covenants and agrees with Project Co to pay to Project Co the Legislative Holdback on the Legislative Holdback Payment Date or pay to such party as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. HMQ agrees to pay the Legislative Holdback as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by HMQ of the Legislative Holdback in accordance with this Section 4.5 as Project Co may direct, constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the Legislative Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

4.6 HMQ Holdback

- (a) The HMQ Holdback may be reduced from time to time as a result of such actions by Project Co, as confirmed by the Independent Certifier, in accordance with the terms and conditions of this Project Agreement. To the extent the HMQ Holdback is reduced from time to time, Project Co hereby irrevocably directs HMQ to pay the amount of any HMQ Holdback reduction, together with applicable HST, to the Lenders' Agent or as the Lenders' Agent may direct, as security for the Financing. HMQ agrees to pay the HMQ Holdback reductions as directed by Project Co and shall not accept any redirection without the consent of the Lenders' Agent. Project Co acknowledges and agrees that

payment by HMQ of the HMQ Holdback reductions in accordance with this Section 4.6 as Project Co may direct constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the HMQ Holdback reductions to Project Co under this Project Agreement and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

4.7 Additional HMQ Payments

- (a) Unless otherwise provided in the relevant Variation Confirmation or in this Project Agreement, HMQ will pay all Additional HMQ Payments to Project Co, together with applicable HST, on a progress payment basis in the manner and at the times contemplated by Schedule 20 – Payments and Holdbacks, or as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. HMQ agrees to pay the Additional HMQ Payments as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by HMQ of the Additional HMQ Payments in accordance with this Section 4.7 as Project Co may direct, constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the Additional HMQ Payments to Project Co under this Project Agreement and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

4.8 [Intentionally Deleted]

4.9 Compensation on Termination

- (a) If this Project Agreement is terminated pursuant to Sections 34.3(a), 35.2(a)(ii), 36.1, 36.2 or 36.3, then:
- (i) Schedule 23 - Compensation on Termination shall apply and HMQ shall pay Project Co any applicable compensation on termination; and
 - (ii) the provisions of Sections 4.3 through 4.7, inclusive, shall no longer apply.
- (b) Project Co hereby irrevocably directs HMQ to make any Compensation Payment to the Lenders' Agent, or as the Lenders' Agent may direct, as security for the Financing. HMQ shall pay the Compensation Payment as directed by the Lenders' Agent and shall not accept any redirection without the consent of Lenders' Agent. HMQ will pay the Compensation Payment in accordance with the provisions of Schedule 23 – Compensation on Termination. Project Co acknowledges and agrees that payment by HMQ of the Compensation Payment to the Lenders' Agent in accordance with this Section 4.9 constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the Compensation Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

4.10 Payment Due under Insurance Policies

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

4.11 [Intentionally Deleted.]

4.12 HST

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

4.13 Set-Off

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
 - (i) HMQ to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 44) which are due to HMQ by Project Co pursuant to the terms of this Project Agreement, by the Construction Guarantor pursuant to Schedule 12A – Performance Guarantee of Construction Guarantor, or by the Construction Parent Guarantor pursuant to Schedule 12B – Performance Guarantee of Construction Parent Guarantor; and
 - (ii) Project Co to set off against any amounts otherwise due to HMQ pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 44) which are due to Project Co by HMQ pursuant to the terms of this Project Agreement.

4.14 Effect of Payment

- (a) Subject to Section 38.2, no payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

4.15 No Other Entitlement

- (a) Project Co shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Project Agreement, except as specifically and expressly set out in this Project Agreement.

4.16 Taxes

- (a) All amounts specified in this Project Agreement are expressed exclusive of HST but inclusive of all other Taxes. Except as specified in Section 4.16(c), applicable HST shall be paid simultaneously with any amount due hereunder, including, for clarity, any compensation on termination.
- (b) HMQ shall pay, or cause to be paid, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or the Facility.
- (c) No later than 3 weeks after the month in which Substantial Completion occurs, HMQ shall pay to Project Co all HST payable in accordance with paragraph 168(3)(c) of the *Excise Tax Act* (Canada) in respect of the construction of the Facility for remittance to the Canada Revenue Agency, which amount will be set out in an invoice issued by Project Co to HMQ upon the occurrence of Substantial Completion and shall reflect the capital cost of the Facility as set out in the Financial Model, which will serve as a reasonable estimate of the full consideration for Substantial Completion. For clarity, the amount of each payment made by HMQ to Project Co pursuant to paragraph 168(3)(c) of the *Excise Tax Act* (Canada) does not include any HST amounts already paid by HMQ to Project Co on the Substantial Completion Payment.
- (d) HMQ shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by HMQ upon and in connection with payments by HMQ to Project Co under this Project Agreement.

4.17 Changes in Scope of HST

- (a) If, as a result of a Change in Law, the provision of any goods or services by Project Co in connection with the performance of the Works that was not subject to HST as at the date of this Project Agreement becomes subject to HST, HMQ will pay to Project Co the amount of such HST as may be exigible from time to time thereafter in connection with the provision of such goods or services by Project Co.

4.18 Changes in Recoverability of Tax Credits

- (a) HMQ will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to HMQ from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 4.18, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to HMQ which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project

Co in the course of carrying out the Works or otherwise performing the Works to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

- (c) For the purposes of this Section 4.18, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to HMQ which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Works to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

4.19 Information and Assistance Provided by Project Co

- (a) Project Co shall, at HMQ’s request and cost, assist HMQ in applying for and obtaining all remissions and credits of HST to which HMQ is entitled.
- (b) HMQ may apply for a global or general exemption, waiver, remission, or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement. Project Co shall, at HMQ’s cost, assist HMQ in making any applications for such global or general exemption, waiver, remission or refund and shall provide HMQ with such documentation as HMQ may reasonably require to support such application and, in any event, shall provide such consent as HMQ may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by HMQ through such application shall accrue to the sole benefit of HMQ.
- (c) Project Co will provide HMQ with any information reasonably requested by HMQ from time to time in relation to the HST chargeable in accordance with this Project Agreement and payable by HMQ to Project Co from time to time.

4.20 Residency – Income Tax Act (Canada)

- (a) Project Co shall not undertake any action or transaction that, if undertaken, would cause or result in Project Co becoming a Non-Resident without HMQ’s prior written consent, which consent may be withheld in HMQ’s sole discretion.

4.21 Taxes – General

- (a) Project Co shall not, without the prior written consent of HMQ (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause HMQ to have (or result in HMQ having)) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Project Agreement or under any other Ancillary Document.

4.22 Taxes – Indemnity

- (a) If (i) Project Co becomes a Non Resident, or (ii) HMQ is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by HMQ under the Project Agreement or under any of the Project Documents, then HMQ shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which (A) Project Co or the Project Co Party becomes a Non Resident and at all times while it remains a Non Resident; or (B) HMQ is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non Resident or otherwise as required by Applicable Law; and all amounts paid or credited by HMQ under this Project Agreement or under any other Ancillary Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.
- (b) If (i) Project Co becomes a Non Resident, or (ii) HMQ is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by HMQ under the Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless HMQ for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by HMQ in respect of any amounts paid or credited by HMQ to Project Co or any Project Co Party under this Project Agreement or under any other Ancillary Document as a result of either of the foregoing items less any amount withheld or deducted by HMQ in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”). Payment under this indemnification shall be made within 30 days from the date HMQ makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by HMQ shall be conclusive evidence, absent manifest error, of the amount due from Project Co to HMQ. HMQ shall be entitled to exercise its rights of set off under Section 4.13 against any amounts owing under this indemnification.

4.23 Monthly Equipment Payment

- (a) Subject to Section 21.5(c), no later than 45 days following receipt of an Equipment Invoice, HMQ shall pay to Project Co the Monthly Equipment Payment specified in the Equipment Invoice.

5. SCOPE OF AGREEMENT

5.1 Scope of Agreement

- (a) Project Co shall undertake the Project and perform the Works, including, for clarity, the Post Games Works, in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co acknowledges the following:
 - (i) the Facility is intended to be used both as a Pan American Games/Para Pan American Games Facility and as a legacy Facility for City and UofT;
 - (ii) the Project will be carried out in the following phases:
 - (A) the period from Commercial Close to Final Completion in accordance with this Project Agreement; and
 - (B) the period during which Project Co shall carry out the Work in accordance with Schedule 32 – Post Games Works.
- (c) Project Co shall perform the Post Games Works in accordance with Schedule 32 – Post Games Works.
- (d) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to HMQ, except as otherwise provided in this Project Agreement. Project Co's sole recourse with respect to the subject matter of this Project Agreement shall be to Ontario Infrastructure and Lands Corporation as Crown agent.

6. REPRESENTATIONS AND WARRANTIES

6.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to HMQ that as of the date of this Project Agreement:
 - (i) Project Co is a corporation incorporated and validly existing under the laws of the Province of Alberta, is in good standing with the Registrar of Corporations and with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (ii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of high performance athletics and aquatics facilities and have the required ability, experience, skill and capacity to perform the Works in a timely and professional manner as set out in this Project Agreement;

- (iii) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
- (iv) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
- (v) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vi) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating, formation or organizational documents, including any by-laws;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no Project Co Event of Default has occurred and is continuing;
- (viii) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;
- (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform

its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;

- (x) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of HMQ, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Works in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xi) Project Co is able to meet its obligations as they generally become due;
- (xii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada);
- (xiii) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xiv) Project Co is not a Non-Resident;
- (xv) Project Co has obtained all necessary Project Co Permits, Licences, Approvals and Agreements required to commence the Works;
- (xvi) the manager or supervisory personnel Project Co has assigned to the Project are highly experienced;
- (xvii) Project Co has a sufficient staff of qualified and competent personnel to replace its designated supervisors, subject to HMQ's approval, in the event of death, incapacity or resignation;
- (xviii) Project Co and certain of the Project Co Parties have conducted inspections of the Site prior to Commercial Close and an investigation and examination of the Project Agreement, the Background Information and any other documents made available to Project Co by HMQ (which include, to the extent made available to Project Co by HMQ, equipment lists, a legal description of the Site, copies of any registered and unregistered agreements affecting the Site, results of tests, reports of independent testing agencies and surveys and documents indicating the location of Utilities and other structures to the extent obtained by HMQ) so as to ascertain the nature or location of the Works and the Site, the physical conditions of the Site, and protocols, rules and regulations if any, possible delays in commencing the Works, conditions relating to the transportation, handling and storage of materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the Works;

- (xix) Project Co has sufficient expertise available to it with the appropriate skills to review the Project Agreement and the Background Information in accordance with the standard of care set out in Section 11.8(a)(viii);
- (xx) Project Co has secured the Financing and is in a position to implement the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing financing for projects similar to the Project;
- (xxi) No Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project; and
- (xxii) No Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project.

6.2 HMQ Representations and Warranties

- (a) HMQ represents and warrants to Project Co that as of the date of this Project Agreement:
 - (i) Ontario Infrastructure and Lands Corporation is a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement as agent to the Province;
 - (ii) subject to Sections 6.2(a)(v)(C), (D), (E) and (F), as applicable, IO is entering into this Project Agreement as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind the Province to this Project Agreement, and Project Co is entitled to rely upon IO's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by IO as agent for the Province that are required by this Project Agreement to be executed and delivered by HMQ;
 - (iii) subject to Sections 6.2(a)(v)(C), (D), (E) and (F), HMQ has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
 - (iv) subject to Sections 6.2(a)(v)(D) and (E), HMQ has obtained all of the necessary approvals to enter into and perform its obligations under this Project Agreement;

- (v) this Project Agreement has been duly authorized, executed, and delivered by HMQ and constitutes a legal, valid, and binding obligation of HMQ, enforceable against HMQ in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;
 - (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;
 - (D) **[Intentionally Deleted];**
 - (E) any terms and conditions as are set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act* (Ontario); and
 - (F) the powers of the Minister of Finance to effect set offs against amounts owing by Ontario pursuant to Section 43 of the *Financial Administration Act* (Ontario);
- (vi) the execution, delivery, and performance by HMQ of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) **[Intentionally Deleted];**
 - (B) the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, or any regulations made in respect thereof;
 - (C) **[Intentionally Deleted];**
 - (D) any Applicable Law; or
 - (E) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no HMQ Event of Default has occurred and is continuing;
- (viii) to the knowledge of IO, there are no actions, suits, proceedings, or investigations pending or threatened (in writing) against HMQ at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of

which IO has received written notice and that individually or in the aggregate could result in a material adverse effect on the Project; and

- (ix) HMQ has rights of use and access to, on and over the Site and the Facility or has the requisite power to obtain such rights that are sufficient to enable HMQ to grant or cause to be granted to Project Co the licence rights contemplated in Section 16.1.

7. BACKGROUND INFORMATION

7.1 No Liability

- (a) Except as expressly provided in Sections 7.4, 18.2 and 18.3, none of HMQ, City, UofT, TO2015, any HMQ Party or any Government Entity shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from HMQ, any HMQ Party, City, UofT, TO2015 or any Government Entity, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

7.2 No Warranty

- (a) Except as expressly provided in Sections 7.4, 18.2 and 18.3:
 - (i) none of HMQ, any HMQ Party, City, UofT, TO2015 or any Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), none of HMQ, any HMQ Party, City, UofT, TO2015 or any Government Entity warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
 - (ii) none of HMQ, any HMQ Party, City, UofT, TO2015 or any Government Entity shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
 - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
 - (B) to review or update the Background Information; or
 - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

7.3 No Claims

- (a) Project Co acknowledges and confirms that:
- (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
 - (ii) except as expressly provided in Sections 7.4, 18.2 and 18.3, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against HMQ, any HMQ Party, City, UofT, TO2015 or any Government Entity (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
 - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
 - (B) that the Background Information was incorrect or insufficient,nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such ground.

7.4 Technical Reports

- (a) HMQ agrees that, if at the date of this Project Agreement, except as disclosed in any Background Information or as otherwise disclosed by HMQ or any HMQ Party or known by Project Co or any Project Co Party, any of the information in the Technical Reports is, to the actual knowledge of HMQ, incorrect or there is relevant information in the possession or control of HMQ that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Works or materially adversely affects Project Co's cost of performing the Works, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) For the purposes of Section 7.4(a), “to the actual knowledge of HMQ” means to the actual knowledge of the President and Chief Executive Officer of IO or the Project Manager – Project Delivery for the Project.

8. PROJECT DOCUMENTS

8.1 Project Documents

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same.

8.2 Ancillary Documents

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 47.3 and 48.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
 - (ii) make or agree to any amendment, restatement or other modification or waive or exercise any of its rights under any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of HMQ, whether actual or potential;
 - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of HMQ, whether actual or potential; or
 - (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 8.2(a)(i),

without the prior written consent of HMQ, not to be unreasonably withheld or delayed, provided that, where consent is requested pursuant to Section 8.2(a)(i) or 8.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 8.2(a)(i) or 8.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of HMQ, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 8.2(a)(i), or any agreement replacing all or part of any Ancillary Document as described in Section 8.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 47.3.

- (b) Upon the written request of HMQ or the HMQ Representative, Project Co will deliver or cause to be delivered to HMQ or the HMQ Representative a copy of any notices delivered or received by Project Co under any of the Ancillary Documents.

8.3 Changes to Lending Agreements

- (a) Subject to the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if at the time such action is contemplated and effected, it would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing the liability of HMQ.

8.4 Compliance with Lending Agreements

- (a) Project Co shall keep the Lending Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and the Project Documents, and shall ensure that none of the terms and conditions of the Lending Agreements shall prevent Project Co from performing its obligations under this Project Agreement or the Project Documents.

9. HMQ RESPONSIBILITIES

9.1 General

- (a) HMQ shall, at its own cost and risk:
 - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
 - (ii) obtain, maintain, and, as applicable, renew the HMQ Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms; and
 - (iv) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that HMQ shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) HMQ shall, and shall cause all HMQ Parties to, take reasonable steps to minimize undue interference with the provision of the Works by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of City, UofT or TO2015 or HMQ, or any other Government Entity in

fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude City's, UofT's or TO2015's or IO's board of directors from performing, discharging or exercising their duties, responsibilities, and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of IO's board of directors from time to time subject to Section 29.1(b).

10. PROJECT CO RESPONSIBILITIES – GENERAL

10.1 Other Business

- (a) Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project without the prior written consent of HMQ, in its sole discretion.

10.2 [Intentionally Deleted]

10.3 Complete and Operational Facility

- (a) Project Co shall design, engineer, construct and commission the Facility so as to provide HMQ with a complete and operational Facility in accordance with the Output Specifications and the Project Co Proposal Extracts, all in accordance with and subject to the terms of this Project Agreement.

10.4 General Responsibilities and Standards

- (a) Project Co shall perform and complete the Works including, for clarity, the Post Games Works:
 - (i) so as to satisfy and in strict accordance with the Project Agreement;
 - (ii) in accordance with the Works Schedule and in this regard, shall commence the Works no later than the day following Financial Close and, subject to adjustment as provided for in the Project Agreement, (A) achieve Substantial Completion by the Scheduled Substantial Completion Date; (B) achieve Final Completion by the Scheduled Final Completion Date; (C) achieve PGW Substantial Completion by the Scheduled PGW Substantial Completion Date; and (D) achieve PGW Final Completion by the Scheduled PGW Final Completion Date;
 - (iii) in compliance with Applicable Law, including giving all required notices;
 - (iv) in compliance with all Permits, Licences, Approvals and Agreements and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Agreements;

- (v) in accordance with Good Industry Practice and to meet the standards followed by professionals, manufacturers, contractors and trades who are experienced in work on high performance athletics and aquatics facilities that are comparable to the Facility;
 - (vi) in a timely and professional manner;
 - (vii) with due regard to the health and safety of persons and property;
 - (viii) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of and which will enable HMQ, City, UofT or TO2015 and the HMQ Parties to comply with Applicable Law; and
 - (ix) in accordance with all other terms of this Project Agreement.
- (b) Project Co shall furnish necessary certificates as evidence that the Works installed conform with Applicable Law, including all certificates necessary for the HMQ Representative to certify as required to obtain a permit for HMQ's occupancy or partial occupancy. These certificates are to be final certificates giving complete clearance for the portions of the Works for which they are obtained.

10.5 Project Co Attending Meetings

- (a) Project Co shall attend meetings with respect to the Works as may be directed by the HMQ Representative. Project Co shall not claim any extra compensation for attendance at these meetings. Each of Project Co and HMQ shall designate a representative to attend such meetings who is able to make decisions on each of their respective behalves.

11. PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION

11.1 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the Facility and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 11.1.
- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (c) The Parties agree that Appendix A to Schedule 10 – Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale required by the HMQ Representative) for each of the following:
- (i) 100% design development documentation, being design development drawings, reports, schedules and specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering

- and landscape design information sufficient to allow for the development of working drawings (the “**Design Development Submittals**”);
- (ii) 50% working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement (the “**Construction Document Submittals**”);
 - (iii) Permit, Licence, Approval and Agreement drawings; and
 - (iv) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (d) Project Co shall submit to the HMQ Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Section 11.1(c).
- (e) The Design Data and other items listed in Section 11.1(c) must contain, at a minimum, the following additional information:
- (i) identification of the stage of design or construction to which the documentation relates;
 - (ii) all design or construction drawings and specifications necessary to enable the HMQ Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 – Review Procedure;
 - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
 - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (f) All design review meetings held by Project Co which HMQ wishes to attend shall be held in Toronto, Ontario unless HMQ otherwise agrees in writing.
- (g) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Facility prior to being entitled to proceed in accordance with Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.

- (h) Subject to Section 11.4, neither HMQ, any HMQ Party, City, UofT or TO2015 will have any liability:
 - (i) if a document submitted by Project Co and reviewed by HMQ or the HMQ Representative results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to some defect in any documents, drawings, Output Specifications or certificates submitted by Project Co.
- (i) Project Co and HMQ will cooperate with each other in the design review process. Notwithstanding such cooperation by HMQ, such review shall not, except as provided in Section 11.4, constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (j) Project Co shall allow the HMQ Representative, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the HMQ Representative as soon as practicable following receipt of a written request from the HMQ Representative.
- (k) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and the HMQ Representative may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

11.2 Start-Up Meeting

- (a) Not later than 10 Business Days after Financial Close, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with HMQ to set out the design development process in greater detail.
- (b) The agenda for the Start Up Meeting shall include the following:
 - (i) Project Co’s plan to develop a successful partnership with HMQ for the purpose of supporting HMQ in achieving its vision, mission and core values;
 - (ii) Project Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
 - (iii) Project Co’s process to ensure optimum design quality;
 - (iv) Project Co’s approach to a fully integrated interior design process that includes every element of interior finishes, furniture, fixtures, equipment, occupant signage and wayfinding;
 - (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works

Submittals from Project Co to the HMQ Representative to allow sufficient time for review of each Works Submittal by the HMQ Representative, taking into account both the resources available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule;

- (vi) Project Co's approach to timing, construction, adjustment and user feedback on required mock-ups; and
- (vii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation.

11.3 Design Workshops

- (a) In order to obtain user input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, the Parties will hold user group design workshops (the "**Design Workshops**") upon the following terms:
 - (i) the Project Co Representative shall arrange the Design Workshops in consultation with the HMQ Representative;
 - (ii) the Parties shall cooperate to develop a reasonable schedule for the Design Workshops and shall incorporate such schedule into the Works Schedule;
 - (iii) Project Co shall circulate to the HMQ Representative an agenda for each of the Design Workshops no later than 10 Business Days prior to the relevant Design Workshop;
 - (iv) the Design Workshops shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
 - (v) Project Co shall maintain minutes of the Design Workshops, including possible design solutions and changes in design, and, within two Business Days after each Design Workshop, Project Co shall provide to the HMQ Representative a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay outs, plans or diagrams prepared at the Design Workshop;
 - (vi) HMQ and Project Co agree that the subject matter of the Design Workshops shall not be regarded as Works Submittals to which Schedule 10 – Review Procedure applies, and that HMQ shall not be bound by the input provided in connection with the Design Workshops;

- (vii) Project Co shall submit to HMQ the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 – Review Procedure; and
 - (viii) the Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be 15 Business Days rather than the 10 Business Days prescribed in Section 2.4 of Schedule 10 – Review Procedure.
- (b) Prior to the 100% Design Development Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:
- (i) site plan (traffic, parking, access, landscaping, site furniture, stormwater management, services, grading);
 - (ii) part plan layouts (i.e. field house, aquatics hall, locker rooms, administration, etc.);
 - (iii) vertical and horizontal circulation diagrams;
 - (iv) elevator configurations;
 - (v) materials management strategies;
 - (vi) exterior elevations including exterior finishes;
 - (vii) room layouts;
 - (viii) millwork/modular systems furniture including interior elevations;
 - (ix) Equipment coordination;
 - (x) information and communication technology;
 - (xi) utilities and plant layouts and functionality;
 - (xii) interior finishes and ceiling plans;
 - (xiii) door/hardware/security functionality; and
 - (xiv) the Pan American Games and Para Pan American Games use of the Site and Facility.
- (c) Prior to the 50% Construction Documents Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:

- (i) wall sections;
 - (ii) envelope details;
 - (iii) millwork details;
 - (iv) ceiling details; and
 - (v) Equipment coordination details.
- (d) The purpose of the Design Workshops is to facilitate the incorporation of HMQ, TO2015, City and UofT, as applicable, input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 – Review Procedure.

11.4 Facility Design Acceptability

- (a) HMQ confirms that, as at the date of this Project Agreement, HMQ has reviewed the Site and landscape design, blocking and stacking diagrams and updated space/area analysis and that, subject to any qualifications or comments noted thereon, such submittals satisfy the Output Specifications in respect of Facility Design Acceptability, so far as can reasonably be determined given the level of detail in the submittals.
- (b) With each of the Design Development Submittals, Project Co shall submit to HMQ, for its review pursuant to Schedule 10 – Review Procedure, a draft report (each a “**Facility Design Acceptability Report**”) to specifically identify, with reference to the Output Specifications, such matters of Facility Design Acceptability that Project Co wishes the HMQ Design Team to review and consider as part of the Design Development Submittals. Each Facility Design Acceptability Report shall demonstrate how the Output Specifications are satisfied in respect of Facility Design Acceptability.
- (c) With the Construction Document Submittals, Project Co shall submit to HMQ for review by HMQ, pursuant to Schedule 10 – Review Procedure, a final Facility Design Acceptability Report, and HMQ shall confirm that, subject to any qualifications or comments noted thereon, such Construction Document Submittals satisfy the Output Specifications in respect of Facility Design Acceptability, so far as can reasonably be determined given the level of detail in the Construction Document Submittals.
- (d) Each Facility Design Acceptability Report must be prepared in accordance with the technical submission requirements to be provided by HMQ to Project Co after identification of the preferred proponent and must address the way in which the Design Data meets the requirements of Facility Design Acceptability.

11.5 Performance of Design Obligations

- (a) In the design and engineering of the Project, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised by licensed or registered professional architectural and engineering personnel having specialized knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Project Co shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, Output Specifications and codes, and as otherwise required by Applicable Law.

11.6 Works Submittals

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by HMQ prior to Substantial Completion, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by HMQ pursuant to Schedule 10 – Review Procedure.

11.7 Documents at the Site

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

11.8 General Construction Obligations

- (a) Without limiting Section 10.4, Project Co shall:
 - (i) have complete control of the Works and shall effectively direct and supervise the Works so as to ensure conformance with the Project Agreement, including the phasing or sequencing requirements for the Works set out in the Project

Agreement. During the progress of the Works, Project Co shall endeavour to submit any request for information to the HMQ Representative in a timely manner having regard to the Works Schedule, including whether and how the information requested affects the critical path. Project Co shall develop and implement protocols in accordance with the Output Specifications for the phasing or sequencing of the Works as set out in the Project Agreement, including the coordination of the work of HMQ's own forces or other contractors with the Works. Without limiting the generality of the foregoing, Project Co is responsible for the intermeshing of the various parts and systems comprising any portions of the Works so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between the Project Co Parties or between any of them and Project Co as to where the Works of one begins and ends in relation to the Works of the other;

- (ii) be solely responsible for all construction means, methods, techniques, sequences and procedures used to undertake the Works and for coordinating the various parts of the Works under this Project Agreement and shall coordinate the Works so as to not interfere, interrupt, obstruct, delay or otherwise affect the work of others;
- (iii) prior to commencing applicable procurement and construction activities, verify, at the Site, all measurements and levels necessary for proper and complete fabrication, assembly and installation of the relevant work, and shall further carefully compare such field measurements and conditions with the requirements of the Project Agreement. Where dimensions are not included or exact locations are not apparent, Project Co shall immediately notify the HMQ Representative in writing and obtain written instructions from the HMQ Representative before proceeding with any part of the Works affected thereby;
- (iv) ensure that no work other than the Works under this Project Agreement is constructed on the Site by Project Co, any Project Co Party or any person for whom Project Co is responsible at law;
- (v) protect the Works from all of the elements, casualty and damage in accordance with and subject to the Project Agreement;
- (vi) in respect of plant, equipment, Products and materials incorporated in the Works, use plant, equipment, Products and materials that:
 - (A) are of a kind that are consistent with the Project Agreement;
 - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law, the Project Agreement and Good Industry Practice; and

- (C) where they differ from the Project Agreement, have been substituted with HMQ's prior written consent;
- (vii) provide all the labour, Products, tools, construction machinery, equipment, water, heat, light, power, transportation and other facilities and services required for the performance and completion of the Works and carry out, perform, observe, fulfil and abide by all the covenants, agreements, stipulations, provisions and conditions mentioned and contained in the Project Agreement on the part of Project Co to be carried out, performed, observed and fulfilled;
- (viii) exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar projects, in a timely, good and workmanlike manner, it being acknowledged by Project Co that throughout this Project Agreement, Project Co's obligations, duties and responsibilities shall be interpreted in accordance with this standard and any default or alleged default by Project Co in the performance of its obligations, duties and responsibilities shall similarly be interpreted in accordance with this standard;
- (ix) exercise the same standard of due care and diligence as set out in Section 11.8(a)(viii) in respect of any Products, personnel, or procedures which it may recommend to HMQ;
- (x) comply with all requirements of HMQ set forth in the Project Agreement;
- (xi) comply with all rules and directives issued by HMQ and provided to Project Co so as not to disrupt the operations of HMQ, City, UofT, and TO2015, and except for any requirements of HMQ described in Section 11.8(a)(x), the cost, if any, and the additional time, if any, required to comply with any such rules and directives issued by HMQ shall be adjusted and compensated for by way of a Variation Confirmation as provided in Schedule 22 – Variation Procedure; and
- (xii) use such project management software system(s) and/or online collaboration system(s) (including software and system(s) for project management, change management, request for information control, document management and other communications) as directed by HMQ, at its sole discretion, from time to time. Project Co shall be responsible for its costs and expenses with respect to the implementation and use of such system(s).

11.9 Permits, Licences, Approvals and Agreements

- (a) Project Co shall, at its own cost and risk:
 - (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;

- (ii) except those obligations which are identified as HMQ obligations as identified in Appendix 1 of Schedule 1 – Definitions and Interpretation, assume all of the obligations of HMQ under the HMQ Permits, Licences, Approvals and Agreements (and for greater certainty, the Development Approvals); and
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.
- (b) Where any Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on HMQ, City, UofT, and TO2015 or any HMQ Party, Project Co shall not obtain or renew such Permits, Licences, Approvals and Agreements without the prior written consent of HMQ not to be unreasonably withheld or delayed, provided that neither HMQ, City, UofT, and TO2015 nor any HMQ Party shall be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence, Approval and Agreement or for the failure of Project Co to renew any HMQ Permit, Licence, Approval and Agreement. HMQ shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on HMQ, City, UofT, and TO2015 or any HMQ Party by the requirements of any Permit, Licence, Approval and Agreement obtained with HMQ consent under this Section 11.9(a)(ii).
- (c) HMQ shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Permits, Licences, Approvals and Agreements. In respect of Section 11.9(a)(ii), HMQ shall: (i) provide Project Co with relevant information and copies of notices received under the applicable HMQ Permits, Licences, Approvals and Agreements and (ii) execute any documents under the applicable HMQ Permits, Licences, Approvals and Agreements which Applicable Law dictates that only HMQ can execute.

11.10 Minimize Disturbance

- (a) Project Co acknowledges that in addition to the use of Good Industry Practice, the Project Agreement includes instructions as to the manner in which the Works are to be performed in order to minimize disturbance, including with respect to noise, dust control and access to the Site. Project Co further acknowledges that the Cost of the Works includes all premium time and overtime that may be required to perform the Works in accordance with the Project Agreement and Good Industry Practice. Project Co shall develop and implement protocols in furtherance of the foregoing in accordance with the Output Specifications.
- (b) Project Co shall use all methods required to comply with the instructions set out in the Project Agreement, during the performance of the Works. Project Co shall fully cooperate with HMQ in complying with said instructions during the performance of the Works. Any costs incurred by Project Co in complying with said instructions shall be part of the Guaranteed Price.

11.11 Use of the Works

- (a) Project Co shall confine construction machinery and equipment, storage of Products, and operations of employees to limits indicated by Applicable Law or the Project Agreement and shall not unreasonably encumber the Site with Products.
- (b) Project Co shall not load or permit to be loaded any part of the Works with a weight or force that will endanger the safety of the Works.
- (c) HMQ, City and UofT shall have the right to enter and occupy the Works in whole or in part for the purpose of placing fittings, furniture and equipment or for other uses, including the intended use of HMQ before Substantial Completion, as provided for in the Works Schedule. Project Co shall cooperate with HMQ and the HMQ Representative, so as to permit HMQ, City and UofT to occupy and to place such fittings, furniture and equipment in the most efficient manner possible. Such entry and occupation shall not be considered an acceptance of the Works or in any way relieve Project Co from responsibility to complete this Project Agreement. Subject to Section 11.21(d), Project Co is responsible to ensure the completion in accordance with the Scheduled Substantial Completion Date and that the Facility is ready for occupancy by City and UofT, in accordance with the Project Agreement. Project Co acknowledges that Substantial Completion is only achieved in respect of the Works as a whole, save and except for the Post Games Works, which shall be completed in accordance with Schedule 32 – Post Games Works.

11.12 Cutting and Remedial Work

- (a) Project Co shall do the cutting and remedial work required to integrate the several parts of the Works in a cohesive manner.
- (b) Project Co shall coordinate the Works to ensure that this requirement is kept to a minimum.
- (c) Cutting and remedial work shall be performed by specialists familiar with the Products affected and shall be performed in a manner to neither damage nor endanger the Works.

11.13 Temporary Supports, Structures and Facility

- (a) Project Co shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary supports, structures, and facilities and the design and execution of construction methods required in their use. Any review of Project Co's temporary supports, structures, or facilities or any shop drawings related thereto by HMQ or HMQ Representative does not relieve Project Co of its "sole responsibility" under this section.
- (b) Project Co shall engage registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in Section 11.13(a) where

required by law or by the Project Agreement and in all cases, where such temporary supports, structures, and facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.

- (c) Subject to Section 11.17, but notwithstanding the provisions of Sections 11.8, 11.13(a) and 11.13(b) or provisions to the contrary elsewhere in the Project Agreement, where such Project Agreement include designs for temporary supports, structures and facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the Works and Project Co shall not be held responsible for that part of the design or the specified method of construction. Project Co shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the Works.

11.14 Cleanup

- (a) Project Co shall maintain the Works in a tidy condition and free from the accumulation of waste products and debris, other than that caused by HMQ, HMQ's other contractors or their employees.
- (b) Project Co shall remove waste products and debris, other than that resulting from the work of HMQ, HMQ's other contractors or their employees, and shall leave the Site and Facility clean and suitable for occupancy by HMQ on the Substantial Completion Date. Project Co shall remove products, tools, construction machinery, and equipment not required for the performance of the remaining Works.
- (c) Prior to application for the final certificate for payment, Project Co shall remove products, tools, construction machinery and equipment, and waste products and debris, other than that resulting from the work of HMQ, HMQ's other contractors or their employees.
- (d) In the event of any dispute regarding the removal of waste products, debris, tools, equipment, and the like, HMQ shall provide a written notice to Project Co to remove the said waste and debris and allow a reasonable period of time for Project Co to remove the said materials. If Project Co fails to remove the materials within the time specified, HMQ may remove or may cause the removal of the waste products and debris and withhold an amount equal to such cost, in an amount that the HMQ Representative shall determine to be reasonable.

11.15 Protection of Work and Property

- (a) Project Co shall protect the Works and the property of HMQ, City and UofT at the Site, including the property adjacent to the Site, from damage which may arise as a result of Project Co's operations under this Project Agreement, and shall be responsible for such damage, except damage which occurs as a result of acts or omissions by HMQ, the HMQ Representative or any contractor retained by HMQ directly and whose contract is not assigned to Project Co, their respective agents and employees.

- (b) Should Project Co, in the performance of this Project Agreement, damage the Works, the property of HMQ, City or UofT at the Site, including property adjacent to the Site, Project Co shall be responsible to Make Good such damage at Project Co's expense.
- (c) Should damage occur to the Works or the property of HMQ, City or UofT at the Site, for which Project Co is not responsible, as provided in Section 11.15(a), Project Co shall Make Good such damage to the Works and, if HMQ so directs, to the property of HMQ, City or UofT, as applicable, and the Guaranteed Price and Scheduled Substantial Completion Date or the Scheduled PGW Substantial Completion Date, as applicable, shall be adjusted in accordance with Schedule 22 – Variation Procedure.
- (d) Project Co shall not undertake to repair and/or replace any damage whatsoever to adjoining property or acknowledge the same was caused or occasioned by Project Co, without first consulting HMQ and receiving written instructions as to the course of action to be followed.
- (e) Notwithstanding Section 11.15(d), where there is danger to life or property which arises out of or in connection with the performance of the Works, either Party may, but Project Co shall, take such emergency action as is necessary to remove the danger.
- (f) If any Project Co Party has caused damage to the work of another contractor related to the Project, Project Co agrees upon due notice to settle with the other contractor by negotiation or arbitration in accordance with Section 11.21(e) and Schedule 27 – Dispute Resolution Procedure. If the other contractor makes a claim against HMQ on account of damage alleged to have been so sustained, the dispute shall be dealt with in substantially the same manner as contemplated in Section 11.21(e) and Schedule 27 – Dispute Resolution Procedure.

11.16 Labour Relations Obligations

- (a) Project Co acknowledges and agrees that it has carried out due diligence on (i) the various collective agreements to which City and UofT are bound or which City or UofT are contractually required to apply to the Project and (ii) the applicability of such collective agreements to the Project.
- (b) During the Project Term, and in the performance of the Project Agreement, Project Co shall not, and Project Co shall ensure that the Project Co Parties do not, in any way whatsoever, contravene or cause City or UofT to contravene any provision of any collective agreement listed in Section 11.16(c).
- (c) Without limiting the generality of Section 11.16(b), Project Co acknowledges and agrees that it is a requirement of certain of the collective agreements referenced in Section 11.16(a) and (b) that certain parts of the Project shall be performed by employees covered by the applicable collective agreements, which requirements Project Co agrees to comply with and to ensure that the Project Co Parties agree to comply with the following collective agreements: **[REDACTED]**

11.17 Subcontractors and Suppliers

- (a) Project Co shall preserve and protect the rights of the Parties, as well as the rights and obligations of City, UofT and TO2015, under this Project Agreement with respect to Works to be performed under Subcontract, and shall:
- (i) enter into Subcontracts or written agreements with Project Co Parties to require them to perform their work as provided in the Project Agreement;
 - (ii) incorporate the relevant terms and conditions of the Project Agreement into all contracts or written agreements with Project Co Parties, including those specified in Sections 11.16 and 11.23; and
 - (iii) be as fully responsible to HMQ for acts and omissions of the Project Co Parties as for acts and omissions of persons directly employed by Project Co.
- (b) Attached as Schedule 8 – List of Project Co Parties is a list of all Project Co Parties which Project Co has engaged or caused to be engaged for the performance of the Works as of the date of execution of this Project Agreement. Project Co agrees to update such list from time to time as additional Project Co Parties are engaged. Any of these named Project Co Parties listed by Project Co may be changed by Project Co upon prior notice to (but without the approval of) the HMQ Representative, provided however, that if the HMQ Representative reasonably objects to any change to a mechanical or electrical Subcontractor or a swimming pool Subcontractor, then Project Co shall select an alternative replacement mechanical, electrical or swimming pool Subcontractor to which the HMQ Representative does not reasonably object.
- (c) Project Co shall not be required to employ as a Project Co Party, a person to whom Project Co may reasonably object, provided HMQ may require Project Co to use particular persons as specified in the Project Agreement for specific building systems of HMQ to ensure HMQ does not lose the benefit of any warranty in respect to such building systems. HMQ shall have the right to assign to Project Co the work of HMQ's other contractors or the work of HMQ's own forces related to the Project and, if such assignment results in an increase in Project Co's cost or a delay in the Works Schedule, the same shall be addressed or compensated for in accordance with the provisions of Schedule 22 – Variation Procedure. Notwithstanding the foregoing provisions of this Section 11.17(c), Project Co shall use the Project Co Parties that have been identified in the Project Agreement for specific portions of the Works and with respect to such Project Co Parties there shall be no increase in Project Co's cost or allowance for any delay in the Works Schedule.
- (d) Project Co hereby agrees to contractually obligate the Construction Contractor to enter into the Assignable Subcontract Agreement for Design and Construction Contract and, subject to Section 11.17(e), to cause the Construction Contractor to cause each of the other Subcontractors, including Suppliers leasing any construction machinery and equipment, to enter into the Assignable Subcontract Agreement, to evidence that (i) the

Lenders or HMQ shall have the right to cure any default by the Construction Contractor under the Subcontract and, (ii) each such Subcontract shall be assignable without the further consent of such Project Co Party and without the payment of any penalty or other amount, at the HMQ's or the Lenders' option, to HMQ or to the Lenders or to such other Construction Contractor as HMQ or the Lenders may designate, which rights of assignment shall only be exercised by HMQ, such the Lenders or such other Construction Contractor in the event that this Project Agreement is terminated as a result of Project Co's default. Project Co further agrees that it shall deliver those fully executed Assignable Subcontract Agreements that are identified in Schedule 8 – Project Co Parties to HMQ within 45 days of Financial Close.

- (e) In respect of contracts with Project Co Parties having a total estimated cost of [REDACTED] or less, neither Project Co nor the Construction Contractor is obliged to enter into an Assignable Subcontract Agreement, provided that Project Co shall cause the Construction Contractor to ensure that each Subcontract entered into with a Project Co Party is assignable without such Project Co Party's further consent and without the payment of any penalty or other amount at HMQ's option, to HMQ or the Lenders or to such other Construction Contractor as HMQ or the Lenders may designate, which rights shall only be exercised by HMQ, the Lenders or such other Construction Contractor in the event that this Project Agreement is terminated as a result of Project Co's default.
- (f) Notwithstanding Section 1.2(c), in the case of any item of the Works being specified under the heading of more than one trade section, Project Co shall decide which of these trades is to perform the Works.

11.18 Labour and Products

- (a) Unless otherwise stipulated elsewhere in the Project Agreement or in other documents made available to Project Co by HMQ, Project Co shall, as appropriate, provide separate metering for all services and facilities necessary for the performance of the Works. Project Co shall arrange for delivery of materials and equipment to the Project in accordance with the Works Schedule.
- (b) Products shall be free from faults, improper workmanship and defects and in conformance with the Project Agreement. Products which are not specified shall be of a quality best suited to the purpose required and their use shall be subject to the approval of the HMQ Representative.
- (c) Project Co shall (i) maintain good order and discipline among all personnel engaged in respect of the Works and shall promote and maintain a good relationship with all such personnel; (ii) not employ any persons to perform the Works who is/are incompatible with other labour employed by Project Co in connection with the Works; and (iii) act promptly on all problems of labour relations including grievances and jurisdictional disputes. Project Co shall not employ on the Works anyone not skilled in the task assigned to him and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled

substances and other activities that will or may constitute a danger to life, health or property.

- (d) At HMQ's instruction, Project Co shall promptly remove from the Site any employee who represents a threat to the safety or progress of the Project or whose conduct may be considered as harassment in the workplace of any person who is an employee of HMQ under the *Human Rights Code* (Ontario).
- (e) Project Co is responsible for the safe on-site storage of Products and their protection (including Products supplied by HMQ and other contractors) in such a way so as to avoid dangerous conditions or contamination to the Products or other persons or property, and in locations at the Site satisfactory to HMQ.

11.19 Liability Unaffected

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

11.20 Safety

- (a) From Financial Close until Substantial Completion and from Notice of Commencement of the Post Games Works to PGW Final Completion, Project Co shall:
 - (i) comply with the Construction Safety Plan;
 - (ii) keep the Site, the Works and the Facility in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site, in the Facility and in the immediate vicinity of the Site;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site and the Facility of any persons or creatures not entitled to be there;

- (iv) comply with Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
- (v) perform, or cause a Project Co Party to perform, all of the obligations of the “constructor”, and indemnify each of City, UofT, TO2015, HMQ and any other Government Entity against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and
- (vi) provide HMQ with a certificate of good standing from WSIB or any successor thereto once every 90 days.

11.21 Additional Works

- (a) HMQ reserves the right to carry out Additional Works. HMQ may assign the methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the safety training in respect of the Additional Works to Project Co.
- (b) In connection with the Additional Works, HMQ shall:
 - (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with the Works during the performance of the Works;
 - (ii) enter into separate contracts with Additional Contractors under conditions of contract which are compatible with the conditions of this Project Agreement and provide for compliance by Additional Contractors with Section 11.21(c) and all directions of Project Co in respect of any matter regarding health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works during the performance of the Works in those cases where HMQ has requested Project Co to proceed in accordance with Section 11.21(c);
 - (iii) ensure that insurance coverage is provided as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co as it affects the Works and in any event, such insurance shall provide for liability insurance of not less than [REDACTED]; and
 - (iv) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Additional Works, Project Co shall, during the performance of the Works:

- (i) where HMQ has assigned to Project Co the matters referred to in Section 11.21(a) and subject to the performance by HMQ of its obligations under Sections 11.21(b)(i) and 11.21(b)(ii), provide for the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works;
 - (ii) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works;
 - (iii) participate with HMQ and Additional Contractors in reviewing their construction schedules when directed to do so by HMQ;
 - (iv) where part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly report to HMQ in writing and prior to proceeding with that part of the Works, any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against HMQ by reason of such readily apparent deficiencies; and
 - (v) where HMQ has assigned to Project Co the matters referred to in Section 11.21(a) in respect of Additional Works, and subject to the performance by HMQ of its obligations under Sections 11.21(b)(i) and 11.21(b)(ii), for the Additional Contractors and in respect to such Additional Works, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety, including all the responsibilities of the ‘constructor’ under the *Occupational Health and Safety Act* (Ontario) prior to Substantial Completion at the Site and, at the request of HMQ exercised in a manner consistent with the *Occupational Health and Safety Act* (Ontario), at any time that Project Co is acting as a ‘constructor’ on the Site following Substantial Completion at the Site.
- (d) In the case of Additional Works carried out prior to Substantial Completion at the Site, if:
- (i) any Additional Contractors cause any damage to the Works;
 - (ii) Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Contractors not complying with the coordination, scheduling and safety instructions of Project Co; or
 - (iii) subject to the performance by Project Co of its obligations under Sections 11.21(c)(i), 11.21(c)(ii), 11.21(c)(iii) and 11.21(c)(v), if Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Works (other than Additional Works that are required to meet the Output Specifications and provided such Additional Works are performed by such Additional Contractors in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with HMQ),

then, any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

- (e) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure, provided the Additional Contractors have reciprocal obligations and HMQ has made commercially reasonable efforts to ensure that such provisions are included in the contracts with the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with HMQ contains a similar agreement to arbitrate.
- (i) Project Co shall have a period of 10 Business Days following notice from HMQ of HMQ’s intention to carry out Additional Works, including a reasonable description of such Additional Works, to request a Variation if such Additional Works are reasonably expected to make a warranty made in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice, void;
- (ii) if Project Co has made a request for a Variation in accordance with Section 11.21(e)(i), HMQ shall, within 10 Business Days of such request, either issue a Variation Enquiry or give notice to Project Co that it does not agree that a Variation is required;
- (iii) **[Intentionally Deleted]**; and
- (iv) where HMQ has, under Section 11.21(e)(ii), given notice to Project Co that it does not agree that a Variation is required, HMQ shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
- (A) HMQ shall not be entitled to withdraw any such Variation Enquiry unless HMQ determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void or the Parties otherwise agree; and
- (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (f) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors, on and to the Works performed by Project Co will not relieve

Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.

11.22 Defective Works

- (a) Project Co shall promptly remove from the Site and replace or re-execute defective Works that fails to conform to the Project Agreement whether or not the defective Works has been incorporated in the Works and whether or not the defect is the result of poor workmanship, use of defective Products or damage through carelessness or other act or omission of Project Co. The correction of defective Works shall be at Project Co's expense. Project Co shall rectify, in a manner acceptable to the Independent Certifier, all defective Works and deficiencies throughout the Works, whether or not they are specifically identified by the Independent Certifier, and Project Co shall prioritize the correction of any defective Works so as not to interfere with or derogate from the Works Schedule, provided that Project Co shall prioritize the correction of any defective Works that in the sole discretion of HMQ is determined to adversely affect the day to day operation of HMQ.
- (b) Project Co shall Make Good promptly other contractors' work destroyed or damaged by such rectifications at Project Co's expense.
- (c) If in the opinion of the Independent Certifier it is not expedient to correct defective Works or Works not performed as provided in the Project Agreement, HMQ may deduct from the amount of the Guaranteed Price the difference in value between the work as performed and that called for by the Project Agreement. If HMQ and Project Co do not agree on the difference in value, they shall refer the matter to the Independent Certifier for a determination and the determination will be issued as a Variation.

11.23 Warranty Obligations

- (a) Project Co represents, warrants and covenants that:
 - (i) the Works shall conform to the requirements of this Project Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Ontario;
 - (ii) the Works shall be free of defects, including design defects, errors and omissions; and
 - (iii) materials and equipment shall be of good quality and in compliance with this Project Agreement.
- (b) Any deficiency, defect or error in the Works or non-compliance with the requirements of this Project Agreement shall collectively be referred to as a "**Construction Defect**".

- (c) For a period from Substantial Completion to one year following PGW Substantial Completion (the “**Warranty Period**”), Project Co shall at its expense correct and Make Good all Construction Defects arising in respect of the Works. For all work to correct deficient, defective and non-compliant Works, the Warranty Period shall be extended for a further two years from the date of the last work completed in respect of such correction. For clarity, any extension of the Warranty Period for the purposes of a correction shall only apply to the deficient, defective or non compliant Works and not the Works as a whole.
- (d) In addition to the obligation to correct and Make Good Construction Defects during the Warranty Period, Project Co shall at its expense correct and Make Good any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Works (“**Construction Latent Defect**”), provided HMQ gives Project Co written notice of the Construction Latent Defect within the time frame applicable to such Construction Latent Defect pursuant to the *Limitations Act*, 2002 (Ontario).
- (e) The warranties described in this Section 11.23 shall cover labour and material, including, the costs of removal and replacement of covering materials. The warranties shall not limit extended warranties on any items of equipment or material called for elsewhere in the Output Specifications or otherwise provided by any manufacturer of such equipment or material.
- (f) If Project Co fails to correct and Make Good Construction Defects in accordance with Sections 11.23(c) and 11.23(d) and in the time period specified, without prejudice to any other right or remedy HMQ may have, HMQ may correct such Construction Defect at Project Co’s expense.
- (g) The warranties described in this Section 11.23 are for the benefit of City and UofT and will be administered by HMQ on behalf of City and UofT.
- (h) For clarity, Project Co’s warranty obligations with respect to the Post Games Works are set out in Schedule 32 – Post Games Works.

11.24 Prompt Repair of Warranty Work

- (a) Project Co acknowledges and agrees that considering that it is critical that the Facility be completed well in advance of the Pan American Games and be fully operational during the Pan American Games and Para Pan American Games, the performance of warranty work by Project Co shall be as follows:
 - (i) prior to July 1, 2015, and subject to Section 11.24(a)(iv), Project Co shall perform warranty work in a timely manner;
 - (ii) between July 1, 2015 and August 14, 2015 Project Co shall perform warranty work on an urgent basis;

- (iii) after August 14, 2015, Project Co shall perform warranty work in a timely manner; and
- (iv) prior to July 1, 2015, Project Co shall perform warranty work on an urgent basis for certain specified dates corresponding to the use of the Facility for sporting events, provided that HMQ shall provide advance notice of the specified dates and the aggregate number of specified dates shall not exceed 30 days.

Project Co further acknowledges that if HMQ is unable to contact Project Co and/or obtain the corrective work within such time period required by HMQ that HMQ's own forces may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or non-compliant items in the Works, at Project Co's sole cost and expense, and except in the case of damage caused by HMQ's own forces, such emergency steps taken by HMQ's own forces shall not invalidate any warranties in respect of such portion of the Works affected by such corrective actions of HMQ's own forces. For the purposes of this Section 11.24(a), performing warranty work on an "urgent basis" means responding to and commencing work within one hour of a request for warranty work by HMQ.

11.25 Warranty Letter of Credit

- (a) As security for Project Co's warranty obligations during the Warranty Period and for the purposes of Section 11.25(f), Project Co shall deliver, or cause to be delivered to HMQ, in accordance with Section 11.25(b), an irrevocable letter of credit (the "**Warranty Letter of Credit**") substantially in the form of Schedule 28B – Warranty Letter of Credit. The Warranty Letter of Credit shall be in the amount equal to **[REDACTED]**.
- (b) Project Co shall either,
 - (i) deliver the Warranty Letter of Credit no later than 10 days prior to the Scheduled Substantial Completion Date; or
 - (ii) elect to deliver the Warranty Letter of Credit anytime following the date in Section 11.25(b)(i), provided that, if Project Co makes such an election, HMQ may withhold from the Substantial Completion Payment a holdback in the amount of **[REDACTED]** (the "**Warranty Letter of Credit Holdback**"), which holdback shall be held in an interest bearing account.
- (c) Subject to HMQ's rights in Section 11.25(d), HMQ shall release the Warranty Letter of Credit Holdback, together with all interest accrued thereon, less the amount of any claims satisfied in accordance with Section 11.25(d), no later than 5 days following delivery of the Warranty Letter of Credit to HMQ.
- (d) Subject to Section 11.25(f), HMQ shall be entitled to draw on the Warranty Letter of Credit, from time to time, an amount equal to the damages suffered by HMQ, including any costs incurred by HMQ in accordance with Section 11.23(f), as a result of Project Co's breach of its obligations under Sections 11.23 and 11.24. Alternatively, if following

Substantial Completion, Project Co has not delivered the Warranty Letter of Credit in accordance with Section 11.25(b)(i), HMQ may, in its sole discretion, use funds from the Warranty Letter of Credit Holdback to satisfy the damages suffered by HMQ, including any costs incurred by HMQ in accordance with Section 11.23(f), as a result of Project Co's breach of its obligations under Sections 11.23 and 11.24.

- (e) HMQ shall release and deliver the full amount of the Warranty Letter of Credit, less
 - (i) the amount of any warranty claims then outstanding, if any; and
 - (ii) the amount of claims previously satisfied by a draw by HMQ on the Warranty Letter of Credit, if any,on August 31, 2015.
- (f) HMQ shall be entitled to draw on the Warranty Letter of Credit in accordance with Section 11.25(d) and to draw an amount equal to **[REDACTED]** in the event that Project Co breaches its obligations under Section 22.4(d).

11.26 Substitutions

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project Agreement by using the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name or description, the naming or identification of the item is intended to establish the type and the minimum function and quality required, and equipment, components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors shall not be substituted without the prior written consent of HMQ, in its sole discretion.

11.27 Change in Standards

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction of the Facility, and that standard has changed between the date of this Project Agreement and the date that such compliance is required, then Project Co shall give notice to HMQ of such change. If, after such notice, HMQ requires compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. If HMQ does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Project Agreement, without a Variation therefor. This Section 11.27 shall not apply where a change in a technical standard is also a Change in Law.

12. REPRESENTATIVES

12.1 The HMQ Representative

- (a) Subject to the limitations set out in Section 12.1(d), the HMQ Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the HMQ Representative and such other functions and powers of HMQ under this Project Agreement as HMQ may notify Project Co from time to time.
- (b) HMQ may, from time to time by written notice to Project Co, change the HMQ Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no HMQ Representative has been appointed, or when the HMQ Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the HMQ Representative's functions under this Project Agreement, HMQ shall perform or may, by written notice to Project Co, promptly appoint an alternative HMQ Representative to perform the functions which would otherwise be performed by the HMQ Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative HMQ Representative which is permitted by this Project Agreement as being authorized by HMQ, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The HMQ Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 12.1(a) and 12.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the HMQ Representative which is authorized by this Project Agreement as being authorized by HMQ, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

12.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 12.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of HMQ, not to be unreasonably withheld or delayed.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written

notice to HMQ, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek HMQ's consent in accordance with Section 12.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written notice, HMQ and the HMQ Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and HMQ and the HMQ Representative shall not be required to determine whether authority has in fact been given.

- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 12.2(d), unless otherwise notified in writing, HMQ and the HMQ Representative shall be entitled to treat any act of the Project Co Representative which is authorized by this Project Agreement as being authorized by Project Co, and HMQ and the HMQ Representative shall not be required to determine whether authority has in fact been given.

12.3 Communications to Representatives

- (a) At the time that a Party appoints or changes the appointment of the HMQ Representative or the Project Co Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute notices to the Party appointing such representative.

12.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of HMQ, acting reasonably, such involvement would have a material adverse effect on the Works.
- (b) If Project Co considers it necessary to replace any individual identified in Schedule 9 – Key Individuals, Project Co shall provide HMQ with relevant information on the proposed replacement and shall consult with HMQ before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of HMQ, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced and of equal or better quality and experience than the individual being replaced.

- (c) If HMQ determines, acting reasonably, that it is in the best interests of HMQ that any individual identified in Schedule 9 – Key Individuals be replaced, HMQ shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days of receipt by Project Co of such notice, Project Co shall provide HMQ with relevant information on the proposed replacement and shall consult with HMQ before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of HMQ, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced and of equal or better quality and experience than the individual being replaced.

13. WORKS SCHEDULE

13.1 Completion of the Works

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

13.2 The Works Schedule

- (a) Project Co shall:
- (i) prepare and submit to HMQ and the Independent Certifier as soon as practical and in any event within 45 days of Financial Close, a detailed computerized Works Schedule using a critical path method (“CPM”) network and a Works Schedule dependent cash flow forecast, each in a form approved by HMQ. The planning and schedule software shall be Primavera 6.0 or other software compatible with Primavera 6.0 that supports the completion of the Works in accordance with Section 13.1. The Works Schedule and any other schedule related reporting requirements of Project Co shall conform to the phasing and sequencing requirements for the Works as set out in the Project Agreement, including the work to be completed by HMQ’s own forces or by other contractors, the Scheduled Substantial Completion Date, the Scheduled Final Completion Date, the Output Specifications, including, the sequencing requirements, the schedule for commissioning of the Works and for achieving the Scheduled Substantial Completion Date and the Scheduled Final Completion Date. HMQ shall provide Project Co with comments on the draft schedule in accordance with Schedule 10 –

Review Procedure, provided that the period for review of such draft schedule shall be 20 Business Days rather than the 10 Business Days prescribed in Section 2.4 of Schedule 10 – Review Procedure. Project Co shall revise the draft schedule to the extent required by Schedule 10 – Review Procedure within 30 days of receipt of any comments from HMQ. When agreed by the Parties, the draft schedule shall become the Works Schedule;

- (ii) continuously monitor the progress of the Works in relation to the Works Schedule and the cash flow and update the Works Schedule and the cash flow projections set out in the Works Report, maintain the continuity of the Works Schedule's CPM network for all updates and revisions and immediately notify HMQ of any variance or potential variance in the scheduled completion dates;
- (iii) advise the HMQ Representative of any revisions required to the Works Schedule as a result of extension of the Scheduled Substantial Completion Date or Scheduled PGW Substantial Completion Date in accordance with Schedule 22 – Variation Procedure;
- (iv) identify potential variances between scheduling and scheduled completion dates, review the schedule of Works not started or incomplete and implement necessary adjustments in the Works Schedule in order to meet the Scheduled Substantial Completion Date and the Scheduled Final Completion Date set out in the Works Schedule, including the movement of manpower and equipment in response to availability of work areas;
- (v) monitor the Subcontractors' personnel staffing and equipment and the availability of materials and supplies in order to meet the Works Schedule and take appropriate courses of action when the requirements of a Subcontract with any Project Co Party are not met;
- (vi) obtain from Project Co Parties a schedule showing the order number, vendor's name, shop drawing status, manufacturing lead time and delivery date of all critical material and equipment required for the Works;
- (vii) pre-order equipment, materials and supplies where necessitated by cost and/or time factors and expedite delivery of critical items;
- (viii) in consultation with the HMQ Representative, include in the Works Schedule the integration of the equipment Output Specifications, rough-in requirements, supply and installation, including of HMQ's equipment to ensure that the ordering, delivery, receiving and supply of equipment does not impact on the Works Schedule; and
- (ix) schedule, in consultation with HMQ, submittals to and reviews by necessary Sports Governing Authorities to permit timely certification(s) by such Sports Governing Authorities of the parts of the Facility to be used for the Pan American

Games and Para Pan American Games, which certification(s) (as more particularly described in the Output Specifications) are required to host the following events:

- (A) swimming;
 - (B) diving;
 - (C) synchronized swimming;
 - (D) fencing;
 - (E) modern pentathlon; and
 - (F) sitting volleyball.
- (b) The Works Schedule shall be prepared in accordance with Good Industry Practice for a large complex project and shall be in sufficient detail so as to enable the HMQ Representative and, if applicable, the Independent Certifier, to monitor the progress of the Works, including all commissioning activities, and the likely future progress of the Works. Given the size and complexity of the Project, the Works Schedule shall include no fewer than 1,000 activities.
- (c) Without limiting the generality of Section 13.2(b), the Works Schedule shall, at a minimum, include:
- (i) major milestone events, which shall include at a minimum the Works Milestones;
 - (ii) the dates that key decisions must be made by HMQ to support the progress of the Works;
 - (iii) a detailed and editable procurement, delivery, installation, training and commissioning schedule for all Equipment;
 - (iv) all design related activities, including the proposed date for each Design Workshops;
 - (v) the proposed date for each Works Submittal;
 - (vi) all construction activities, including subcontract work and cash allowance work, both on and off the Site;
 - (vii) all procurement activities undertaken by the Construction Contractor with respect to materials and equipment, including timelines for Shop Drawings, manufacturing periods and dates of delivery to the Site;
 - (viii) all Project Co Commissioning and HMQ Commissioning activities;

- (ix) the manpower requirements for each activity, including subcontract work;
 - (x) a manpower histogram, both overall and by trade;
 - (xi) a cumulative “S” curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date;
 - (xii) projected Design and Construction Contract cash flows;
 - (xiii) the timing of all international sport certifications of the Facility; and
 - (xiv) the dates for the First Scheduled Interim Payment Date and Second Scheduled Interim Payment Date.
- (d) Project Co shall, concurrent with the issuance of the Notice of Commencement of Post Games Works in accordance with Section 2.2(a) of Schedule 32 – Post Games Works, review and update the Works Schedule in consultation with the HMQ Representative.

13.3 Changes to Critical Path

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

13.4 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Section 30, if, at any time:
- (i) the actual progress of the Works has significantly fallen behind the Works Schedule, including, for clarity, any failure of Project Co to achieve Works Milestones; or
 - (ii) HMQ is of the opinion that:
 - (A) the actual progress of the Works has significantly fallen behind the Works Schedule; or
 - (B) Project Co will not achieve Substantial Completion by the Longstop Date,

Project Co shall:

- (iii) within 5 Business Days of receipt of notice from HMQ, produce and deliver to each of the HMQ Representative and the Independent Certifier:
 - (A) a report identifying the reasons for the delay; and
 - (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
 - (I) completion of the Works Milestones;
 - (II) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (III) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
- (iv) bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.4(a)(iii) and approved by the HMQ Representative.
- (b) Project Co shall notify the HMQ Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.

13.5 Notification of Early Substantial Completion

- (a) Unless Project Co obtains the prior written consent of HMQ, in its sole discretion, Project Co shall not be entitled to the Substantial Completion Certificate prior to, and the Substantial Completion Date shall not be earlier than, the Scheduled Substantial Completion Date.

13.6 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within 15 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the HMQ Representative and the Independent Certifier a works report (each, a “**Works Report**”), which will include:
 - (i) an executive summary describing the general status of the Works and progress made over the relevant month;
 - (ii) an updated Works Schedule, in both summary and detailed formats;
 - (iii) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes; and
 - (iv) an update on those matters set out in Schedule 17 – Works Report Requirements,

all in form and substance satisfactory to HMQ, acting reasonably. For greater certainty, for all updates and revisions to the Works Schedule, Project Co must provide a revised critical path reflecting the updated or revised Works Schedule.

- (b) Project Co shall use, and shall ensure that the Construction Contractor uses, the project management software system specified by HMQ.

13.7 Project Co Delay

- (a) Notwithstanding Section 13.4 and without limiting any other provision of this Project Agreement but subject to Section 30, before Substantial Completion, if at any time:
 - (i) the actual progress of the Works has fallen behind the Works Schedule by a period of 30 calendar days;
 - (ii) Project Co fails to achieve a Works Milestone; or
 - (iii) HMQ is of the opinion that:
 - (A) the actual progress of the Works has fallen behind the Works Schedule by a period of 30 calendar days; or
 - (B) Project Co will fail to achieve a Works Milestone,

Project Co shall be required:

- (iv) within five Business Days of receipt of notice from HMQ, to produce and deliver to each of the HMQ Representative and the Independent Certifier:
 - (A) a report identifying the reasons for such delay or failure;
 - (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay or to achieve the Works Milestone;
 - (C) confirmation that Project Co can satisfy all Interim Payment Requirements applicable to the First Interim Payment by the First Scheduled Interim Payment Date;
 - (D) confirmation that Project Co can satisfy all Interim Payment Requirements applicable to the Second Interim Payment by the Second Scheduled Interim Payment Date; and
 - (E) confirmation that Project Co can achieve Substantial Completion by the Scheduled Substantial Completion Date; and
- (v) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.7(a)(iv)(B) and approved by the HMQ Representative.

- (b) If Project Co does not, as determined by the Independent Certifier, bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.7(a)(iv)(B), HMQ may, in its sole discretion, concurrently issue to Project Co and the Lenders' Agent a "**Project Co Delay Notice**" and, upon the issuance of such notice, a "**Project Co Delay**" shall arise. In the event of a Project Co Delay, HMQ shall direct Project Co to accelerate the performance of the Works to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.7(a)(iv)(B) or otherwise achieve the Works Milestone and/or eliminate or significantly reduce the delay described in Section 13.7(a) to the satisfaction of the Independent Certifier and Project Co agrees that any costs associated with performing such acceleration of the Works shall be at Project Co's own expense. The Project Co Delay shall end upon Project Co bringing the progress of the Works back on schedule in accordance with the plan delivered under Section 13.7(a)(iv)(B) or otherwise achieving the Works Milestone and/or eliminating or significantly reducing the delay described in Section 13.7(a) to the satisfaction of the Independent Certifier. For greater clarity, the issuance of a Project Co Delay Notice or the occurrence of a Project Co Delay shall not constitute a Project Co Event of Default except to the extent that such occurrence of a Project Co Delay or the failure to remedy such occurrence causes or contributes to a failure to achieve Substantial Completion prior to the Longstop Date.

14. WORKS COMMITTEE

14.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the "**Works Committee**") consisting of:
- (i) 2 representatives appointed by UofT and City (one each) from time to time;
 - (ii) the following 3 representatives appointed by HMQ:
 - (A) the HMQ Representative;
 - (B) 1 TO2015 representative; and
 - (C) 1 other representative appointed by HMQ from time to time; and
 - (iii) the following 3 representatives appointed by Project Co:
 - (A) the Project Co Representative;
 - (B) 1 representative of the Construction Contractor; and
 - (C) such other representative appointed by Project Co from time to time.
- (b) The Independent Certifier and the Design Compliance Consultant shall be entitled to, but not required, to attend meetings as non-voting members of the Works Committee.

Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the Works Committee members.

- (c) The HMQ Representative shall be the chairperson of the Works Committee.

14.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works. The Works Committee shall interface with the Equipment Steering Committee as and when required.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
- (i) any design, construction and commissioning issues;
 - (ii) the Works Schedule;
 - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
 - (iv) any quality assurance and safety issues;
 - (v) the Works Reports;
 - (vi) any special matters referred to the Works Committee by HMQ or Project Co;
 - (vii) any community and media relations issues in accordance with Schedule 18 – Communications Protocol;
 - (viii) monitoring the Final Commissioning Program; and
 - (ix) any other issues pertaining to the Works.
- (c) Subject to Section 14.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any change to a major milestone date set out in the Works Schedule, the Scheduled Substantial Completion Date, the Scheduled PGW Substantial

Completion Date, the Scheduled Final Completion Date or the Scheduled PGW Final Completion Date;

- (iii) any Variation;
- (iv) any change that may materially adversely affect Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date;
- (v) any change that may materially adversely affect Project Co's ability to achieve PGW Substantial Completion by the Scheduled PGW Substantial Completion Date or Final Completion by the Scheduled PGW Final Completion Date; or
- (vi) any matter with respect to which HMQ has a right of consent or in respect of which HMQ may exercise discretion pursuant to this Project Agreement.

14.3 Term of Works Committee

- (a) Unless otherwise agreed, the Works Committee shall operate until the PGW Final Completion Date.
- (b) In the period from Final Completion to the commencement of the Post Games Works, the HMQ Representative may either suspend the operation of the Works Committee or convene meetings less frequently than once per month.

14.4 Replacement of Committee Members

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

14.5 Procedures and Practices

- (a) The members of the Works Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
 - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and

- (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the PGW Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representatives or the HMQ Representatives on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days' notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site, in the City of Toronto, Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) 2 representatives of HMQ (one of whom shall be the HMQ Representative), 2 representatives of Project Co (one of whom shall be the Project Co Representative) and at least one representative of each of City, UofT and TO2015 shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by HMQ. HMQ shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies HMQ within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co and HMQ shall be deemed to have approved such minutes. HMQ shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by Project Co during regular business hours.

15. QUALITY ASSURANCE

15.1 Quality Plans and Systems

- (a) Project Co shall cause all of the Works to be the subject of quality management systems, which shall include a Design Quality Plan and a Construction Quality Plan (collectively, the "**Quality Plans**"), which may be incorporated into one document.

- (b) All Quality Plans shall be consistent with the requirements of the Output Specifications, and the Final Commissioning Program.
- (c) The Design Quality Plan is attached as part of Schedule 11 – Design Quality Plan and Construction Quality Plan.
- (d) The Construction Quality Plan shall, at a minimum, comply with the requirements of the outline of the Construction Quality Plan attached as part of Schedule 11 – Design Quality Plan and Construction Quality Plan. Project Co shall submit its proposed Construction Quality Plan to HMQ within 60 days following Financial Close.
- (e) All Quality Plans shall be subject to review by HMQ pursuant to Schedule 10 – Review Procedure, and Project Co shall not be entitled to implement or cause the implementation of any Quality Plan unless and until Project Co is entitled to proceed with such implementation pursuant to Schedule 10 – Review Procedure.
- (f) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Works in compliance with the Quality Plans, including by causing the Construction Contractor to implement the Design Quality Plan and the Construction Quality Plan.
- (g) Where any aspect of the Works is performed by more than one Project Co Party, then this Section 15, in so far as relevant or appropriate to the activities to be performed by such Project Co Party, shall apply in respect of each of them and references in this Section 15 to such Project Co Party, including the Construction Contractor, shall be construed accordingly.

15.2 Changes to Plans

- (a) Project Co shall submit to HMQ, in accordance with Schedule 10 – Review Procedure, any changes to any of the Quality Plans required to comply with Section 15.1, and shall amend such Quality Plans as required pursuant to Schedule 10 – Review Procedure.

15.3 Quality Manuals and Procedures

- (a) If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts of it shall be submitted to HMQ at the time that the relevant Quality Plan, or part thereof or change thereto, is submitted in accordance with Schedule 10 – Review Procedure, and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan, or part thereof or change thereto, in accordance with Schedule 10 – Review Procedure.

15.4 Quality Monitoring

- (a) Without limiting HMQ's other rights pursuant to this Project Agreement, including Section 26, HMQ may, from time to time, directly or indirectly, perform periodic

monitoring, spot checks and auditing of Project Co's quality management systems, including all relevant Quality Plans and any quality manuals and procedures. Project Co shall ensure that HMQ also has the right to perform periodic monitoring, spot checks and auditing of the Construction Contractor's quality management systems.

- (b) Project Co shall cooperate, and shall cause the Construction Contractor to cooperate with HMQ in monitoring quality management systems and shall provide HMQ with all information and documentation reasonably required in connection with HMQ's rights under this Section 15.4.

16. LICENCE

16.1 Licence to Site

- (a) Effective from the date of Financial Close until the Termination Date and subject to this Section 16, HMQ hereby grants or shall cause to be granted, and shall continuously until the earlier of the termination of the Project Agreement or Final Completion grant or cause to be granted, to Project Co and all Project Co Parties such non-exclusive licence rights of use and access to, on and over the Site and the Facility, except such rights set out as a Project Co responsibility to obtain under the Permits, Licences, Approvals and Agreements tables attached as Appendix 1 to Schedule 1 – Definitions and Interpretation, as are required by Project Co and sufficient (subject to Project Co performing its obligations described in the Permits, Licences, Approvals and Agreements tables attached as Appendix 1 to Schedule 1 – Definitions and Interpretation) to allow Project Co to perform the Works. Following Final Completion, HMQ shall grant, or cause to be granted, Project Co access to the Site and the Facility necessary for Project Co to carry out its remaining obligations under the Project Agreement.
- (b) In consideration for the licence granted pursuant to Section 16.1(a), Project Co shall provide the Works subject to and in accordance with this Project Agreement.
- (c) Without derogating from any of HMQ's rights hereunder, in particular and subject to this Section 16.1(c), the rights of access to the Site prior to the Substantial Completion Date for purposes of the HMQ Commissioning and certain Third Party Operations, HMQ acknowledges that, in respect of the Works, Project Co and the Project Co Parties require, and HMQ shall provide, access to the Site without material interference by HMQ or any HMQ Party from the date of Financial Close until the Termination Date. Project Co further acknowledges that following Final Completion, its access to the Site and the Facility shall be subject to the Stakeholder Operations and Project Co shall coordinate the execution of the Post Games Works with the Stakeholder Operations.
- (d) None of the rights granted pursuant to this Section 16.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of HMQ or an agent of the Province which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Works.

- (e) The licence provided in this Section 16.1 shall terminate as of the Termination Date.

16.2 Non-Exclusive Licence/Development of Site

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that HMQ and any person authorized by HMQ, including City, UofT and TO2015 and any person authorized by them, may occupy and possess the Site and the Facility, including for the purposes of carrying out the Third Party Operations. In exercising such rights Project Co shall not, and shall ensure that the Project Co Parties do not, except as permitted under this Project Agreement, disrupt the performance of the Third Party Operations.
- (b) Without limiting Section 16.2(a), Project Co acknowledges that HMQ, City and UofT may from time to time use or develop (including by way of subdivision), or permit the use or development of, portions of the Site other than those portions of the Site contained within the building footprint of the Facility and those other portions of the Site necessary for the performance of the Works. Except as set out in this Section 16.2(b), to the extent that such use or development materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Works, such use or development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. Project Co shall not be entitled to a Variation as a result of testing and monitoring of the environmental condition of the Site described in the Risk Assessment Document conducted by HMQ, City or UofT.

16.3 Restricted Activities on the Site

- (a) With respect to Parcel B the licence granted pursuant to Section 16.1(a) shall be solely for the purpose of the construction of a driveway, including pavement finishes and related lighting.

16.4 Naming and Signage

- (a) Project Co acknowledges that HMQ reserves and retains (i) all rights to designate the name for the Site, Facility and any part of the Facility; (ii) all rights to signage in relation to the Site and the Facility; (iii) all rights, trade-marks, naming or branding regarding the Facility or any part of the Facility; and (iv) all rights to install any TO2015, Pan American Games and Para Pan American Games signage on the Site or on any part of the Facility, at a location satisfactory to HMQ, acting reasonably, including, for clarity, on any hoarding erected by Project Co. It is agreed, however, that, with the prior written consent of HMQ, in its sole discretion, Project Co, the Project Co Parties and the Lenders may, for the period prior to Substantial Completion, erect and maintain signage at or on the Site or Project (which may include such parties' logos and trade names) identifying their respective roles in connection with the construction of the Project, in a number and location and having a size and quality previously approved by HMQ.

- (b) Project Co acknowledges and agrees that naming and signage on the Site and Facility will be restricted as to content, timing, size and location because of the use of the Site and Facilities for the Pan American Games and Para Pan American Games. HMQ may, in its sole discretion, require the prompt removal of signage, including, for clarity, signage which has been approved in accordance with Section 16.4(a), at any time whatsoever. For greater clarity, Project Co acknowledges and agrees that HMQ may, in its sole discretion, require prompt removal of any logo or trade name on any signage erected on the Site or Facility that is contrary to any signage or sponsorship rights granted by TO2015 to third parties.
- (c) Project Co shall not use or display the logos of HMQ, City, UofT, TO2015 or the Pan American Games or Para Pan American Games or create any association with TO2015, the Pan American Games or Para Pan American Games without the prior written consent of the applicable entity, which consents will be in the sole discretion of the applicable entity and will be coordinated by HMQ.

16.5 No Interest in Land

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

17. TITLE ENCUMBRANCES

17.1 Title Encumbrances

- (a) Project Co shall perform all obligations under the Title Encumbrances for or on behalf of HMQ, other than:
 - (i) obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of HMQ;
 - (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless such obligations are provided in the Output Specifications as obligations of Project Co or the Parties agree that such obligations are obligations of Project Co;

- (iii) obligations under any Title Encumbrance which the City of Toronto may formally relieve or waive, with the consent of HMQ, with respect to any Development Approval; and
 - (iv) obligations under the Title Encumbrances that Appendix 1 – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation provide for HMQ performing.
- (b) Project Co shall perform the Works in a manner which does not breach the Title Encumbrances or any of the Development Approvals.
 - (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 17.2, no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Site or any part of it, except in accordance with the terms of this Project Agreement.

17.2 No Site Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered against the Site or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance which has not been consented to in writing by HMQ due to an act or omission of Project Co or any Project Co Party, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, HMQ will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.
- (c) Notwithstanding the provisions of this Section 17.2, the Parties acknowledge that the provisions of Sections 3.1 to 3.4 of Schedule 20 – Payments and Holdbacks shall apply to claims for lien made against the Site pursuant to the CLA and shall also apply to claims made against the Legislative Holdback.

17.3 Construction Lien Act (Ontario)

- (a) The Parties acknowledge that the foregoing provisions of Section 17.2 shall apply to claims for lien made against the Site pursuant to the CLA and shall also apply to claims made against HMQ or for the holdback under the CLA as though such a claim were an Encumbrance against the Site as referred to therein.

- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA and for the purposes of the CLA, the contracts entered into by and between Project Co and any Subcontractor in relation to the performance of the Works shall be considered a “contract” as defined in the CLA.
- (c) In furtherance of Section 17.3(b), Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Project Co and HMQ agree to comply with the requirements of the CLA with respect to the Site and the Project whether or not any part of the Site or the Project is subject to the provisions of the CLA. For greater certainty, Project Co and HMQ hereto covenant and agree to assume and undertake the same obligations that would exist if the Project was subject to the CLA with respect to any part or parts of the Site or Project to which the CLA does not apply.
- (f) The Parties acknowledge and agree that this Project Agreement describes the agreements, obligations and undertakings of the Parties in respect of two separate improvements (as defined in the CLA), being the Works (excluding the Post Games Works) and the Post Games Works, which shall be completed in two separate phases as described in the recitals to this Project Agreement. Accordingly, notwithstanding that all Works are to be performed under this Project Agreement, the Works (excluding the Post Games Works) and the Post Games Works shall be considered two separate improvements under two separate contracts for the purposes of the CLA, including for the determination of relevant dates of “substantial performance” and “completion” (as such terms are defined in the CLA), the retention and release of statutory holdbacks under Part IV of the CLA, and the requirement to file a Notice of Project and designate a constructor under the *Occupational Health and Safety Act* (Ontario). For clarity, nothing in this Section 17.3 is intended to waive any rights that Project Co or any other person may have under the CLA.

18. SITE CONDITION

18.1 Acceptance of Site Condition

- (a) Subject to Sections 7.4, 18.2 and 18.3, Project Co acknowledges and agrees that it has inspected all matters relating to the Site, including the Background Information, prior to executing this Project Agreement and agrees to accept the Site and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to

Sections 7.4, 18.2 and 18.3, Project Co shall not be entitled to make any claim of any nature whatsoever against HMQ, any HMQ Party, City, UofT or TO2015 on any grounds relating to the Site, including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not HMQ, a HMQ Party, City, UofT or TO2015, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Site provided by such person to Project Co.

- (b) Subject to Sections 7.4, 18.2 and 18.3, Project Co acknowledges and agrees that it has and shall be deemed to have:
- (i) performed all necessary Site due diligence and investigations and inspected and examined the Site and its surroundings;
 - (ii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Site, the load bearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works;
 - (iii) satisfied itself as to the presence of any Contamination on, in or under the Site, or migrating to or from the Site;
 - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
 - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Site; and
 - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Works in a lawful manner.

18.2 Contamination

- (a) HMQ shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination:

- (i) that was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports, the Geotechnical Reports or the Risk Assessment Document;
 - (ii) that could have been properly inferable, readily apparent or readily discoverable on the basis of reasonable, normal course and industry standard investigations, inspections or other due diligence; or
 - (iii) that is caused by Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination for which HMQ is responsible pursuant to Section 18.2(a), Project Co shall immediately inform the HMQ Representative and shall comply with all Applicable Law in respect thereof at HMQ's cost pursuant to Section 18.2(d).
- (c) In the event that HMQ wishes Project Co to perform actions which are in addition to any required pursuant to Section 18.2(b), then HMQ shall issue an instruction to Project Co specifying what action HMQ requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at HMQ's cost pursuant to Section 18.2(d).
- (d) If Sections 18.2(b) and 18.2(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of Contamination for which HMQ is responsible pursuant to Section 18.2(a) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

18.3 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Site are or shall be the sole and absolute property of HMQ.
- (b) Upon the discovery of any item referred to in Section 18.3(a) during the course of the Works, Project Co shall:
- (i) immediately inform the HMQ Representative of such discovery;
 - (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such Works would endanger the item or prevent or impede its excavation;
 - (iii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and

- (iv) comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including Schedule 19 – Heritage Guidelines and Protocols.
- (c) In the event that HMQ wishes Project Co to perform actions which are in addition to any required pursuant to Section 18.3(b), then HMQ shall issue an instruction to Project Co specifying what action HMQ requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (d) If Sections 18.3(b) and 18.3(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of such discovery and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

19. CITY OF TORONTO AND THIRD PARTY FINANCIAL OBLIGATIONS

19.1 Financial Obligations

- (a) Project Co shall be responsible for all Financial Obligations under or in respect of all Permits, Licences, Approvals and Agreements including to City, any Utility Company, any Governmental Authority or any other third party in respect of the Works, including:
 - (i) any development charges relating to the Works, the Facility or the Site;
 - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;
 - (iii) any security deposits and letters of credit required under any Permits, Licences, Approvals and Agreements; and
 - (iv) any other amounts payable under any Project Co Permits, Licences, Approvals and Agreements.
- (b) The Parties agree that any refund, partial rebate or credit granted by City, any applicable Utility Company or any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 19.1(a) shall be for the benefit of HMQ to the extent such Financial Obligations were paid by HMQ and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.
- (c) HMQ shall be responsible for all Financial Obligations required under the HMQ Permits, Licences, Approvals and Agreements that are expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation as being the responsibility of HMQ.

20. HMQ ACCESS AND MONITORING

20.1 HMQ Access During the Works Phase

- (a) Subject to Section 20.1(b) but without limiting any of HMQ's rights in respect of the Site, Project Co acknowledges and agrees that City, UofT, TO2015 and Government Entities and their respective representatives shall, prior to Final Completion, have unrestricted access to the Site, the Facility and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours.
- (b) In exercising their access rights under Section 20.1(a) during the Project Term, HMQ, City, UofT, TO2015 and the HMQ Parties shall:
 - (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for HMQ's own use);
 - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
 - (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

20.2 Increased Monitoring

- (a) If, at any stage, HMQ is of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Output Specifications and the Project Co Proposal Extracts), HMQ may, without prejudice to any other right or remedy available to it, by notice to Project Co, increase the level of monitoring of Project Co from that set out in this Project Agreement to such level as HMQ considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to HMQ's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations related to the Works under this Project Agreement. Project Co will compensate HMQ for any reasonable costs incurred as a result of such increased monitoring.

20.3 Right to Open Up

- (a) HMQ shall have the right, at any time prior to the PGW Final Completion Date, to request Project Co to open up and inspect (or allow HMQ to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where HMQ reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), relevant to such

part or parts of the Works, and Project Co shall comply with such request. When HMQ makes such a request, HMQ shall include reasonably detailed reasons with such request.

- (b) If the inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to HMQ and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (c) If the inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), relevant to such part or parts of the Works, the exercise by HMQ of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

20.4 No Relief from Obligations

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

21. EQUIPMENT

21.1 Equipment Steering Committee

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Equipment Steering Committee**”) consisting of:
 - (i) 3 representatives of HMQ appointed by HMQ from time to time, one of whom shall be the Senior Project Manager or Equipment Project Manager, plus one representative of each of City, UofT and TO2015; and
 - (ii) 3 representatives of Project Co, one of whom shall be the Project Co Representative, appointed by Project Co from time to time.
- (b) Members of the Equipment Steering Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the Equipment Steering Committee.
- (c) The Equipment Steering Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Not-In-Contract Equipment, including the interaction between Not-In-Contract Equipment commissioning and Site commissioning.

- (d) The primary role of the Equipment Steering Committee shall be to oversee and coordinate the procurement and installation of all Not-In-Contract Equipment in a timely and efficient manner and in accordance with the Works Schedule and Equipment Procurement Sub-Plan, Project Co and the Equipment Steering Committee will work co-operatively with HMQ and any equipment consultant retained by HMQ.
- (e) 4 representatives of HMQ which must include a representative from each of HMQ, City, UofT and TO2015 and either the Senior Project Coordinator or the Senior Project Manager and one representative of Project Co (or a delegate thereof) shall constitute a quorum at any meeting of the Equipment Steering Committee. A quorum of members may exercise all the powers of the Equipment Steering Committee. The members shall not transact business at a meeting of the Equipment Steering Committee unless a quorum is present.
- (f) The members of the Equipment Steering Committee may adopt such other procedures and practices for the conduct of the activities of the Equipment Steering Committee as they consider appropriate from time to time.

21.2 HMQ Equipment Responsibilities

- (a) HMQ shall be responsible for determining the method of procurement, quantity, make, model, vendor and any terms and conditions of financing for all Not-In-Contract Equipment based upon tenders, quotations or proposals obtained by Project Co.
- (b) HMQ shall be responsible for the decommissioning and transfer of any Existing Equipment.

21.3 Project Co Equipment Responsibilities

- (a) Project Co shall be responsible for:
 - (i) revising, coordinating and finalizing the plan to procure, install and commission all Equipment based on the development of Project Co's Design Data and the latest information available from the HMQ Representative;
 - (ii) procuring all Not-in-Contract Equipment in accordance with Section 21.4;
 - (iii) incorporating design and installation requirements of the Existing Equipment into Project Co's Design Data;
 - (iv) providing all structural, mechanical, electrical and information and communications technology building system services to produce a complete working system for all Equipment;

- (v) expediting, delivering, unpacking, offloading, handling and storing all Not-In-Contract Equipment and In-Contract Equipment, including meeting all LEED requirements relating to the disposal of packaging materials;
 - (vi) coordinating, scheduling and completing the installation or reinstallation, as applicable, of all Not-In-Contract Equipment and In-Contract Equipment in accordance with manufacturer's instructions, this Section 21, the Works Schedule and Schedule 15 – Output Specifications;
 - (vii) coordinating and scheduling the installation or reinstallation, as applicable, of all Owner Equipment in accordance with manufacturer's instructions, this Section 21 of the Project Agreement, the Works Schedule and Schedule 15 – Output Specifications;
 - (viii) coordinating, scheduling and completing the commissioning, testing and calibration of all Not-In-Contract Equipment and In-Contract Equipment in accordance with the Final Commissioning Program; and
 - (ix) coordinating and scheduling the commissioning of all Owner Equipment in accordance with the Final Commissioning Program.
- (b) Project Co shall, at its sole cost, purchase the In-Contract Equipment, including the cost of delivery, storage, unpacking, installation/placement, commissioning and provision of training.
- (c) For the purpose of achieving Substantial Completion, all Not-In-Contract Equipment and In-Contract Equipment must be successfully commissioned by Project Co in accordance with the Final Commissioning Program provided that, in respect of any item of Not-In-Contract Equipment, such requirements shall be waived by HMQ if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete the procurement, installation or commissioning of such item of Not-In-Contract Equipment due to a delay in the performance of any of its obligations by an equipment vendor or manufacturer.
- (d) Project Co shall, at its sole cost, install or cause an equipment vendor to install all Not-In-Contract Equipment and such installation costs shall not be included in the Monthly Equipment Payment.

21.4 Project Co Procurement Responsibilities

- (a) Project Co shall act as purchasing and procurement manager for HMQ and shall:
 - (i) in consultation with the Equipment Steering Committee, finalize the list of Not-In-Contract Equipment based on the development of Project Co's Design Data and the latest information available from the HMQ Representative and update the

- budget for Not-In-Contract Equipment for approval by the Equipment Steering Committee;
- (ii) in consultation with Equipment Steering Committee, review the Equipment building system requirements and layout the Equipment onto the design drawings for reconciliation with the services and space designed prior to purchasing or moving of any Equipment;
 - (iii) in consultation with the Equipment Steering Committee, establish procurement processes that are fair, open and competitive, all in accordance with any applicable HMQ policies and good purchasing and procurement practices for Not-In-Contract Equipment, notwithstanding the generality of the foregoing, ensure that each procurement process solicits proposals from at least three different suppliers provided that if it is not possible to solicit from three different suppliers for specific Not-In-Contract Equipment, the Equipment Steering Committee may approve the issuance of an Equipment RFP for fewer than three different suppliers;
 - (iv) comply with such procurement processes for Not-In-Contract Equipment;
 - (v) in consultation with the Equipment Steering Committee, prepare tenders, quotations or requests for proposal (the “**Equipment Procurement Documentation**”), which shall, subject to Section 21.2(a), be in form and substance satisfactory to HMQ and Project Co;
 - (vi) manage the procurement of all Not-In-Contract Equipment, including:
 - (A) providing advice to the Equipment Steering Committee in respect of the evaluation of tenders, quotations or proposals from equipment vendors;
 - (B) assisting the Equipment Steering Committee in the review of the tenders, quotations or proposals from equipment vendors by clearly delineating the costs and performance of the subject Not-In-Contract Equipment, the training methods and values, the testing and calibration protocols, the acceptable end results and the party responsible for such testing, be it the vendor, a third party or individuals engaged by Project Co;
 - (C) assisting the Equipment Steering Committee with the selection of tenders, quotations or proposals from equipment vendors;
 - (D) the entering into of all purchase orders and other contracts to be entered into with respect to the Not-In-Contract Equipment; and
 - (E) providing such documentation as HMQ requires, acting reasonably, to discharge its obligations under this Section 21;

- (vii) in accordance with the Equipment Procurement Documentation, act as a single point of contact for all Equipment vendors;
 - (viii) manage the procurement of Not-In-Contract Equipment so as to bundle the purchase of all such Not-In-Contract Equipment to minimize the number of Equipment RFPs issued to the extent reasonably possible, thereby minimizing the number of Monthly Equipment Payments;
 - (ix) test and coordinate any Not-In-Contract Equipment not tested and calibrated by equipment vendors; and
 - (x) for the period between Substantial Completion and PGW Substantial Completion, coordinate and manage any warranty issues with the Not-In-Contract Equipment vendors.
- (b) Based on the tenders, quotations and proposals received from Equipment vendors, Project Co shall make recommendations to the Equipment Steering Committee for the procurement of each item of Not-In-Contract Equipment. Each such recommendation shall include the following information:
- (i) item description, item number, and quantities;
 - (ii) the manufacturer, model number, vendor, Output Specifications and options for the item;
 - (iii) an analysis and recommendation as to which make, model number and vendor of the item provides the overall best value for HMQ, and any other benefits of the recommendation;
 - (iv) an analysis of the effect of the items on the overall design of the Facility and the relevant areas within the Facility;
 - (v) details of the warranties, vendor installation, service agreements, training, supplies, spare parts and start up consumables included with the items by the relevant manufacturer or vendor;
 - (vi) details of training for all applicable HMQ, City, UofT and TO2015 staff;
 - (vii) Equipment acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant Equipment vendor;
 - (viii) the dates and times when the items shall be delivered to the Site;
 - (ix) all costs, with a breakdown of applicable HST and net of all direct or indirect discounts, rebates, refunds, chargebacks, credits, price adjustments or any other

- allowances obtained across all categories of Not-In-Contract Equipment that effectively reduce the net selling price of such Not-In-Contract Equipment;
- (x) the total amounts and timing of cash flows required to implement the recommendation and the full details of the calculation of such amounts;
 - (xi) whether the procurement is a purchase, a lease, part of a managed equipment program, based on usage pricing or any other arrangement, and the terms and timing of payments thereof;
 - (xii) any Taxes applicable to the items;
 - (xiii) if so requested by the HMQ Representative, a copy of each quote or proposal and all other relevant information in respect of the items and such other documentation as HMQ may reasonably require, all of which shall be provided on a fully transparent and open basis to the HMQ Representative; and
 - (xiv) if no tenders, quotations and proposals are available or have been received by Project Co, an alternate recommended course of action for procurement by Project Co, including possible substitutes for such items.
- (c) In response to any recommendation made by Project Co in accordance with Section 21.4(b), HMQ may do any of the following with respect of some or all of the items:
- (i) instruct Project Co to proceed with the procurement;
 - (ii) withdraw the requirement for Project Co to proceed with the procurement;
 - (iii) increase or decrease the quantities of any item, require the procurement of other items in substitution for such items or otherwise change the items to be procured or the terms on which such items are to be procured; or
 - (iv) reject any Equipment vendor or item.
- (d) Project Co shall provide to the HMQ Representative, as soon as reasonably practicable following a request therefor, such additional information as HMQ may require in respect of any recommendation made by Project Co in accordance with Section 21.4(b).
- (e) Project Co, and not HMQ, shall be liable as “purchaser” to the vendor under every purchase order, contract and manufacturer’s installation invoice related to the In Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms.
- (f) Project Co shall enter into all purchase orders and other contracts (as purchaser) with respect to Not-In-Contract Equipment on behalf of HMQ. For greater certainty, Project Co shall be liable as “purchaser” to the vendor under every purchase order, contract and manufacturer’s installation invoice related to Not-In-Contract Equipment provided that

all purchase orders, contracts and manufacturer's installation invoices specify that City and UofT are the end users of the Not-In-Contract Equipment and are the beneficiaries of any warranties related thereto. Project Co shall be solely responsible for any claims by equipment vendors, manufacturers or suppliers for increased installation costs arising from any failure by Project Co to satisfy the installation conditions described in purchase orders issued to equipment vendors of Not-In-Contract Equipment.

21.5 Payment for Not-In-Contract Equipment

- (a) Project Co shall, 90 days after the formation of the Equipment Steering Committee, deliver a list of the estimated amount of each Monthly Equipment Payment and a schedule detailing the approximate timing of all Monthly Equipment Payments to the Equipment Steering Committee (the "**Monthly Equipment Payment Estimate**"). Project Co shall update the Monthly Equipment Payment Estimate bi-monthly, or earlier upon request from the Equipment Steering Committee.
- (b) Beginning 180 days following the formation of the Equipment Steering Committee, Project Co shall deliver to HMQ an invoice (an "**Equipment Invoice**"), no later than 5 days after the end of each month in which Project Co has received an invoice from an equipment vendor, for the total cost of purchasing all Not-In-Contract Equipment in respect of the immediately previous month (the "**Monthly Equipment Payment**"). Project Co shall concurrently deliver a copy of the Equipment Invoice to the Equipment Steering Committee. For clarity, the Equipment Invoice shall not include any financing or installation costs. Project Co shall concurrently deliver any documentation requested by HMQ, acting reasonably, detailing the costs of the Not-In-Contract Equipment.
- (c) If HMQ or the Equipment Steering Committee disputes all or any part of an Equipment Invoice, HMQ shall notify Project Co in writing of that part of the amounts which HMQ or the Equipment Steering Committee disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute relating to the Equipment Invoice within ten Business Days of the delivery of the notice of the Dispute to Project Co. If HMQ and Project Co fail to so resolve the Dispute within such period, the Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by HMQ that is determined not to have been payable shall be paid forthwith by Project Co to HMQ and Project Co shall indemnify HMQ from and against any damages suffered or incurred resulting from such overpayment by HMQ as provided for at Section 44.1(e) on the basis that the due date was the date of the overpayment by HMQ. Following resolution of the Dispute, any amount which has been withheld by HMQ that is determined to have been payable shall be paid forthwith by HMQ to Project Co and HMQ shall indemnify Project Co from and against any damages suffered or incurred resulting from such withholding by HMQ as provided for at Section 44.2(c) on the basis that the due date was the date upon which such amount became payable to Project Co.

- (d) Project Co shall ensure that the Monthly Equipment Payment does not include any financing costs. Project Co shall be solely responsible for any financing costs relating to the Not-In-Contract Equipment, and shall promptly reimburse HMQ for any amounts of financing that HMQ determines have been included in the Monthly Equipment Payment. Project Co represents and warrants that no financing costs relating to the procurement of Not-In-Contract Equipment have been included in the Financial Model.
- (e) Whether or not Substantial Completion has been achieved, until such time as Project Co has completed the procurement, installation and commissioning of all In-Contract and Not-In-Contract Equipment in accordance with this Section 21, HMQ may withhold from an outstanding Monthly Equipment Payment, or if such outstanding Monthly Equipment Payment is insufficient, from the Substantial Completion Payment, a holdback amount equal to [REDACTED].

21.6 Standards for In-Contract and Not-In-Contract Equipment

- (a) Project Co shall cause all In-Contract Equipment and Not-In-Contract Equipment to be:
 - (i) of the type specified in, and required to satisfy, the Output Specifications;
 - (ii) new and of good quality;
 - (iii) in compliance with all Applicable Law; and
 - (iv) delivered and installed in accordance with the Works Schedule and the Output Specifications.
- (b) Project Co shall, as soon as practicable after receiving a request from the HMQ Representative, supply to the HMQ Representative evidence to demonstrate its compliance with this Section 21.6.

21.7 Minimizing Disruptions

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

21.8 Equipment Training

- (a) For and in respect of each item of Equipment procured by Project Co and operated by HMQ, City, UofT and/or TO2015, Project Co shall, in accordance with Schedule 14 – Outline Commissioning Program, provide or arrange for adequate, appropriate and timely training in the item’s proper operation and maintenance for all applicable HMQ, City, UofT and/or TO2015 staff.

- (b) HMQ shall make its staff available for training purposes in accordance with the Works Schedule and the Final Commissioning Program.

21.9 Scheduling of Equipment Procurement and Installation

- (a) Project Co shall, in consultation with HMQ, prepare a schedule for the procurement, installation and commissioning of all Equipment, and shall incorporate the timing of procurement or transfer, as applicable, installation and commissioning of all Equipment into the Works Schedule and the Final Commissioning Program. Such schedule shall include the date by which HMQ must make a final determination of the quantity, make, model and vendor of each piece of Equipment.
- (b) The Equipment RFP shall include a milestone schedule, which will include:
 - (i) the date for submission of shop drawings by the equipment vendor to Project Co;
 - (ii) the review period for shop drawings by Project Co and date for finalization of shop drawings;
 - (iii) the date by which the equipment vendor requires access to the Facility to carry out the installation of Not-In-Contract Equipment; and
 - (iv) the date for commencement of commissioning and the date for completion of commissioning of the Not-In-Contract Equipment.
- (c) HMQ shall determine the quantity, make, model and vendor of each piece of Not-In-Contract Equipment, and shall cause Project Co to execute any purchase order, contract, manufacturer's installation invoice and/or other documentation related thereto, by the relevant date set out in the Works Schedule, provided that the HMQ Representative shall have received such documentation as HMQ requires, acting reasonably, to discharge its obligations under this Section 21 no later than 30 days prior to the relevant date set out in the Works Schedule.

21.10 Maintenance of Equipment

- (a) For greater certainty, Project Co is not responsible for the maintenance, repair, replacement, monitoring or refurbishment of any Equipment, except as set out in Schedule 15 – Output Specifications.

22. LEADERSHIP IN ENVIRONMENTAL DESIGN AND OTHER REQUIREMENTS

22.1 LEED Design and Construction Obligations

- (a) Project Co shall perform the Works so as to achieve the prerequisites and credits required to achieve the LEED Silver Rating and, except as set out in Section 2.6 of the

Sustainability Requirements and Guidelines of Schedule 15 – Output Specifications, Project Co may, in its sole discretion, determine which additional credits to pursue.

22.2 Mandatory Prerequisites and Credits

- (a) Project Co shall, at a minimum, achieve the credits and prerequisites under the LEED Rating System provided for in Section 2.6 of the Sustainability Requirements and Guidelines of Schedule 15 – Output Specifications.

22.3 LEED Progress Reports

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

22.4 LEED Silver Rating

- (a) Project Co shall cause the Project to be registered with CaGBC. Project Co shall verify that the Project is registered with CaGBC within 60 days following Financial Close and confirm to HMQ that Project Co is satisfied that the registration is valid, and is effective as of the date it was made.
- (b) If there is a change in the requirements for achievement of LEED Silver Rating under the LEED Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify HMQ of such change and such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (c) Project Co shall apply to the CaGBC to obtain LEED Silver Rating for the Facility as soon as possible.
- (d) In the event that LEED Silver Rating is not obtained by May 31, 2015, other than as a direct result of any act or omission of HMQ or any HMQ Party, HMQ shall be entitled to draw on the Warranty Letter of Credit in the amount of **[REDACTED]** of liquidated damages. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ will suffer as a result of LEED Silver Rating not being obtained by May 31, 2015 and would be difficult or impossible to quantify upon the happening of such event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of a failure by Project Co to achieve LEED Silver Rating and, for greater certainty, a failure by Project Co to achieve LEED Silver Rating shall not result in a Project Co Event of Default. The Parties agree that HMQ shall be entitled to draw on the Warranty Letter of Credit as provided in this Section 22.4(d) whether or not HMQ incurs or mitigates its damages, and that HMQ shall not have any obligation to mitigate any such damages.

22.5 Greenhouse Gas Credits

- (a) Any greenhouse gas credits which may be guaranteed as a result of the Project shall be owned by City and UofT and Project Co shall have no entitlement to any of such credits whatsoever.

23. INDEPENDENT CERTIFIER

23.1 Appointment

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

23.2 Role of Independent Certifier

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

23.3 Changes to Terms of Appointment

- (a) Neither HMQ nor Project Co shall without the other's prior written approval (not to be unreasonably withheld or delayed):
 - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
 - (ii) vary the terms of the Independent Certifier Agreement or the service performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

23.4 Right to Change Appointment

- (a) The Parties acknowledge that the Independent Certifier shall provide certain services and reports to Project Co, the Lenders and the Project Co Parties in addition to performing the functions of the Independent Certifier under this Project Agreement. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days' notice to the

Independent Certifier. If such notice is given, then, pursuant to Section 23.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

23.5 Cooperation

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and both Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

23.6 Payment of Independent Certifier

- (a) Project Co and HMQ shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.

23.7 Replacement

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within 5 Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
 - (i) each Party shall, within 5 Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
 - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and
 - (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

24. COMMISSIONING AND COMPLETION

24.1 Commissioning Activities

- (a) Project Co shall perform all Project Co Commissioning, and shall facilitate the performance of all HMQ Commissioning, pursuant to the Final Commissioning Program.
- (b) Project Co acknowledges and agrees that it will commission those portions of the Facility affected by the Post Games Works again after the completion of the Post Games Works and will complete the Project Co PGW Commissioning in accordance with Schedule 32 – Post Games Works.

24.2 Final Commissioning Program

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect of the Project Co Commissioning and the HMQ Commissioning and shall provide a copy thereof to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative not less than 365 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall:
 - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co Commissioning shall be completed to achieve:
 - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
 - (B) Final Completion on or before the Scheduled Final Completion Date;
 - (ii) describe the requirements, and the timing and sequence of such requirements, of the HMQ Commissioning activities;
 - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
 - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on HMQ than those set out in the Outline Commissioning Program, unless otherwise agreed to by HMQ;
 - (v) include the names of the individuals or companies proposed to perform all Project Co Commissioning;

- (vi) include a schedule of each of the Project Co Commissioning Tests and the HMQ Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
 - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning and the HMQ Commissioning;
 - (viii) provide for the re-verification of systems following the HMQ Commissioning; and
 - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law.
- (c) HMQ shall provide Project Co with comments on the draft Final Commissioning Program in accordance with Schedule 10 – Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent required by Schedule 10 – Review Procedure within 30 days of receipt of any comments from HMQ.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program.

24.3 Commencement of Project Co Commissioning

- (a) Project Co shall give 30 days' written notice to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative of the proposed commencement of the Project Co Commissioning.
- (b) Project Co shall give at least 5 Business Days' notice to, and shall invite, the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative to witness, and to comment on, each aspect of the Project Co Commissioning. Project Co shall, together with such notice, provide all information that the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative may reasonably require in relation thereto, including:
- (i) tests proposed;
 - (ii) test methodology; and
 - (iii) expected test results.

24.4 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Substantial Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the "**Substantial Completion Notice**") upon the satisfaction of all requirements for Substantial Completion, which Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied.
- (c) HMQ shall, within 5 Business Days after receipt of the Substantial Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Substantial Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 24.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, to determine whether any Minor Deficiencies exist, and to issue to HMQ and to Project Co either:
 - (i) the Substantial Completion Certificate, setting out in such certificate the Substantial Completion Date and the Minor Deficiencies List (if applicable) in accordance with Section 24.8; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.4(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Substantial Completion Notice and Sections 24.4(c) to (e), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.

- (f) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date, and a Dispute in relation to the Substantial Completion Payment Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Schedule 27 – Dispute Resolution Procedure.
- (g) Notwithstanding that it is a condition of Substantial Completion that TO2015 has received all Sports Governing Authority Certification(s), if Project Co,
 - (i) has provided the Field of Play Surveys in accordance with Section 24.5(b);
 - (ii) has otherwise met all other requirements for Substantial Completion; and
 - (iii) allowed access to the Facility in accordance with Section 20.1 for the purposes of any required inspections performed by HMQ, TO2015, City or UofT in conjunction with a Sports Governing Authority,

then HMQ shall be obliged to waive the requirement for the delivery of the Sports Governing Authority Certification(s) as a condition of Substantial Completion.

24.5 Operation and Maintenance Manuals and Field of Play Surveys

- (a) Project Co shall prepare and deliver to HMQ draft copies of all necessary operation and maintenance manuals for the Facility no later than 30 days prior to the Substantial Completion Date.
- (b) Project Co shall prepare and deliver to HMQ draft copies of the Field of Play Surveys at least 30 days prior to the Substantial Completion Date and it shall be a condition of achieving Substantial Completion that Project Co has delivered Field of Play Surveys in a form that complies with the Output Specifications and Sports Governing Authority Certification as determined by the Independent Certifier.

24.6 HMQ Commissioning

- (a) The Parties acknowledge that the HMQ Commissioning shall be performed both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall give HMQ full access to the Site, the Facility and all relevant parts thereof at such times as may be set out in the Final Commissioning Program to enable HMQ to

undertake the HMQ Commissioning in accordance with the Final Commissioning Program. HMQ shall comply, and shall ensure that all HMQ Parties comply, with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Works in performing the HMQ Commissioning.

- (b) HMQ acknowledges that, during the HMQ Commissioning Period, Project Co and each Subcontractor will be active in the Facility in both the rectification of Minor Deficiencies and the completion of Project Co Commissioning, and HMQ shall take commercially reasonable steps to allow such activities to proceed in accordance with the Final Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the HMQ Commissioning Period, Project Co and each Subcontractor shall cooperate with HMQ and all HMQ Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the HMQ Commissioning activities are able to be completed in the timeframe for completion set out in the Final Commissioning Program.

24.7 Countdown Notice

- (a) Project Co shall deliver a notice (the “**Countdown Notice**”) to HMQ and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Substantial Completion Date) on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).
- (b) The Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 90 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.
- (c) Project Co acknowledges and agrees that HMQ requires a minimum of 90 days’ notice prior to the Anticipated Substantial Completion Date to prepare for the HMQ Commissioning.
- (d) In accordance with Section 13.5(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of HMQ, in its sole discretion.

24.8 Minor Deficiencies

- (a) In the event that Minor Deficiencies exist when Project Co gives the Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and HMQ, shall prepare a list of all Minor Deficiencies (the “**Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies.

HMQ may withhold from the Substantial Completion Payment a holdback amount that is [REDACTED] of the amount estimated by the Independent Certifier for HMQ to complete and rectify all such Minor Deficiencies (the “**HMQ Holdback**”), which holdback shall be held in an interest bearing account.

- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of HMQ’s use and enjoyment of the Facility or disruption of the Works.
- (c) The Independent Certifier must prepare the Minor Deficiencies List in relation to the Substantial Completion Notice before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are such Minor Deficiencies.
- (d) HMQ may, in its sole discretion, waive any requirement for Substantial Completion, including with respect to Equipment, and the failure to meet any such requirement shall constitute a Minor Deficiency.

24.9 Rectification of Minor Deficiencies

- (a) Project Co shall, in consultation with the HMQ Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Works complete and rectify all Minor Deficiencies within 45 days of the issuance of the Minor Deficiencies List or such other period as the Independent Certifier may specify in the Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

24.10 Failure to Rectify Minor Deficiencies

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

HMQ may engage others to perform the work necessary to complete and rectify any such Minor Deficiencies, at the risk and cost of Project Co, and HMQ may deduct such cost from the HMQ Holdback and interest earned thereon.

- (b) Upon completion and rectification of each Minor Deficiency, HMQ shall release to Project Co the amount of the HMQ Holdback related to such Minor Deficiency. Upon completion and rectification of all Minor Deficiencies, HMQ shall release to Project Co the then remaining amount of the HMQ Holdback, together with all interest accrued thereon. Where HMQ exercises its rights pursuant to Section 24.10(a)(ii), if the cost of such completion and rectification exceeds the amount of the HMQ Holdback and interest, then Project Co shall reimburse HMQ for all such excess cost.

24.11 Final Completion Countdown Notice

- (a) Project Co shall deliver a notice (the “**Final Completion Countdown Notice**”) to HMQ and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Final Completion Date) on which Project Co anticipates that Final Completion will be achieved (the “**Anticipated Final Completion Date**”).
- (b) The Final Completion Countdown Notice shall be delivered not less than 60 days prior to the Anticipated Final Completion Date. If Project Co fails to deliver the Final Completion Countdown Notice not less than 60 days prior to the Scheduled Final Completion Date, the Anticipated Final Completion Date shall be deemed to be the same date as the Scheduled Final Completion Date.

24.12 [Intentionally Deleted]

24.13 [Intentionally Deleted]

24.14 [Intentionally Deleted]

24.15 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days’ notice prior to the date upon which Project Co anticipates all requirements for Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the “**Final Completion Notice**”) upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies, together with Project Co’s opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied. The Final Completion Notice shall also include the following documentation:

- (i) Project Co's written request for release of holdback, including a declaration that no written notices of lien arising from the performance of the Works have been received by it;
 - (ii) Project Co's Statutory Declaration CCDC 9A (2001);
 - (iii) Project Co's WSIB Certificate of Clearance; and
 - (iv) a written statement that the Works has been performed to the requirements of the Ancillary Documents, itemizing approved changes in the Works, the Independent Certifier's written instructions, and modifications required by Governmental Authorities.
- (c) HMQ shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 24.15(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, and to issue to HMQ and to Project Co either:
- (i) the Final Completion Certificate, setting out in such certificate the Final Completion Date; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.15(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 24.15(c) to (e), inclusive, shall be repeated until the Final Completion Certificate has been issued.

- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) For the purposes of the Final Completion Notice, any of the Minor Deficiencies which are items of minor work of a seasonal nature which cannot be completed prior to the Final Completion Date shall be identified in the Final Completion Notice, and shall be completed within the period identified in the Final Completion Notice.

24.16 Effect of Certificates/Use

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate, any taking over or use by HMQ of any part of the Facility under the terms of this Project Agreement, shall, in no way:
 - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List;
 - (ii) be construed as an approval by HMQ of the Works or the way in which they have been carried out; or
 - (iii) release Project Co from its obligation to carry out the Post Games Works.

24.17 Interim Payment Countdown Notice

- (a) For each of the First Interim Payment and Second Interim Payment, Project Co shall deliver a notice (the “**Interim Payment Countdown Notice**”) to HMQ and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the First Scheduled Interim Payment Date and the Second Scheduled Interim Payment Date, as applicable) on which Project Co anticipates that it will meet the Interim Payment Requirements for the First Interim Payment and the Second Interim Payment, respectively (each an “**Anticipated Interim Payment Date**”).
- (b) Each Interim Payment Countdown Notice shall be delivered no less than 45 days prior to the applicable Anticipated Interim Payment Date. If Project Co fails to deliver an Interim Payment Countdown Notice no less than 45 days prior to the First Scheduled Interim Payment Date or the Second Scheduled Interim Payment Date, the applicable Anticipated Interim Payment Date shall be deemed to be the same date as the First Scheduled Interim Payment Date or the Second Scheduled Interim Payment Date, as applicable.

- (c) Project Co acknowledges and agrees that HMQ requires a minimum of 45 days' notice prior to each Anticipated Interim Payment Date.

24.18 Certification of Interim Payment

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all Interim Payment Requirements for the First Interim Payment and the Second Interim Payment, as applicable, shall be satisfied. Project Co shall deliver a notice to the Independent Certifier and the HMQ Representative upon the satisfaction of all Interim Payment Requirements for the First Interim Payment and the Second Interim Payment, (each an "**Interim Payment Application**"), as applicable, which shall describe, in reasonable detail, the satisfaction of all the requirements for payment of the First Interim Payment and Second Interim Payment, as applicable, together with Project Co's opinion as to whether the conditions for payment of the First Interim Payment and Second Interim Payment, as applicable, have been satisfied. The Interim Payment Application shall include all construction progress reports relating to the applicable Interim Payment Requirements certified by the Lenders' Consultant. Project Co shall, and shall cause the Lenders' Consultant to, co-operate with the Independent Certifier to permit the Independent Certifier to verify the Lenders' Consultant's construction progress reports.
- (b) HMQ shall, within 5 Business Days after receipt of each Interim Payment Application, provide the Independent Certifier and Project Co with HMQ's opinion as to whether Project Co has satisfied all of the Interim Payment Requirements for the First Interim Payment and the Second Interim Payment, as applicable, and, if applicable, any reasons as to why it considers that Project Co has not satisfied all of the Interim Payment Requirements for the First Interim Payment and the Second Interim Payment.
- (c) Within 5 Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 24.18(b), the Parties shall cause the Independent Certifier to determine whether the Interim Payment Requirements for the First Interim Payment and the Second Interim Payment, as applicable, have been met, having regard to the opinions of both Project Co and HMQ, and to issue to HMQ and Project Co either:
 - (i) a notice that all Interim Payment Requirements for the First Interim Payment and the Second Interim Payment, as applicable, have been met; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the Interim Payment Requirements for the First Interim Payment and the Second Interim Payment, as applicable.
- (d) Where the Independent Certifier has issued a report in accordance with Section 24.18(c)(ii), Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with a detailed list indicating the rectification actions proposed for all matters raised in the report, together with the schedule for completion of all such rectification actions. Project Co shall perform all

such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Interim Payment Application and Sections 24.18(b) to (d), inclusive, shall be repeated until the Independent Certifier issues a notice pursuant to Section 24.18(c)(i).

24.19 Post Games Works Completion

- (a) All matters related to commissioning, substantial completion and final completion of the Post Game Works are dealt with in Schedule 32 – Post Games Works.
- (b) No later than 10 days prior to the Scheduled Substantial Completion Date, as security for Project Co's obligation to deliver the Post Games Works in accordance with this Project Agreement, Project Co shall deliver, or cause to be delivered, to HMQ the PGW Letter of Credit. HMQ shall be entitled to draw on the PGW Letter of Credit in accordance with Schedule 32 – Post Games Works.

25. HUMAN RESOURCES

25.1 Admittance of Personnel

- (a) HMQ shall have the right to refuse admittance to, or order the removal from the Site of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of HMQ, is likely to have an adverse effect on the performance of the Works or who, in the reasonable opinion of HMQ, is not a fit and proper person to be at the Site for any reason, including a failure to comply with any policy or any immediate obligation of HMQ to ensure the safety and well being of persons at the Site.
- (b) If at any time during the period during which the Pan American Games or Para Pan American Games is ongoing or TO2015 has exclusive tenancy on the Site or Facility personnel of Project Co or any Project Co Party requires access to the Site or Facility, such personnel must comply with the security requirements of TO2015 at Project Co's expense.

25.2 Confirmation of Action

- (a) Any action taken under Section 25.1 shall promptly be confirmed by HMQ to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

25.3 Notification of Personnel

- (a) If and when so requested by HMQ, Project Co shall, within 3 Business Days of such request, provide a list of the names of all persons it expects may require admission, in connection with this Project Agreement, to any premises occupied by HMQ, specifying

the capacities in which those persons are concerned with this Project Agreement and, subject to Applicable Law, giving such other particulars as HMQ may reasonably require.

25.4 Finality as to Admission

- (a) Any decision of HMQ made pursuant to Section 25.1 shall be final and conclusive.

25.5 [Intentionally Deleted]

25.6 [Intentionally Deleted]

25.7 [Intentionally Deleted]

25.8 Staff Competency

- (a) Project Co shall ensure that:
 - (i) all employees receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements and Authority Requirements; and
 - (ii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of employees to ensure the proper performance of this Project Agreement.

25.9 Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party to, ensure that all potential employees (including, for greater certainty, permanent, temporary, full-time and part-time employees) and persons who may otherwise perform any of the Works:
 - (i) are questioned concerning their Relevant Convictions; and
 - (ii) are required to complete and deliver to Project Co a criminal records search form.

25.10 Effect of Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party to, ensure that no person who discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the completion of a criminal records search, in either case of which Project Co or a Project Co Party is aware or ought to be aware, is allowed access to the Site to perform any of the Works, without the prior written consent of HMQ, in its sole discretion.

25.11 Notification of Convictions

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that HMQ is kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Works who, subsequent to the commencement of such employment or engagement, receives a Relevant Conviction of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party. Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to HMQ as contemplated in this Section 25.

25.12 Disciplinary Action

- (a) HMQ, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Site or at work is otherwise considered by HMQ to be undesirable or to constitute a threat to the health and/or safety of any of the users of the Site. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise HMQ in writing of the outcome of any disciplinary action taken in respect of such person.

25.13 Human Resources Policies

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all relevant matters relating to the Works (including, for example, health and safety). Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirements and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are directly issued to HMQ and all Project Co Parties.

25.14 Management Organizations

- (a) Project Co shall provide, and shall ensure that all Project Co Parties provide, to HMQ, as required to keep such information current, the names of the management teams responsible for the provision of the Works.

26. RECORDS, INFORMATION AND AUDIT

26.1 Records Provisions

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

26.2 Information and General Audit Rights

- (a) Project Co shall provide, and shall cause each Subcontractor to provide, to HMQ all information, reports, documents, records and the like, including as referred to in Schedule 26 – Record Provisions, in the possession of, or available to, Project Co as HMQ may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to HMQ, and shall require each Subcontractor, including the Construction Contractor to provide, to HMQ (at HMQ’s reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 26.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as HMQ may reasonably require from time to time to enable HMQ to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Site, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide HMQ with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Works, or the Site, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify HMQ of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co’s knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to HMQ hereunder, shall be subject and open to inspection and audit by HMQ at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co’s normal places of business unless HMQ and Project Co otherwise agree. HMQ shall also have the right to monitor and audit the performance of any and all parts of the Works wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of HMQ monitoring and auditing such parts of the Works, including providing them with access and copies (at HMQ’s reasonable cost) of all relevant information, reports, documents and records pertaining to

the performance of such parts of the Works. Except as otherwise provided herein, all of HMQ's costs for the inspections, audits and monitoring shall be borne by HMQ.

- (f) In conducting an audit of Project Co under Section 26.2(e) or as otherwise provided under this Project Agreement, HMQ shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at HMQ's reasonable cost) of all books and records of Project Co required to be provided to or available to HMQ hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with HMQ and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with HMQ all matters arising from such audits, including the refunding of monies to HMQ where applicable. At the reasonable request of HMQ's auditors, Project Co shall provide such information, reports, documents and records as HMQ's auditors may reasonably require, other than Sensitive Information.
- (g) HMQ's rights pursuant to this Section 26.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) HMQ's rights pursuant to this Section 26.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

26.3 Lenders' Consultant Reports

- (a) Project Co shall cause the Lenders' Agent to cause, in accordance with Section 5.2 of Schedule 4 – Lenders' Direct Agreement, the Lenders' Consultant to provide HMQ a copy of any written assessment or report prepared by the Lenders' Consultant in relation to the status or progress of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent and/or Project Co.

26.4 Diversity Initiatives Report

- (a) Project Co shall provide, no later than 30 days prior to Substantial Completion, a report to HMQ detailing the implementation of Project Co's diversity plan relating to the Project, highlighting the outcomes of the various diversity-related initiatives in its diversity plan. In particular, Project Co shall provide evidence of meaningful participation from the TO2015 designated groups. Project Co shall also provide any supplemental information relating to diversity initiatives requested by HMQ.

27. COMMUNICATIONS

27.1 Communications Protocol

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

28. CHANGES IN LAW

28.1 Performance after Change in Law

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

28.2 Works Change in Law

- (a) On the occurrence of a Works Change in Law:
- (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) HMQ shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) HMQ shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
 - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Variation Procedure.

28.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Works so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 28.3.
- (b) On the occurrence of a Relevant Change in Law:
 - (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) HMQ shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) HMQ shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
 - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps

- to minimize any increase in costs arising from such Relevant Change in Law; and
- (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change of Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
- (F) any entitlement to compensation payable shall be in accordance with this Section 28.3, and any calculation of compensation shall take into consideration, inter alia:
- (I) any failure by a Party to comply with Section 28.3(b)(iii);
 - (II) the extent to which a Party has been, or shall be, compensated in respect of such Change in Law as a result of any indexation or adjustment of the Guaranteed Price under this Project Agreement;
 - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 30 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 28.3, and Section 31 shall be construed accordingly.

29. VARIATIONS

29.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of HMQ to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the

whole or any part of the Works, including in relation to the whole or any part of the Works.

- (c) Without limiting Project Co's obligations pursuant to Section 11.19(a) and Schedule 22 – Variation Procedure, Project Co shall include in each Subcontract, or shall otherwise cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations.

29.2 Innovation and Value Engineering

- (a) Project Co acknowledges that HMQ at all times desires to reduce the overall cost to HMQ of the Project, and Project Co agrees to cooperate, explore and work with HMQ in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by notice to HMQ.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
 - (i) any Variation Enquiry initiated by HMQ; or
 - (ii) any Variation resulting from a Change in Law.
- (d) The Innovation Proposal must:
 - (i) set out sufficient detail to enable HMQ to evaluate the Innovation Proposal in full;
 - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
 - (iii) request HMQ to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes HMQ requires as a result;
 - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and HMQ;
 - (v) indicate if there are any dates by which a decision by HMQ must be made;
 - (vi) indicate the capital cost of the Innovation Proposal, including the cost of financing; and

- (vii) include such other information and documentation as may be reasonably requested by HMQ to fully evaluate and consider the Innovation Proposal.
- (e) HMQ shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
 - (i) the Innovation Proposal affects the quality of the Works, the Facility, or the likelihood of successful completion of the Works;
 - (ii) the Innovation Proposal will benefit or interfere with the efficient operation of the Facility;
 - (iii) the Innovation Proposal will interfere with the relationship between HMQ and third parties;
 - (iv) the financial strength of Project Co is sufficient to deliver the changed Works, as applicable;
 - (v) the residual value of the Site or Facility is affected;
 - (vi) the Innovation Proposal materially affects the risks or costs to which HMQ is exposed; or
 - (vii) any other matter HMQ considers relevant.
- (f) HMQ may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) HMQ may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If HMQ accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of each Subcontractor to decrease, the net savings in the costs of Project Co and/or each Subcontractor will be shared equally by Project Co and HMQ, and HMQ's share of the net savings shall, if the Parties agree, be reflected in a lump sum payment.
- (j) If an Innovation Proposal causes or will cause the costs of HMQ to decrease, the net savings in the costs of HMQ will be shared:

- (i) equally by Project Co and HMQ for the first 5 years following the implementation of the Innovation Proposal; and
- (ii) thereafter, HMQ shall be entitled to the full benefit of the net savings in costs (if applicable),

and Project Co's share of the net savings shall be reflected in a lump sum payment.

30. DELAY EVENTS

30.1 Definition

- (a) For the purposes of this Project Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that it causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date:
 - (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
 - (ii) any breach by HMQ of any of HMQ's obligations under this Project Agreement (including any delay by HMQ in giving access to the Site pursuant to Section 16.1, any obstruction of the rights afforded to Project Co under Section 16.1, any delay by HMQ in carrying out its obligations set forth in Section 21.9(c), or any delay by HMQ in carrying out its obligations set forth in Schedule 10 – Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) an opening up of the Works pursuant to Section 20.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by HMQ in respect of the same or a similar component of the Works or subset of the Works;
 - (iv) a requirement pursuant to Sections 18.2(b) or 18.2(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
 - (v) a requirement pursuant to Sections 18.3(b) or 18.3(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary

value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;

- (vi) subject to the provisions of Section 11.21, the execution of Additional Works on the Site by Additional Contractors;
- (vii) a requirement pursuant to Section 11.1 of Schedule 27 – Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of HMQ during the pendency of a Dispute, which Dispute is subsequently determined in Project Co’s favour;
- (viii) a Relief Event;
- (ix) an event of Force Majeure;
- (x) a Relevant Change in Law; or
- (xi) a stop work order issued by a Governmental Authority, provided that such order was not issued as a result of a Relief Event, an event of Force Majeure or an act, omission or fault of Project Co or a Project Co Party.

30.2 Consequences of a Delay Event

- (a) Project Co shall provide written notice to the HMQ Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of a Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the HMQ Representative and the Independent Certifier which shall include:
 - (i) a statement of which Delay Event the claim is based upon;
 - (ii) details of the circumstances from which the Delay Event arises;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date, as applicable; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or

support Project Co's claim, Project Co shall submit further particulars based on such information to the HMQ Representative and the Independent Certifier.

- (c) The HMQ Representative shall, after receipt of written details under Section 30.2(a), or of further particulars under Section 30.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the HMQ Representative may reasonably consider necessary. Project Co shall afford the HMQ Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Section 30, the HMQ Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix (A) a revised Scheduled Substantial Completion Date; or (B) a revised Scheduled Final Completion Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:
 - (i) the date of receipt by the HMQ Representative of Project Co's notice given in accordance with Section 30.2(a) and the date of receipt of any further particulars (if such are required under Section 30.2(c)), whichever is later; and
 - (ii) the date of receipt by the HMQ Representative of any supplemental information supplied by Project Co in accordance with Section 30.2(b) and the date of receipt of any further particulars (if such are required under Section 30.2(c)), whichever is later.
- (e) If:
 - (i) the HMQ Representative declines to fix (A) a revised Scheduled Substantial Completion Date; or (B) a revised Scheduled Final Completion Date, as applicable;
 - (ii) Project Co considers that a different(A) Scheduled Substantial Completion Date; or (B) Scheduled Final Completion Date should be fixed; or
 - (iii) there is a dispute as to whether a Delay Event has occurred,

then Project Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

- (f) If the Works should be behind schedule for a reason other than a Delay Event, or if a Project Co Party delays the progress of any portion of the Works necessary to complete the Works on schedule, Project Co shall use all reasonable measures to bring the Works back on schedule. Project Co shall exercise all means within its discretion, such as directing any Project Co Party that is creating delays to increase their labour forces and equipment, to improve the organization and expediting of the Works, or to work overtime

as may be necessary. Project Co shall provide any additional supervision, coordination and expediting, including overtime by its own personnel as may be required to achieve this end. The costs and expenses incurred by the use of such measures and overtime shall be borne by Project Co and/or the Project Co Parties and there shall be no adjustment to the Guaranteed Price as a result of such costs and expenses and for clarity, no extension of the Scheduled Substantial Completion Date.

- (g) Where there are concurrent delays, some of which are caused by HMQ or others for whom HMQ is responsible, and some of which are caused by Project Co or others for whom Project Co is responsible, Project Co shall not be entitled to either an extension in the Scheduled Substantial Completion Date or additional compensation to the extent of the concurrent delays. Concurrent delays are those that are caused by two or more independent events which affect the Scheduled Substantial Completion Date where the time period over which such delays occur overlap in time, but only for the duration of the overlap.
- (h) HMQ shall provide Project Co with access to and use of the Site as required pursuant to Article 16 of this Project Agreement in a manner consistent with the Works Schedule and in accordance with the notification requirements and restrictions set out in the Project Agreement, provided that Project Co agrees that the inability of HMQ to provide Project Co with access to an area for construction activities not on the critical path will not result in a claim by Project Co for a change in the Guaranteed Price or the Scheduled Substantial Completion Date.
- (i) For greater certainty, no extension of the time resulting from a Delay Event shall be allowed, unless the Delay Event on which the claim is based extends the attainment of the Scheduled Substantial Completion Date or Scheduled Final Completion Date, and in no case shall the extension of time be more than the necessary extension of the critical path as a result of the Delay Event.
- (j) For clarity, Project Co shall not be entitled to any extension of time resulting from a Delay Event referred to in Section 30.1(a)(ii) solely as a result of a delay in achieving the Interim Payment Requirements for the applicable Interim Payment.

30.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Delay Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
 - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and

- (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 30.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 30.

31. COMPENSATION EVENTS

31.1 Definition

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 30.1(a)(ii), 30.1(a)(iii), 30.1(a)(iv), 30.1(a)(v), 30.1(a)(vi), 30.1(a)(vii) and 30.1(a)(xi) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.

31.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 31. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
 - (i) Schedule 22 – Variation Procedure, in the case of a Delay Event referred to in Section 30.1(a)(i);
 - (ii) Section 33, in the case of a Delay Event referred to in Section 30.1(a)(ix);
 - (iii) Section 32, in the case of a Delay Event referred to in Section 30.1(a)(viii); and
 - (iv) Section 28, in the case of a Delay Event referred to in Section 30.1(a)(x).
- (b) Subject to Sections 31.3 and 31.4, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better or no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by HMQ to Project Co. Project Co shall promptly provide the HMQ Representative with any information the HMQ Representative may require in order to determine the amount of such compensation.
- (c) If HMQ is required to compensate Project Co pursuant to this Section 31.2, then HMQ may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably.

- (d) Where an event listed in Section 30.1(a) caused Project Co to be delayed in achieving the Interim Payment Requirements for either Interim Payment, and to the extent that such failure was not caused, or contributed to, by Project Co or any Project Co Party,
 - (i) in the case of the First Interim Payment, HMQ shall pay an amount equal to the increase in the Cost of the Financing in respect of the First Interim Payment arising from the period of delay, provided Project Co has complied with its obligations pursuant to Section 31.3;
 - (ii) in the case of the Second Interim Payment, HMQ shall pay an amount equal to the increase in the Cost of the Financing in respect of the Second Interim Payment arising from the period of delay, provided Project Co has complied with its obligations pursuant to Section 31.3;
 - (iii) other than as provided in Section 31.2(d)(i) and (ii), all compensation owed to Project Co arising from such event listed in Section 30.1(a) shall be calculated as of Substantial Completion in accordance with Section 31.2(d) and for clarity, Project Co is required to continue to mitigate its damages until Substantial Completion in accordance with Section 31.3.
- (e) Any amount payable by HMQ pursuant to Section 31.2(d) shall be payable on the Substantial Completion Payment Date.

31.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 31 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 31.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 31.

31.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 31 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

32. RELIEF EVENTS

32.1 Definition

- (a) For the purposes of this Project Agreement, “**Relief Event**” means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
- (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
 - (ii) failure by any Utility Company, local authority or other like body to perform works or provide services;
 - (iii) accidental loss or damage to the Works and/or the Facility or any roads servicing the Site;
 - (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
 - (v) blockade or embargo falling short of Force Majeure;
 - (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the construction industry (or a significant sector of that industry) in the Province of Ontario; or
 - (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Works,

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and/or (i) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co Party and (ii) in the case of HMQ claiming relief, as a result of any act or omission of any HMQ Party.

- (b) For clarity, none of the circumstances listed in Section 44.1(f)(i) through (v) for which Project Co is required to indemnify HMQ, City, UofT and TO2015 shall constitute a Relief Event for the purposes of this Project Agreement.

32.2 Consequences of a Relief Event

- (a) Subject to Section 32.3, no right of termination, other than either Party’s right to terminate this Project Agreement pursuant to Section 36.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement, but only to the extent that such failure to perform is caused by the

occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event).

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 30.1(a)(viii):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 30; and
 - (ii) in respect of a Relief Event referred to in Section 32.1(a)(v), 32.1(a)(vi) or 32.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the HMQ Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, HMQ shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Senior Lenders up to and including such date, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the Delay Event, would have been paid by HMQ to Project Co.
- (c) If a Relief Event occurs, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 32.2(b)(ii) and 38.
- (d) Subject to Section 38, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 32.

32.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 32.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 32.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the

Party to perform, the action being taken in accordance with Section 32.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.

- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 32.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

32.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 32 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

33. FORCE MAJEURE

33.1 Definition

- (a) For the purposes of this Project Agreement, “**Force Majeure**” means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
 - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
 - (ii) nuclear or radioactive contamination of the Works, the Facility and/or the Site, unless Project Co or any Project Co Party is the source or cause of the contamination;
 - (iii) chemical or biological contamination of the Works, the Facility and/or the Site from any event referred to in Section 33.1(a)(i);
 - (iv) pressure waves caused by devices traveling at supersonic speeds; or
 - (v) the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

33.2 Consequences of Force Majeure

- (a) Subject to Section 33.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 30.1(a)(ix):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 30; and
 - (ii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the HMQ Default Termination Sum or Non-Default Termination Sum (or part thereof) in accordance with Schedule 23 – Compensation on Termination, HMQ shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would have been paid by HMQ to Project Co.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 33.2(b)(ii) and 38.
- (d) Subject to Section 38, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 33.

33.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform. Such efforts of mitigation and remediation shall include efforts to minimize any negative impact of the event of Force Majeure on the Works Schedule.
- (b) To the extent that the Party claiming relief does not comply with its obligations under Section 33.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 33.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 33.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 33.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

33.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 33 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

33.5 Modifications

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 – Dispute Resolution Procedure shall not apply to a failure of HMQ and Project Co to reach agreement pursuant to this Section 33.5.

34. PROJECT CO DEFAULT

34.1 Project Co Events of Default

- (a) For the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
 - (i) the occurrence of any of the following events other than as a consequence of a breach by HMQ of its payment obligations hereunder:
 - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or

a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co's assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, HMQ, an HMQ Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Works or of the Stakeholder Operations (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 34.1(a)(i);

- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
- (C) if any execution, sequestration, extent or other process of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder;
or
- (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 34.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 34.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;

- (ii) Project Co failing to achieve Substantial Completion within 90 days after the Scheduled Substantial Completion Date (the “**Longstop Date**”);
- (iii) Project Co either:
 - (A) failing to deliver a rectification plan under Section 13.4(a)(iii)(B);
 - (B) delivering a rectification plan under Section 13.4(a)(iii)(B) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
 - (C) delivering a rectification plan under Section 13.4(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 13.4(a)(iii)(B)(III);
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Works or the Third Party Operations, or that may compromise HMQ’s reputation or integrity, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from HMQ;
- (v) Project Co committing a breach of Sections 40 or 41 or a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in Sections 34.1(a)(i) to (iv) inclusive or 34.1(a)(vi) to (xv) inclusive) other than where such breach is a consequence of a breach by HMQ of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
 - (A) Project Co shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on HMQ and the performance of the Stakeholder Operations;
 - (II) put forward, within 5 Business Days of receipt of notice of such breach from HMQ, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and

- (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (B) upon Project Co failing to comply with any of the provisions of Section 34.1(a)(v)(A):
 - (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on HMQ and the performance of the Stakeholder Operations;
 - (II) Project Co shall, within 3 Business Days after notice from HMQ, submit a plan and schedule, which HMQ shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to HMQ, in its sole discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
 - (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 34.1(a)(v)(B), or HMQ, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;
- (vi) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement;
- (vii) Project Co failing to comply with Sections 47.1 or 47.3;
- (viii) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 47.4;
- (ix) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through HMQ) within 45 days of the earlier of:
 - (A) the registration of such Encumbrance against title to the Site or any part thereof; and
 - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;

- (x) Project Co failing to pay any sum or sums due to HMQ under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 – Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) [REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from HMQ;
- (xi) Project Co failing to comply with Section 48;
- (xii) Project Co failing to comply with Section 8.3;
- (xiii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement, and:
 - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xiv) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xv) Project Co failing to comply with Section 25.8; or
- (xvi) A default by Project Co or any Project Co Party under any of the Ancillary Documents following the expiry of any applicable notice and cure periods thereunder.

34.2 Notification of Occurrence

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify HMQ of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time, giving of notice, determination of any condition, or otherwise, to constitute or give rise to a Project Co Event of Default.

34.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after HMQ becomes aware of a Project Co Event of Default, and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 – Dispute Resolution Procedure that a Project Co Event of

Default has occurred, HMQ may, subject to Section 34.4, terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

34.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 34.1(a)(i)(B), 34.1(a)(i)(C), 34.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 34.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 34.1(a)(i)(B) or 34.1(a)(i)(C)), 34.1(a)(iii), 34.1(a)(iv), 34.1(a)(vi), 34.1(a)(vii), 34.1(a)(viii), (where the Project Co Event of Default referred to in Section 34.1(a)(viii) is capable of being remedied), 34.1(a)(x), 34.1(a)(xii), 34.1(a)(xiii) (where the Project Co Event of Default referred to in Section 34.1(a)(xiii) is not in respect of insurance), 34.1(a)(xiv), or 34.1(a)(xv), HMQ shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice, and Project Co shall:
- (i) within 5 Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to HMQ, acting reasonably; and
 - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 34.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the notice of default, HMQ shall have 5 Business Days from receipt of the same within which to notify Project Co that HMQ does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which HMQ shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 34.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on HMQ; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 34.4(a)(i); or

- (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 34.4(a) and (b); or
- (iv) where Project Co puts forward a plan and schedule pursuant to Section 34.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then HMQ may terminate this Project Agreement in its entirety by written notice with immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

- (d) Notwithstanding that HMQ may give the notice referred to in Section 34.4(a), and without prejudice to the other rights of HMQ in this Section 34.4, at any time during which a Project Co Event of Default is continuing, HMQ may, at Project Co's risk and expense, take such steps as HMQ considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.
- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 34.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and HMQ shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

34.5 HMQ's Costs

- (a) Project Co shall reimburse HMQ for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by HMQ in exercising its rights under this Section 34, including any relevant increased administrative expenses. HMQ shall take commercially reasonable steps to mitigate such costs.

34.6 No other Rights to Terminate

- (a) HMQ shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 34 and 36.

35. HMQ DEFAULT

35.1 HMQ Events of Default

- (a) For the purposes of this Project Agreement, "**HMQ Event of Default**" means any one or more of the following events or circumstances:

- (i) HMQ failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by HMQ in accordance with Schedule 27 – Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) [REDACTED] (index linked) and such failure continues for a period of 20 Business Days from receipt by HMQ of a notice of non-payment from or on behalf of Project Co;
- (ii) HMQ committing a material breach of its obligations under Section 16 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or
- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days (for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”).

35.2 Project Co’s Options

- (a) On the occurrence of an HMQ Event of Default and while the same is continuing, Project Co may give notice to HMQ of the occurrence of such HMQ Event of Default, which notice will specify the details thereof, and, at Project Co’s option and without prejudice to its other rights and remedies under this Project Agreement, may:
 - (i) suspend performance of the Works until such time as HMQ has remedied such HMQ Event of Default; or
 - (ii) if such HMQ Event of Default has not been remedied within 30 days of receipt by HMQ of notice of the occurrence of such HMQ Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.

35.3 Project Co’s Costs

- (a) HMQ shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 35, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

35.4 No Other Rights to Terminate

- (a) Project Co shall have no right or entitlement to terminate this Project Agreement, nor to accept any repudiation of this Project Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Project Agreement.

36. RELIEF EVENT AND NON DEFAULT TERMINATION

36.1 Termination for Relief Event

- (a) If a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 32.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

36.2 Termination for Force Majeure

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 33.5 within 180 days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

36.3 Termination for Convenience

- (a) HMQ shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days written notice to Project Co.
- (b) In the event of notice being given by HMQ in accordance with this Section 36.3, HMQ shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works where such Works have not yet been commenced.

36.4 Automatic Expiry on Expiry Date

- (a) This Project Agreement shall terminate automatically on the Expiry Date.
- (b) Project Co shall not be entitled to any compensation due to termination of this Project Agreement on expiry of the Project Term on the Expiry Date.

37. EFFECT OF TERMINATION

37.1 Termination

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination or termination on the Expiry Date pursuant to Section 36.4, this Section 37 shall apply in respect of such termination.

37.2 Continued Effect – No Waiver

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Project Agreement, including any right to terminate this Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

37.3 Continuing Performance

- (a) Subject to any exercise by HMQ of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination) notwithstanding the giving of any notice of default or notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 37.

37.4 Effect of Notice of Termination

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 36.4:
- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to HMQ as shall not already have been transferred to HMQ pursuant to Section 43.1, Project Co shall transfer to, and there shall vest in, HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), such part of the Works as shall have been constructed and such items of the Equipment as shall have been procured by Project Co, and, if HMQ so elects:
- (A) all plant, equipment and materials (other than those referred to in Section 37.4(a)(i)(B)) on or near to the Site shall remain available to HMQ for the purposes of completing the Works; and
- (B) all construction plant and equipment shall remain available to HMQ for the purposes of completing the Works, subject to payment by HMQ of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to HMQ (to the extent such items have not already been delivered to HMQ) one

complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Facility;

- (iii) in so far as title shall not have already passed to HMQ pursuant to Section 43.1 or Section 37.4(a)(i), Project Co shall hand over to, and there shall vest in, HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), the Facility together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Works and all facilities and equipment, including the Equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to HMQ, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by HMQ in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
- (iv) if HMQ so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Design and Construction Contract), any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Works or to protect the interests of Project Co, shall be novated or assigned to HMQ or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with the Construction Contractor shall be made by HMQ pursuant to, and subject to, the terms of the Assignable Subcontract Agreement for Design and Construction Contract;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if HMQ so elects, execute such sale) to HMQ at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 – Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Facility, and reasonably required by HMQ in connection with the operation of the Facility;
- (vi) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to HMQ for the benefit of City and UofT, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment

used or made available by Project Co under this Project Agreement and included in the Facility; and

- (vii) Project Co shall deliver to HMQ all information, reports, documents, records and the like referred to in Section 26, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to HMQ).

37.5 Ownership of Information

- (a) Subject to Section 39, all information obtained by Project Co, including the As Built Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Works accumulated over the course of the Project Term shall be the property of HMQ, City and UofT and upon termination of this Project Agreement shall be provided or returned to HMQ, as applicable, in electronic format acceptable to HMQ, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

37.6 Provision in Subcontracts

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that HMQ shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 37.

37.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall:
 - (i) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by HMQ pursuant to Section 37.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from HMQ requiring it to do so, HMQ may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
 - (ii) forthwith deliver to the HMQ Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Facility; and

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

37.8 Termination upon Aforesaid Transfer

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

37.9 Survival

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
 - (i) all representations, warranties and indemnities under this Project Agreement; and
 - (ii) Sections 1.2, 1.3, 4, 6, 7, 8, 11.23 to 11.25, 17.2, 18.1, 18.3(a), 23.6, 24.16, 26, 34.5, 35.3, 36.4, 37, 38, 39 (with the exception of 39.4(b)), 40, 41, 43, 44, 45, 46, 48.3, 49.1, 51.4, 51.8, 51.9, 51.10, 51.11 and 51.12 of this Project Agreement, Schedule 23 – Compensation on Termination, Schedule 24 – Financial Model, Sections 1.2 to 1.8 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Schedule 28B – Warranty Letter of Credit, Schedule 28C – Post Games Works Letter of Credit, Sections 3.12, 5 and 6 of Schedule 32 – Post Games Works and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 36.4.

38. COMPENSATION ON TERMINATION

38.1 Compensation on Termination

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 23 – Compensation on Termination shall apply and HMQ shall pay Project Co any applicable compensation on termination.

38.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 38.2(b), any compensation paid pursuant to this Section 38, including pursuant to Schedule 23 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and HMQ, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and HMQ shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 38.2(a) shall be without prejudice to:
 - (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 4.13 or taken into account pursuant to Schedule 23 - Compensation on Termination in determining or agreeing upon the HMQ Default Termination Sum, Non-Default Termination Sum, Project Co Default Termination Sum or any other termination sum, as the case may be;
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 37.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
 - (iii) any amount owing to HMQ in relation to:
 - (A) taxes or tax withholdings, including workers' compensation levies;
 - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
 - (C) any order made by a court under the Civil Remedies Act, S.O. 2001, c.28; and
 - (D) any fraud or other criminal offence committed against HMQ.

39. INTELLECTUAL PROPERTY

39.1 Representation and Warranty

- (a) Project Co represents, warrants and covenants to HMQ and agrees that:
 - (i) Project Co is and shall be the sole and exclusive owner of the Project Data or has and shall have the right to provide the licences granted to HMQ herein;

- (ii) Project Co has and shall have the right to provide the assignments granted to HMQ herein; and
- (iii) the Project Data and the Intellectual Property Rights and their use by City, UofT and TO2015 and HMQ Parties do not and shall not infringe, and are not and shall not be a misappropriation of, any third party Intellectual Property Rights, and, as of the date of this Project Agreement, Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the Project Data or the Intellectual Property Rights.

39.2 Delivery of Project Data and Intellectual Property Rights

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, HMQ free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to HMQ on the aforesaid terms of this Section 39.2(a), for any and all of the Approved Purposes.

39.3 Licence of Project Data and Intellectual Property Rights

- (a) Project Co:
 - (i) hereby grants to HMQ, City, UofT and TO2015 an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
 - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor, obtain the grant of an equivalent licence to that referred to in Section 39.3(a)(i), provided that such licence may, in respect of the Construction Contractor's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the Design and Construction Contract; and
 - (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor), obtain the grant of an equivalent licence to that referred to in Section 39.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.
- (b) In this Section 39.3 and 39.5(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

39.4 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and HMQ pursuant to this Project Agreement or in relation to the Facility, the Site or Works (the “**Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that HMQ, City, UofT and TO2015 shall be the exclusive owners of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of HMQ, execute such further agreements and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) HMQ hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to HMQ.

39.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 39 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of HMQ, City and UofT, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable HMQ, City and UofT or its or their nominee to access and otherwise use (as such term is defined in Section 39.3(b), subject to the payment by HMQ, City and UofT, as applicable, of any relevant fee) such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 39.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 39 in accordance with Good Industry Practice. Project Co shall submit to the HMQ Representative Project Co’s proposals for the back up and storage in safe custody of such data, materials and documents and HMQ shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the HMQ Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the HMQ Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 39.5(b) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

39.6 Claims

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

39.7 HMQ Trade-Marks

- (a) Project Co shall not use any HMQ Trade-Marks or the Trade-Marks of a Government Entity, City, UofT or TO2015 without obtaining a trade-mark licence on terms and conditions satisfactory to HMQ, the relevant Government Entity, City, UofT or TO2015, as applicable, in their sole discretion.

39.8 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 39 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

39.9 Government Use of Documents

- (a) The Parties hereby disclaim any right, title or interest of any nature whatsoever they each may have in or to this Project Agreement that might prohibit or otherwise interfere with a Government Entity's ability to use this Project Agreement in any manner desired by such Government Entity.
- (b) Each of the Parties hereby consents to the use by each Government Entity of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by HMQ (in consultation with Project Co) of any information supplied in confidence to City, UofT, TO2015 or a Government Entity by either Party in circumstances where disclosure may be refused under FIPPA, MFIPPA, or ATI.

40. CONFIDENTIALITY

40.1 Disclosure

- (a) Subject to Sections 40.1(b), 40.1(c) and 40.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, HMQ has a right to disclose or publish (including on websites) this Project Agreement,

any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as HMQ, in its sole discretion, may consider appropriate. In exercising its discretion, HMQ will be guided by the principles set out in Sections 40.1(b) and 40.1(c).

- (b) HMQ will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under FIPPA, MFIPPA, or ATI.
- (c) Notwithstanding Section 40.1(b), but subject to Section 40.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), HMQ may disclose such information.

40.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), HMQ shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 40.1(b). The Parties acknowledge and agree that the Guaranteed Price, but not any breakdown thereof, may be disclosed.
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 40.1(b) and, accordingly, would be exempt from disclosure under FIPPA, MFIPPA and ATI, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and HMQ shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA, MFIPPA and ATI.

40.3 Disclosure to Government

- (a) Project Co acknowledges and agrees that HMQ will be free to disclose any information, including Confidential Information, to each Government Entity, City, UofT and TO2015, and, subject to compliance with FIPPA, MFIPPA and ATI, each Government Entity,

City, UofT and TO2015 will be free to use, disclose or publish (including on websites) the information on such terms and in such manner as such Government Entity sees fit.

- (b) For greater certainty, the Parties acknowledge and agree that, subject only to the removal of any information which the Parties are (or would be) entitled to refuse to disclose pursuant to FIPPA, MFIPPA and ATI, this Project Agreement, any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by each Government Entity, City, UofT and TO2015.

40.4 Freedom of Information

- (a) The Parties acknowledge and agree that FIPPA, MFIPPA and ATI, apply in various ways to the Government Entities, and to City, UofT and TO2015, and that each Government Entity, City, UofT and TO2015 is required to fully comply with the freedom of information legislation applicable to that entity.

40.5 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 40 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:
- (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee of the Lenders and the Lenders' Agent, and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Works or which Project Co is obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that each Government Entity may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and

financing policies and framework. A Government Entity will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.

- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.

40.6 Exceptions

- (a) Information of a Party (the “**Proprietor**”), other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
 - (i) the Proprietor advises the other Party to whom the information has been disclosed (the “**Confidant**”) that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
 - (iii) the information is a matter of public record or in the public domain;
 - (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
 - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant’s knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
 - (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
 - (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;

- (viii) the information is disclosed to HMQ upon a termination of this Project Agreement, pursuant to Section 36 or is otherwise required by HMQ for the purposes of performing (or having performed) the Works, including the design or construction of the Facility, or any other operations or services the same as, or similar to, the Works; or
- (ix) the information would not be exempt from disclosure under FIPPA.

40.7 Survival of Confidentiality

- (a) The obligations in Section 40.1 to Section 40.6 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

40.8 Communications Protocol

- (a) The Parties shall comply with the provisions of Schedule 18 – Communications Protocol.

41. PERSONAL INFORMATION

41.1 Protection of Personal Information

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of HMQ and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by HMQ.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA, the Personal Information Protection and Electronic Documents Act (Canada) and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Works.
- (d) Any part of the Works that involves or may involve the collection, use, storage, processing or any other handling of Personal Information shall be performed by Project Co and each Project Co Party within Canada, and Project Co shall, and shall cause each Project Co Party to, not store, process, communicate, transfer, access or permit or enable direct or remote access to any Personal Information outside of Canada.

- (e) Project Co shall, and shall cause each Project Co Party to, implement, maintain and adhere to appropriate policies, procedures and controls to ensure that Personal Information is not stored or processed in, communicated or transferred to, or accessed from, outside of Canada, and that the requirements of this Section 41 are otherwise complied with.
- (f) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 41.
- (g) Project Co shall allow HMQ on reasonable notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 41 including, without limitation, the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of HMQ with respect to Project Co or each Project Co Party's handling of Personal Information.
- (h) Project Co shall not subcontract or delegate to any third party any of the Works that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of HMQ and without obtaining written contractual commitments of such third party substantially the same as those of this Section 41.

41.2 Survival

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

42. INSURANCE AND PERFORMANCE SECURITY

42.1 General Requirements

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

42.2 No Relief from Liabilities and Obligations

- (a) Neither compliance nor failure to comply with the insurance provisions of this Project Agreement shall relieve Project Co or HMQ of their respective liabilities and obligations under this Project Agreement.

42.3 Performance Guarantees of Construction Guarantor and Construction Parent Guarantor

- (a) Project Co shall ensure that at all times during the Project Term, a valid and binding performance guarantee of the Construction Guarantor, or a party of comparable financial strength, capacity and stability, as determined by HMQ acting in its sole discretion, in the

form of guarantee attached as Schedule 12A – Performance Guarantee of Construction Guarantor, is in place and enforceable by HMQ.

- (b) Project Co shall ensure that at all times during the Project Term, a valid and binding performance guarantee of the Construction Parent Guarantor, or a party of comparable financial strength, capacity and stability, as determined by HMQ acting in its sole discretion, in the form of guarantee attached as Schedule 12B – Performance Guarantee of Construction Parent Guarantor, is in place and enforceable by HMQ.
- (c) For clarity, Project Co shall ensure that the replacement of the Construction Guarantor and the Construction Parent Guarantor in accordance with the Lenders’ Direct Agreement does not adversely affect the performance guarantees delivered at Commercial Close.

43. TITLE

43.1 Title

- (a) Title to each item and part of the Facility and the Equipment, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to HMQ (or as HMQ may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the Facility or are to be affixed or attached to the Facility prior to Substantial Completion shall pass to HMQ (or as HMQ may direct) at the time that such items are included in the Facility or affixed or attached to the Facility.

44. INDEMNITIES

44.1 Project Co Indemnities to HMQ, City, UofT and TO2015

- (a) Project Co shall indemnify and save harmless HMQ, City, UofT and TO2015 and their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
 - (i) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
 - (ii) any physical loss of or damage to all or any part of the Site and the Facility, or to any equipment, assets or other property related thereto;
 - (iii) the death or personal injury of any person;

- (iv) any physical loss of or damage to property or assets of any third party; or
- (v) any other loss or damage of any third party,

in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, except to the extent caused, or contributed to, by:

- (vi) the breach of this Project Agreement by HMQ; or
 - (vii) in respect of Section 44.1(a)(i), any deliberate or negligent act or omission of HMQ, City, UofT, TO2015 or any Government Entity; or
 - (viii) in respect of Sections 44.1(a)(ii), 44.1(a)(iii), 44.1(a)(iv) or 44.1(a)(v), any act or omission of City, UofT, TO2015 or any Government Entity.
- (b) Project Co shall indemnify and save harmless HMQ, City, UofT, TO2015 and each Government Entity and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless HMQ, City, UofT, TO2015 and each Government Entity and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
- (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Permits, Licences, Approvals and Agreements in accordance with this Project Agreement; or
 - (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which HMQ, is responsible pursuant to Section 18.2(a);

except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by HMQ or by any act or omission of HMQ, City or UofT or any HMQ Party.

- (d) Without prejudice to HMQ's rights under Section 34 and any other rights under this Project Agreement, if HMQ exercises its step-in rights under the Assignable Subcontract Agreement for Design and Construction Contract, Project Co shall indemnify HMQ for all obligations of Project Co assumed by HMQ under the Design and Construction

Contract, as the case may be, and for all reasonable costs and expenses incurred by HMQ in relation to the exercise of HMQ's rights.

- (e) Project Co shall indemnify HMQ, City, UofT and TO2015 for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to HMQ under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by HMQ, or from the date identified (if any) applicable to an amount determined as payable by Project Co to HMQ under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.
- (f) Project Co shall indemnify and save harmless HMQ, City, UofT and TO2015 and their respective directors, officers, employees, agents and representatives from and against any and all claims, losses (including, without limitation, Direct Losses) or damages (for greater certainty, losses and damages shall include reasonable legal fees and related expenses incurred by any one or combination of HMQ, City, UofT or TO2015 in connection with (i), (ii) (iii) (iv) and/or (v) below) which may be suffered, sustained, incurred or brought against any one or combination of them as a result of, in respect of, or arising out of any one or more of the following:
 - (i) any unfair labour practice complaint filed by an employee, trade union or bargaining agent with the Ontario Labour Relations Board (“**OLRB**”);
 - (ii) any related employer or similar application filed or brought by a trade union or bargaining agent with the OLRB pursuant to Section 1(4) of the Ontario Labour Relations Act, 1995 (“**OLRA**”);
 - (iii) any successor employer or sale of business application filed or brought by a trade union or bargaining agent with the OLRB pursuant to Section 69 of the OLRA;
 - (iv) any application or complaint filed or brought by a trade union or bargaining agent with the OLRB in relation to a jurisdictional dispute, whether pursuant to Section 99 of the OLRA or otherwise; or
 - (v) any other application, grievance or complaint filed or brought by an employee, trade union or bargaining agent with the OLRB;

in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, and in the performance of the Project Agreement, except to the extent caused, or contributed to, by:

- (vi) the breach of this Project Agreement by HMQ; or

(vii) any deliberate or negligent act or omission of HMQ, City, UofT, or TO2015.

44.2 HMQ Indemnities to Project Co

- (a) HMQ shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by HMQ or any act or omission of HMQ or any HMQ Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
 - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by HMQ or any deliberate or negligent act or omission of HMQ or any HMQ Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and
 - (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by HMQ or any deliberate or negligent act or omission of any Government Entity, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

provided that there shall be excluded from the indemnity given by HMQ any liability for the occurrence of risks against which Project Co is required to insure under this Project Agreement to the extent of the proceeds available or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Project Agreement.

- (b) HMQ shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by HMQ herein.
- (c) HMQ shall indemnify Project Co for damages suffered or incurred on account of (i) any payment not duly made by HMQ pursuant to the terms of this Project Agreement on the

due date; (ii) any overpayment to or underpayment by HMQ; or (iii) an amount determined as payable by HMQ to Project Co under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by HMQ to Project Co under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

44.3 Conduct of Claims

- (a) This Section 44.3 shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 44, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 44.3(d), 44.3(e) and 44.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) With respect to any claim conducted by the Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;

- (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 44.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 44.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section 44.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or
 - (iii) the Indemnifier fails to comply in any material respect with Section 44.3(d).
- (f) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 44.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where HMQ is the Beneficiary, HMQ may retain or take over such conduct in any matter involving research confidentiality or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 44.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the

claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (h) Any person taking any of the steps contemplated by this Section 44.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

44.4 Mitigation – Indemnity Claims

- (a) For greater certainty, Section 51.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

45. LIMITS ON LIABILITY

45.1 Indirect Losses

- (a) Subject to Section 45.1(b), without prejudice to HMQ’s rights under Schedule 20 – Payments and Holdbacks, or the Parties’ rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:

- (i) for punitive, exemplary or aggravated damages;
- (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
- (iii) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party or by City, UofT, or TO2015,

(collectively, “**Indirect Losses**”).

- (b) With respect to the indemnity in Section 44.1(a)(i) only, the exceptions in Sections 45.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, HMQ’s, City’s, UofT’s

or TO2015's loss of use of the Facility or a portion thereof, which for the purposes of Section 44.1(a)(i), shall be Direct Losses. For clarity, any Direct Losses suffered by HMQ, City, UofT or TO2015 as a result of loss of use of the Facility or a portion thereof shall include the cost of procuring any replacement facilities for the Pan American Games and Para Pan American Games.

45.2 No Liability in Tort

- (a) Subject to the indemnities provided herein, HMQ and the HMQ Parties shall not be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to HMQ or any HMQ Party in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

45.3 Sole Remedy

- (a) Nothing in this Project Agreement shall prevent or restrict the right of HMQ to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (b) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 – Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

45.4 Maximum Liability

- (a) Subject to Section 45.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 44 shall not exceed [REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Project Co's maximum aggregate liability in respect of all claims under Section 44.1(a)(i) shall not exceed [REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 45.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

46. DISPUTE RESOLUTION PROCEDURE

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

47. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

47.1 Project Co Assignment

- (a) Project Co shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement or any Ancillary Document without the prior written consent of HMQ, which consent may be withheld in the sole discretion of HMQ.
- (b) Section 47.1(a) shall not apply to:
- (i) the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if HMQ so requires; or
 - (ii) any Subcontract or sub-subcontract entered into by Project Co, the Project Co Parties or any sub-subcontractor in connection with the Project.

47.2 HMQ Assignment

- (a) HMQ may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and HMQ are parties:
- (i) to the Province or to any minister of the Province;
 - (ii) in circumstances other than those described in Section 47.2(a)(i), as may be required to comply with Applicable Law;
 - (iii) to an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of HMQ under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of HMQ's obligations hereunder and under the other Project Documents to which HMQ is a party in respect of the period from and after the assignment; and
 - (iv) in circumstances other than those described in Sections 47.2(a)(i) to 47.2(a)(iii), with the prior written consent of Project Co, not to be unreasonably withheld or delayed; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of HMQ hereunder

and under any agreement in connection with this Project Agreement to which Project Co and HMQ are parties in respect of the period from and after the assignment.

- (b) HMQ shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 47.2.

47.3 Subcontracting

- (a) Project Co shall not subcontract any interest in this Project Agreement or the Design and Construction Contract, and shall not permit the Construction Contractor to subcontract any interest in the Design and Construction Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities: (i) are inconsistent with the roles of HMQ, City, UofT and TO2015 in the Province of Ontario; (ii) may compromise the reputation of HMQ, City, UofT, TO2015, and/or the Province; (iii) may compromise the integrity of the Province or the Project; or (iv) are inconsistent with the nature of international competitive sporting facilities, so as to affect public confidence in that system.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor unless Project Co has complied with Sections 8.2(a), 47.3(c) and 47.3(d) or received the prior written consent of HMQ, not to be unreasonably withheld or delayed.
- (c) Subject to Section 47.3(d), if the Design and Construction Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to HMQ's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor, and Project Co shall require, that any replacement enter into a contract upon the same or substantially similar terms as the Design and Construction Contract so replaced, including the provision of replacement Security and an assignment agreement on the same or substantially similar terms as the Assignable Subcontract Agreement for Design and Construction Contract unless any material variations are approved by HMQ, acting reasonably.

47.4 Changes in Ownership and Control

- (a) No Change in Ownership of Project Co, or any person with an ownership interest in Project Co, shall be permitted:
 - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities: (i) are inconsistent with the roles of HMQ, City, UofT and TO2015 in the province of Ontario; (ii) may compromise the

reputation of HMQ, City, UofT or TO2015 and/or the Province; or (iii) may compromise the integrity of the Province or the Project; or

- (ii) if such Change in Ownership would have a material adverse effect on the performance of the Works.
- (b) No Change in Control of Project Co, or any company of which Project Co is a subsidiary, shall be permitted without the prior written consent of HMQ, which may be withheld in HMQ's sole discretion.
- (c) This Section 47.4 shall not apply to a Change in Ownership or Change in Control of companies whose equity securities are listed on a recognized stock exchange.
- (d) Whether or not Project Co is required to obtain HMQ's consent to a Change in Ownership or Change in Control pursuant to this Section 47.4, Project Co shall provide timely notice to HMQ of any proposed Change in Ownership or Change in Control of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such person, as the case may be, within 5 Business Days of such Change in Ownership or Change in Control, and such notification shall include a statement identifying all such owners, or persons with an ownership interest in Project Co, as the case may be, and their respective holdings of such ownership interests of Project Co, prior to and following any such Change in Ownership or Change in Control.
- (e) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project.

47.5 HMQ Due Diligence

- (a) Project Co shall promptly reimburse HMQ for HMQ's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of HMQ pursuant to, or HMQ determination of Project Co's compliance with Section 47.1, 47.3 or 47.4 whether or not such consent is granted.

48. PROHIBITED ACTS

48.1 Definition

- (a) The term "**Prohibited Act**" means:
 - (i) offering, giving or agreeing to give to HMQ, City, UofT, TO2015 or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:

- (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Project Agreement or any other agreement with HMQ, City, UofT, TO2015 or any public body in connection with the Project; or
- (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with HMQ, City, UofT, TO2015 or any public body in connection with the Project,

provided that this Section 48.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to HMQ or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with HMQ, City, UofT, TO2015 or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with HMQ, City, UofT, TO2015 or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, HMQ, City, UofT, TO2015 or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to HMQ, provided that this Section 48.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to HMQ or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with HMQ, City, UofT, TO2015 or any public body in connection with the Project without contravening the intent of this Section 48;
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with HMQ, City, UofT, TO2015 or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud HMQ, City, UofT, TO2015 or any other public body.

48.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then HMQ shall be entitled to act in accordance with the following:

- (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then HMQ may give written notice to Project Co and Section 34 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then HMQ may give written notice to Project Co and Section 34 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Works shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then HMQ may give written notice to Project Co and Section 34 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Works shall be performed by another person, where relevant, in accordance with Section 47.3;
 - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then HMQ may give notice to Project Co and Section 34 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Works shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 48.2(a)(i) to 48.2(a)(iv), then HMQ may give notice to Project Co and Section 34 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Works shall be performed by another person.
- (b) Any notice of termination under this Section 48.2 shall specify:
- (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom HMQ believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 48.2, HMQ shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 48.

48.3 Permitted Payments

- (a) Nothing contained in this Section 48 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

48.4 Notification

- (a) Project Co shall notify HMQ of the occurrence and details of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

48.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 48, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

49. NOTICES

49.1 Notices to Parties

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

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to HMQ:
c/o Ontario Infrastructure
and Lands Corporation

777 Bay Street, 9th Floor
Toronto, ON
M5G 2C8

Fax No.: [REDACTED]

Attn.: [REDACTED]

With a copy to the following addressees
(which shall not constitute notice):

City of Toronto: [REDACTED]
Fax No.: [REDACTED]
Attn: [REDACTED]

With a copy to: [REDACTED]
Fax No: [REDACTED]
Attn: [REDACTED]

University of Toronto: [REDACTED]
Fax No: [REDACTED]
Attn: [REDACTED]

Toronto 2015 [REDACTED]
Fax No: [REDACTED]
Attention: [REDACTED]

49.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 49.1, where any Notice is to be provided or submitted to the HMQ Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co Representative: [REDACTED]
Fax No.: [REDACTED]
Attn.: [REDACTED]

If to the HMQ Representative: 777 Bay Street, 9th Floor
Toronto, ON
M5G 2C8
Fax No.: [REDACTED]

Attn.: [REDACTED]

49.3 Facsimile

- (a) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 49.3.

49.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 49.1 or 49.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

49.5 Deemed Receipt of Notices

- (a) Subject to Sections 49.5(b), 49.5(c) and 49.5(d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 49.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

49.6 Service on HMQ

- (a) Where any Notice is required to be served on HMQ, the obligation to serve such Notice shall be fulfilled by serving it on HMQ in accordance with the provisions of this Section 49.

50. HMQ DESIGNATE

50.1 Right to Designate

- (a) At any time and from time to time, the Province may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Project Agreement (including, without limitation, review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to HMQ for review, approval, comment, evaluation or otherwise as described in this Project Agreement, engage in discussions, consultations and meetings with Project Co, submitting notices and documentation to HMQ, issuances of notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Province has notified Project Co in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice). The Province shall advise Project Co in writing of any designation hereunder. The rights and obligations of the parties to this Project Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of the Province to delegate administrative responsibilities hereunder as set forth in this Section 50.1.

51. GENERAL

51.1 Amendments

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

51.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

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

51.3 Relationship Between the Parties

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between HMQ and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between HMQ and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
 - (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent it that is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
 - (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation Board or other similar levies with respect to any persons employed or engaged by the other Party;
 - (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
 - (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

51.4 General Duty to Mitigate

- (a) HMQ and Project Co shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Project Agreement.

51.5 Actual Knowledge

- (a) Without limitation to its actual knowledge and/or such knowledge which it, at law, may from time to time, be deemed to have, Project Co and HMQ shall, for all purposes of this Project Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by their respective directors, officers, senior management and the Project Co Representative and HMQ Representative, respectively. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the "knowledge of" Project Co or HMQ, shall be construed in a manner consistent with the foregoing sentence.

51.6 Entire Agreement

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

51.7 No Reliance

- (a) Each of the Parties acknowledge that:
 - (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
 - (ii) this Section 51.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

51.8 Severability

- (a) Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement. If any such provision of this Project Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to

eliminate such invalidity, unenforceability or illegality and to restore this Project Agreement as near as possible to its original intent and effect.

51.9 Enurement

- (a) This Project Agreement and any other agreement entered into in connection with the Project to which both HMQ and Project Co are parties shall enure to the benefit of, and be binding on, HMQ and Project Co and their respective successors and permitted transferees and assigns.

51.10 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 27 – Dispute Resolution Procedure, both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Project Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

51.11 Cumulative Remedies

- (a) Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

51.12 Further Assurance

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Project Agreement.

51.13 Costs

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement.

51.14 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Project Agreement and related documents be drawn in English. Chacune des parties reconnaît

avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English.

51.15 Proof of Authority

- (a) HMQ and Project Co each reserve the right to require any person executing this Project Agreement on behalf of the other Party to provide proof, in a form acceptable to HMQ or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind HMQ or Project Co, as applicable.

51.16 Counterparts

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

51.17 Government Entities as Third Party Beneficiaries

- (a) The provisions of Sections 4.22(b), 5.1(d), 7.1, 7.2(a), 7.3(a), 9.1(c), 10.4(a), 11.1(h), 11.16, 11.19(a), 16.1(a), 39.7, 39.9, 40, 44.1 and 45.2 and each other provision of the Project Agreement which is to the benefit of City, UofT, TO2015 or a Government Entity are:
 - (i) intended for the benefit of each entity and, if set out in the relevant Section, each entity's directors, officers, employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, the "**Third Party Beneficiaries**"); and
 - (ii) are in addition to, and not in substitution for, any other rights that the Third Party Beneficiaries may have by contract or otherwise.
- (b) HMQ shall hold the rights and benefits of Sections 5.1(d), 7.1, 7.2(a), 7.3(a), 9.1(c), 11.19(a), 39.9 and 40 and each other provision of the Project Agreement which is to the benefit of City, UofT, TO2015 and each Government Entity in trust for and on behalf of the Third Party Beneficiaries and HMQ hereby accepts such trust and agrees to hold the

benefit of and enforce performance of such covenants on behalf of the Third Party Beneficiaries.

51.18 Time is of the Essence

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

51.19 Copyright Notice

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

[EXECUTION PAGE IMMEDIATELY FOLLOWS]

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

**ONTARIO INFRASTRUCTURE AND
LANDS CORPORATION, a Crown agent,
continued under the *Ontario Infrastructure and
Lands Corporation Act, 2011***

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

I have authority to bind the corporation.

PCL AQUATICS CENTRE 2012 LTD.

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the corporation.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
- 1.1 “**Account Trustee**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.2 “**Additional Contractors**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor or Project Co) or HMQ’s own forces, engaged by HMQ to carry out the Additional Works.
- 1.1 “**Additional HMQ Payments**” means amounts payable to Project Co pursuant to any Variation or Variation Directive under which HMQ is expressly responsible for an increase to the Guaranteed Price or any other payment to be made by HMQ, which, pursuant to the express provisions of the Project Agreement are to be paid as Additional HMQ Payments, but not including any Interim Payment, the Substantial Completion Payment or the PGW Substantial Completion Payment.
- 1.3 “**Additional Works**” means those works in relation to the Facility which are not Works and which are to be carried out by an Additional Contractor., including works HMQ requires to be performed prior to Substantial Completion with respect to the installation of IT equipment (routers, servers, core switches, etc.), communication equipment (telephones, fax machines, etc.), computing equipment (desktop computers, printers, scanners, etc.) and Owner Equipment.
- 1.4 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of its unitholders, shareholders, partners or owners as the case may be.
- 1.5 “**Ancillary Documents**” means the Design and Construction Contract and the performance security required under Schedule 25 - Insurance and Performance Security Requirements.
- 1.6 “**Anticipated Final Completion Date**” has the meaning given in Section 24.11(a) of the Project Agreement.
- 1.7 “**Anticipated Interim Payment Date**” has the meaning given in Section 24.17(a) of the Project Agreement.
- 1.8 “**Anticipated PGW Final Completion Date**” has the meaning given in Schedule 32 – Post Games Works.
- 1.9 “**Anticipated PGW Substantial Completion Date**” has the meaning given in Schedule 32 – Post Games Works.

- 1.10 “**Anticipated Substantial Completion Date**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.11 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, HMQ, any HMQ Party.
- 1.12 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.13 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.14 “**Approved Purposes**” means:
- (a) any of City, UofT or TO2015 performing the Stakeholder Operations (and any operations of HMQ relating to the performance of such Stakeholder Operations), their obligations under the Project Agreement and/or any other activities in connection with the Facility and the Site; and
 - (b) following termination of the Project Agreement, the design, construction and/or maintenance of the Facility, and/or the performance of any other operations the same as, or similar to, the Works.
- 1.15 “**As Built Drawings**” means drawings prepared by Project Co in a format and with content and details that HMQ, acting reasonably, considers appropriate.
- 1.16 “**Assignable Subcontract Agreement**” means the form of agreement attached as Schedule 21 – Form of Assignable Subcontract Agreement.
- 1.17 “**Assignable Subcontract Agreement for Design and Construction Contract**” means the form of agreement to be entered into between HMQ, Project Co and the Construction Contractor in the form set out in Schedule 5 – Assignable Subcontract Agreement for Design and Construction Contract.
- 1.18 “**Associated Liabilities**” has the meaning given in Section 4.22(b) of the Project Agreement.
- 1.19 “**ATI**” means the *Access to Information Act* (Canada).

- 1.20 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.21 “**Background Information**” means any and all drawings, reports (including the Environmental Reports, the Geotechnical Reports and any other report referred to in the Output Specifications), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by any HMQ Party, or which was obtained from or through any other sources prior to the date of the Project Agreement.
- 1.22 “**Bank**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.23 “**Beneficiary**” has the meaning given in Section 44.3(a) of the Project Agreement.
- 1.24 “**Bonds**” means any one or more of the Performance Bond (which, for greater clarity, includes that Multiple Obligee Rider to the Performance Bond) and Labour and Material Payment Bond (which, for greater clarity, includes the Multiple Obligee Rider to the Labour and Material Payment Bond) and collectively, means all of them, which Bonds are in the forms attached as Appendices B and C, respectively, to Schedule 25 – Insurance and Performance Security Requirements.
- 1.25 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.
- 1.26 “**CaGBC**” means the Canadian Green Building Council.
- 1.27 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.28 “**Canadian GAAP**” shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.
- 1.29 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.30 “**Cash Allowance Account**” means [REDACTED].
- 1.31 “**Cash Allowance Amount**” means [REDACTED].
- 1.32 “**Cash Allowance Items**” means the work performed by Project Co to fulfill the obligations set out under Section 1(c) of the “Transportation Services” section of Section D (Site Plan

- Advisory Comments) of Schedule A to Appendix 1 of Schedule 1 – Definitions and Interpretation.
- 1.33 “**Certification Services**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.34 “**Certification Services Variation**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.35 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person;
 - (c) any other change of direct or indirect power to direct or cause the direction of the management, actions or policies of such person; or
 - (d) any other change of direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.
- 1.36 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the date of the Project Agreement.
- 1.37 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.38 “**City**” has the meaning given in the recitals to the Project Agreement.
- 1.39 “**CLA**” means the *Construction Lien Act* (Ontario).
- 1.40 “**Commercial Close**” means the date of the Project Agreement.
- 1.41 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 - Outline Commissioning Program;
 - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;

- (c) recommended by the manufacturer of any part of the Plant or equipment; and
 - (d) required to be included in the Final Commissioning Program by the Independent Certifier, the HMQ Commissioning Agent or the HMQ Representative during its development pursuant to Section 24.2 of the Project Agreement; and
 - (e) required to be included in the PGW Final Commissioning Program by the Independent Certifier, the HMQ Commissioning Agent or the HMQ Representative during its development pursuant to Schedule 14 – Outline Commissioning Program.
- 1.42 “**Compensation Event**” has the meaning given in Section 31.1(a) of the Project Agreement.
- 1.43 “**Compensation Payment**” means the HMQ Default Termination Sum, the Project Co Default Termination Sum or the Non-Default Termination Sum.
- 1.44 “**Confidant**” has the meaning given in Section 40.6(a)(i) of the Project Agreement.
- 1.45 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement.
- 1.46 “**Construction Contractor**” means PCL Constructors Canada Inc., engaged by Project Co to perform the Works and any substitute building contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.47 “**Construction Defect**” has the meaning given to it in Section 11.23(b) of the Project Agreement.
- 1.48 “**Construction Document Submittals**” has the meaning given in Section 11.1(c)(ii) of the Project Agreement.
- 1.49 “**Construction Guarantor**” means PCL Constructors Canada Inc.
- 1.50 “**Construction Latent Defect**” has the meaning given in Section 11.23(d).
- 1.51 “**Construction Parent Guarantor**” means [REDACTED].
- 1.52 “**Construction Quality Plan**” means such document included in Schedule 11 - Design Quality Plan and Construction Quality Plan.
- 1.53 “**Construction Safety Plan**” means the construction safety plan included in Schedule 13 – Project Co Proposal Extracts.
- 1.54 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the

- Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.55 “**Cost of the Financing**” means all costs and expenses incurred in connection with the Financing pursuant to the Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in Schedule 24 – Financial Model.
- 1.56 “**Cost of the Post Games Works**” means the cost to Project Co of performing the Post Games Works as set out in Schedule 24 – Financial Model.
- 1.57 “**Cost of the Works**” means the cost to Project Co of performing the Works as set out in Schedule 24 – Financial Model and shall include all amounts to be included in the Cost of the Works set out in the Project Agreement.
- 1.58 “**Countdown Notice**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.59 “**CPI**” means, as at the date of the Project Agreement, CPI XFET and, thereafter, the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 - Dispute Resolution Procedure, most closely resembles such index.
- 1.60 “**CPI_n**” is the value of CPI on April 1 of the relevant year, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.61 “**CPI_o**” is the value of CPI at Financial Close, to be determined by reference to the relevant index in the month immediately preceding Financial Close.
- 1.62 “**CPI XFET**” means the Consumer Price Index excluding food, energy and the effect of changes in indirect taxes.
- 1.63 “**CPM**” has the meaning given in Section 13.2(a)(i) of the Project Agreement.
- 1.64 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.65 “**Delay Event**” has the meaning given in Section 30.1(a) of the Project Agreement.
- 1.66 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.67 “**Design and Construction Contract**” means the design and construction contract between Project Co and the Construction Contractor dated on or about the date of Financial Close in the form set out in Schedule 3 – Design and Construction Contract.

1.68 “**Design and Construction Work**” means the design, construction, installation, testing, commissioning and completion of the Facility, including the Post Games Works, the rectification of any Minor Deficiencies and PGW Minor Deficiencies, all warranty work, and any other related activities required pursuant to the provisions of the Project Agreement, provided, however, that for the purpose of this defined term, the term “Project Agreement” shall be deemed not to include any of the activities, covenants, terms or conditions contained in the list set out below in numbered items (a) through (o) inclusive (including the actual executed versions of the documents referred to below) and for greater certainty shall not include any covenant, agreement, undertaking or obligation related to the Financing or the Cost of the Financing:

- (a) Recitals;
- (b) Article 2;
- (c) Sections 4.2, 4.3, 4.4, 4.9 and 4.11;
- (d) Article 6;
- (e) Sections 8.3 and 8.4;
- (f) Section 34.1(a)(iv);
- (g) Sections 47.3(c) and (d);
- (h) Article 49;
- (i) Schedule 2 – Completion Documents;
- (j) Schedule 4- Lenders’ Direct Agreement;
- (k) Schedule 5 – Assignable Subcontract Agreement for Design and Construction Contract;
- (l) Schedule 12A – Performance Guarantee of Construction Guarantor;
- (m) Schedule 12B – Performance Guarantee of Construction Parent Guarantor;
- (n) Schedule 20 – Payments and Holdbacks;
- (o) Schedule 24 – Financial Model; and
- (p) Schedule 31 – Project Co Information.

1.69 “**Design Compliance Consultant**” means [REDACTED].

- 1.70 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations, and other data prepared by Project Co relating to the design, construction or testing of the Facility, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.71 “**Design Development Submittals**” has the meaning given in Section 11.1(c)(i) of the Project Agreement.
- 1.72 “**Design Quality Plan**” means such document included in Schedule 11 - Design Quality Plan and Construction Quality Plan.
- 1.73 “**Design Team**” means [REDACTED], engaged by Project Co to design the Facility and any substitute design team engaged by Project Co as may be permitted by the Project Agreement.
- 1.74 “**Design Workshops**” has the meaning given in Section 11.3(a) of the Project Agreement.
- 1.75 “**Development Approvals**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Agreements required from time to time for construction of the Facility.
- 1.76 “**Direct Cost**” has the meaning given in Schedule 22 -Variation Procedure.
- 1.77 “**Direct Losses**” means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.78 “**Direct or Indirect Power or Control**” means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (a) ownership, beneficial or otherwise, of greater than five percent (5%) of any of the shares, units or equity interests of a person;
 - (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual’s ownership, beneficial or otherwise, is equal to, or exceeds, five percent (5%) of the voting securities, units or equity interests of such persons; or
 - (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.

- 1.79 “**Discriminatory Change in Law**” means any Change in Law, the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:
- (a) facilities whose design, construction and financing are procured by a contract similar to the Project Agreement in relation to other similar facilities;
 - (b) the Facility in relation to other international sporting competition facilities;
 - (c) Project Co in relation to other persons; or
 - (d) persons undertaking projects for design, construction and financing that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,
- except that such Change in Law shall not be a Discriminatory Change in Law:
- (e) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
 - (f) solely on the basis that its effect on Project Co is greater than its effect on other companies; or
 - (g) where such Change in Law is a change in Taxes that affects companies generally.
- 1.80 “**Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.81 “**Dispute Resolution Procedure**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.82 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.
- 1.83 “**Emergency**” means any situation, event, occurrence, multiple occurrences or circumstances:
- (a) that:
 - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any persons (including any of City, UofT or TO2015) or any part of or the whole of the Facility;
 - (ii) causes or may cause damage or harm to property, buildings and/or equipment;

- (iii) constitutes a hostage situation or state of emergency declared as such by the HMQ Representative (acting reasonably);
- (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Facility, any part of the Site, the conduct of Works or the conduct of Stakeholder Operations; or
- (v) constitutes a period of transition to or from war;

and which, in the opinion of HMQ, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or

- (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) the police, the armed forces, fire or ambulance services.

- 1.84 “**Encumbrance**” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including claims of the Workplace Safety and Insurance Board, Canada Revenue Agency, and other Governmental Authorities.
- 1.85 “**Environmental Reports**” means [REDACTED].
- 1.86 “**Equipment**” means the Owner Equipment, Not-In-Contract Equipment and the In-Contract Equipment.
- 1.87 “**Equipment Invoice**” has the meaning given in Section 21.5(b) of the Project Agreement.
- 1.88 “**Equipment Procurement Documentation**” has the meaning given in Section 21.4(a)(v) of the Project Agreement.
- 1.89 “**Equipment Procurement Sub-Plan**” means the equipment procurement sub-plan included in the Project Co Proposal Extracts.
- 1.90 “**Equipment RFP**” means the request for proposals to be prepared by Project Co for the procurement of any of the Not-In-Contract Equipment in accordance with Section 21 of the Project Agreement.
- 1.91 “**Equipment Steering Committee**” has the meaning given in Section 21.1(a) of the Project Agreement.
- 1.92 “**Estimate**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.93 “**Existing Equipment**” means all equipment items marked “Existing” in Section 6.2 – FFE Data Base of Schedule 15 – Output Specification.

- 1.94 “**Expert**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.95 “**Expiry Date**” means the first anniversary of the date of the PGW Substantial Completion Date.
- 1.96 “**Facility**” means:
- (a) all buildings, facilities and other structures;
 - (b) the Plant;
 - (c) all site services, utilities, roadways and parking area required to support such buildings, facilities and structures;
 - (d) all supporting systems, infrastructure and improvements; and
 - (e) all other works, improvements and demolition to occur on the Site,
- in each case required to meet the Output Specifications and the requirements under the Permits, Licences, Approvals and Agreements and whether or not in the course of construction, installation or completion.
- 1.97 “**Facility Design Acceptability**” means that the design of the Facility,
- (a) achieves the high performance athletics, community and student use, and Pan American Games/Para Pan American Games objectives;
 - (b) accommodates TO2015 in hosting the Pan American Games/Para Pan American Games events planned for the Facility;
 - (c) allows the City and UofT to deliver on planned athletics programs to the community and students; and
 - (d) allows for high-performance training and testing of athletes competing at an international level in the sports accommodated in the Facility,
- as set out in the Output Specifications. Facility Design Acceptability shall be a salient evaluation factor of importance to HMQ, TO2015, City and UofT at all stages of development of the Facility.
- 1.98 “**Facility Design Acceptability Report**” has the meaning given in Section 11.4(b) of the Project Agreement.
- 1.99 “**Field of Play Surveys**” has the meaning given in Part 2, Section 2.4.3 of Schedule 15 – Output Specifications.

- 1.100 “**Final Commissioning Program**” means the program to be jointly developed and agreed by HMQ and Project Co in accordance with Section 24.2 of the Project Agreement.
- 1.101 “**Final Completion**” means the completion of the Works (excluding the Post Games Works) in accordance with the Project Agreement, including completion of all Minor Deficiencies.
- 1.102 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.15 of the Project Agreement.
- 1.103 “**Final Completion Countdown Notice**” has the meaning given in Section 24.11(a) of the Project Agreement.
- 1.104 “**Final Completion Date**” means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, as such date shall be stated therein.
- 1.105 “**Final Completion Notice**” has the meaning given in Section 24.15(b) of the Project Agreement.
- 1.106 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.107 “**Financial Close Target Date**” means June 28, 2012, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.108 “**Financial Model**” means the computer spreadsheet model included in Schedule 24 – Financial Model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Works together with, if applicable, the profit and loss accounts and balance sheets for Project Co throughout the Project Term, accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.109 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable Taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations.
- 1.110 “**Financing**” means the financing with the Lenders, that is consistent in all material respects with Schedule 24 - Financial Model and the Project Agreement, to finance the Project.
- 1.111 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.112 “**First Interim Payment**” means [REDACTED].
- 1.113 “**First Scheduled Interim Payment Date**” means May 31, 2013.
- 1.114 “**Force Majeure**” has the meaning given in Section 33.1(a) of the Project Agreement.

- 1.115 “**Geotechnical Reports**” means [REDACTED].
- 1.116 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.117 “**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 legal jurisdiction in any way over HMQ, any aspect of the performance of the Project Agreement or the operation of the Facility, the Stakeholder Operations, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.118 “**Government Entity**” means one or more of the Province, MOI, HMQ and the Government of Canada.
- 1.119 “**Guaranteed Price**” is the amount referred to in Section 3.1(a) of the Project Agreement.
- 1.120 “**Hazardous Substances**” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.121 “**Hedge Provider**” means a person that has entered into a Hedging Agreement with Project Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.122 “**Hedging Agreement**” means an agreement relating to interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.123 “**Heritage Guidelines and Protocols**” means the guidelines, protocols, processes and best practices set out in Schedule 19 – Heritage Guidelines and Protocols.
- 1.124 “**HMQ**” means Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*.
- 1.125 “**HMQ Commissioning**” means the commissioning activities to be carried out by any one or more of HMQ in accordance with the Final Commissioning Program.
- 1.126 “**HMQ Commissioning Agent**” means the person appointed by HMQ as its commissioning agent.

- 1.127 “**HMQ Commissioning Period**” means the period during which HMQ is performing the HMQ Commissioning.
- 1.128 “**HMQ Commissioning Tests**” means all commissioning tests required to be performed by HMQ, pursuant to the Final Commissioning Program.
- 1.129 “**HMQ Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.130 “**HMQ Design Team**” means any of HMQ, their agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Facility on behalf of HMQ, but excluding Project Co and any Project Co Party.
- 1.131 “**HMQ Event of Default**” has the meaning given in Section 35.1(a) of the Project Agreement.
- 1.132 “**HMQ Holdback**” means any amount which HMQ may withhold from the Substantial Completion Payment under Section 24.8 of the Project Agreement, provided for greater certainty, that where this Project Agreement provides for a deduction in respect of any HMQ Holdback, such deduction shall apply to any payments to be made by HMQ hereunder (whether to Project Co or the Lenders’ Agent), notwithstanding that the Project Agreement expressly provides for deductions from payments to be made to Project Co.
- 1.133 “**HMQ Party**” means any of HMQ and its respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the Stakeholder Operations, but excluding Project Co and any Project Co Party, and the “**HMQ Parties**” shall be construed accordingly.
- 1.134 “**HMQ Permits, Licences, Approvals and Agreements**” means those HMQ permits, licences, approvals and agreements which are the responsibility of HMQ to obtain as set out in Appendix 1 of this Schedule 1 - Definitions and Interpretation.
- 1.135 “**HMQ PGW Commissioning**” has the meaning given in Schedule 32 – Post Games Works.
- 1.136 “**HMQ Representative**” means the person designated as such by HMQ on or prior to the date of the Project Agreement and any permitted replacement.
- 1.137 “**HMQ Taxes**” means taxes, or payments in lieu of taxes, imposed on HMQ and HST and property taxes for which HMQ is responsible pursuant to Section 34 of the Project Agreement.
- 1.138 “**HMQ Trade-Marks**” means any and all Trade-Marks used by HMQ in any manner whatsoever.

- 1.139 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.140 “**In-Contract Equipment**” means all equipment which is identified as category code “IC” in the “Procurement” column in Section 6.2 – FFE Data Base of Schedule 15 – Output Specifications.
- 1.141 “**Indemnifiable Taxes**” has the meaning given in Section 4.22(b).
- 1.142 “**Indemnifier**” has the meaning given in Section 44.3(a) of the Project Agreement.
- 1.143 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.144 “**Independent Certifier Agreement**” means the contract entered into between Project Co, HMQ and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.145 “**Indirect Losses**” has the meaning given in Section 45.1 of the Project Agreement.
- 1.146 “**Innovation Proposal**” has the meaning given in Section 29.2(b) of the Project Agreement.
- 1.147 “**Insurance**” means the insurance contemplated in Schedule 25 – Insurance and Performance Security Requirements.
- 1.148 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between HMQ, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.149 “**Intellectual Property**” means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.
- 1.150 “**Intellectual Property Rights**” means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the date of the Project Agreement created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for

such third parties' use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:

- (a) the Works, including the design and construction of the Facility (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction); or
 - (b) the Project Agreement.
- 1.151 “**Interest Reference Rate**” means the reference benchmark rate of interest identified in the Financial Model and used in the calculation of the Project Debt Interest Cost, and for greater clarity, is the base rate of interest exclusive of any stated or imbedded spread, (including credit, swap or other types of spread) or fees.
- 1.152 “**Interim Payment**” means the First Interim Payment or the Second Interim Payment, as applicable.
- 1.153 “**Interim Payment Application**” has the meaning given in Section 24.18(a) of the Project Agreement.
- 1.154 “**Interim Payment Countdown Notice**” has the meaning given in Section 24.17(a) of the Project Agreement.
- 1.155 “**Interim Payment Requirements**” means [REDACTED].
- 1.156 “**IO**” means Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*.
- 1.157 “**IPFP Framework**” has the meaning given in the recitals to the Project Agreement.
- 1.158 “**Irrecoverable Tax**” has the meaning given in Section 4.18(b) of the Project Agreement.
- 1.159 “**Jointly Developed Materials**” has the meaning given in Section 39.4(a) of the Project Agreement.
- 1.160 “**Junior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.161 “**Junior Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Junior Lenders in the normal course under the Lending Agreements.
- 1.162 “**Junior Lenders**” [Not used.]
- 1.163 “**Key Individuals**” has the meaning given in Schedule 9 – Key Individuals.

- 1.164 **“Labour and Material Payment Bond”** means, collectively, the Labour and Material Payment Bond and the Multiple Obligee Rider to Labour and Material Payment Bond in the form attached as Appendix C to Schedule 25 – Insurance and Performance Security Requirements.
- 1.165 **“LEED”** means Leadership in Energy & Environmental Design.
- 1.166 **“LEED Rating System”** means CaGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System for New Construction and Major Renovations, LEED – NC Version 1.0, including any addenda or update thereto issued prior to the date of the Project Agreement.
- 1.167 **“LEED Silver Rating”** means the achievement of a "Silver" rating from the CaGBC, with respect to the LEED Rating System.
- 1.168 **“Legislative Holdback”** means the holdback(s) to be maintained under Part IV of the CLA.
- 1.169 **“Legislative Holdback Payment Date”** means the date for payment of the Legislative Holdback pursuant to Section 4 of Schedule 20 – Payments and Holdbacks.
- 1.170 **“Lenders”** means any or all or any of the persons who provide the Financing, and for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns.
- 1.171 **“Lenders’ Agent”** has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.172 **“Lenders’ Consultant”** means any consultant appointed from time to time by the Lenders. Nothing contained in the Project Documents and no action taken by the Lenders’ Consultant in connection with the Works or the Project Documents shall constitute direction and/or control by HMQ, Project Co or the Lenders.
- 1.173 **“Lenders’ Direct Agreement”** means the direct agreement to be entered into between HMQ, the Lenders’ Agent and Project Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.174 **“Lending Agreements”** means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the Financing, including, for greater certainty, the Security Documents and the Hedging Agreements.
- 1.175 **“Longstop Date”** has the meaning given in Section 34.1(a)(ii) of the Project Agreement.
- 1.176 **“Make Good”, “Made Good”** and derivatives thereof, means repairing, restoring, refurbishing, rehabilitating or performing filling operation on the Works as required under the Project Agreement or any existing components disturbed due to the Works, to at least the condition existing at the commencement of the Works, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound

- attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.
- 1.177 “**MFIPPA**” means the *Municipal Freedom of Information and Projection of Privacy Act* (Ontario).
- 1.178 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Substantial Completion and which would not materially impair HMQ’s use and enjoyment of the Facility (including the HMQ Commissioning) or the performance of the Stakeholder Operations.
- 1.179 “**Minor Deficiencies List**” has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.180 “**MOI**” means Her Majesty The Queen in Right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.181 “**Monthly Equipment Payment**” has the meaning given in Section 21.5(b) of the Project Agreement.
- 1.182 “**Monthly Equipment Payment Estimate**” has the meaning given in Section 21.5(a) of the Project Agreement.
- 1.183 “**Multiple Obligee Rider to Labour and Material Payment Bond**” means the Multiple Obligee Rider amending the Labour and Material Payment Bond to add HMQ and Lender as additional named Obligees, in the form attached as Exhibit 1 to Appendix C of Schedule 25 – Insurance and Performance Security Requirements.
- 1.184 “**Multiple Obligee Rider to Performance Bond**” means the Multiple Obligee Rider amending the Performance Bond to add HMQ and Lender as additional named Obligees, in the form attached as Exhibit 1 to Appendix B of Schedule 25 – Insurance and Performance Security Requirements.
- 1.185 “**No Default Payment Compensation Amount**” means [REDACTED].
- 1.186 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.187 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.188 “**Not-In-Contract Equipment**” means all furniture and equipment marked “PCo” in the “Procurement” column in Section 6.2 – FFE Data Base of Schedule 15 – Output Specifications and, for clarity, does not include the In-Contract Equipment;

- 1.189 “**Notice**” has the meaning given in Section 49.1(a) of the Project Agreement.
- 1.190 “**Notice of Commencement of Post Games Works**” has the meaning given in Schedule 32 – Post Games Works.
- 1.191 “**Notice of Project**” means a notice of project filed with the Ministry of Labour in compliance with O. Reg 213/91 under the *Occupational Health and Safety Act* (Ontario).
- 1.192 “**Occupancy Permit**” means the occupancy permit issued for the Facility by the City.
- 1.193 “**OLRA**” has the meaning given in Section 44.1(f)(ii) of the Project Agreement.
- 1.194 “**OLRB**” has the meaning given in Section 44.1(f)(i) of the Project Agreement.
- 1.195 “**Order**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.196 “**Outline Commissioning Program**” means the schedule setting out the standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities of the Parties outlined in Schedule 14 - Outline Commissioning Program.
- 1.197 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.198 “**Owner Equipment**” means all furniture and equipment marked “Owner” set out in the “Procurement” column in Section 6.2 – FFE Data Base of Schedule 15 – Output Specifications.
- 1.199 “**Pan American Games**” means the Pan American Games taking place in Toronto on July 10, 2015 – July 26, 2015.
- 1.200 “**Para Pan American Games**” means the Para Pan American Games taking place in Toronto on August 7, 2015 – August 14, 2015.
- 1.201 “**Parcel A**” means Part of Lot 13 Registrar's compiled plan 10303 and Part of Lot 10, Concession 2, being Parts 1, 2, 3 and 4 on Plan 66R-25881.
- 1.202 “**Parcel B**” means Part of Lot 10, Concession 2 and Part of Lot 15, Registrar's compiled plan 10303, being parts of Parts 4, Part 13 and Part 16 on Plan 66R-25517.
- 1.203 “**Party**” means either HMQ or Project Co, and “**Parties**” means both HMQ and Project Co, but, for greater certainty, such definitions do not include MOI.
- 1.204 “**Payment Compensation Amount**” means [REDACTED].
- 1.205 “**Performance Bond**” means collectively, the Performance Bond and the Multiple Obligee Rider to the Performance Bond in the form attached as Appendix B to Schedule 25 – Insurance and Performance Security Requirements.

- 1.206 “**Performance Guarantee of Construction Guarantor**” means the performance guarantee given by the Construction Guarantor in the form set out in Schedule 12A – Performance Guarantee of Construction Guarantor.
- 1.207 “**Performance Guarantee of Construction Parent Guarantor**” means the performance guarantee given by the Construction Parent Guarantor in the form set out in Schedule 12B – Performance Guarantee of Construction Parent Guarantor.
- 1.208 “**Permits, Licences, Approvals and Agreements**” means the HMQ Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.209 “**Personal Information**” means all personal information (as the term “**personal information**” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or a Project Co Party other than personal information of the employees of Project Co or a Project Co Party and other than personal information that is wholly unrelated to the Works and not derived directly or indirectly from HMQ in respect of the Project.
- 1.210 “**PGW Commissioning Program**” has the meaning given in Schedule 32 – Post Games Works.
- 1.211 “**PGW Countdown Notice**” has the meaning given in Schedule 32 – Post Games Works.
- 1.212 “**PGW Final Commissioning Program**” has the meaning given in Schedule 32 – Post Games Works.
- 1.213 “**PGW Final Completion**” has the meaning given in Schedule 32 – Post Games Works.
- 1.214 “**PGW Final Completion Certificate**” has the meaning given in Schedule 32 – Post Games Works.
- 1.215 “**PGW Final Completion Countdown Notice**” has the meaning given in Schedule 32 – Post Games Works.
- 1.216 “**PGW Final Completion Date**” has the meaning given in Schedule 32 – Post Games Works.
- 1.217 “**PGW Holdback**” has the meaning given in Schedule 32 – Post Games Works.
- 1.218 “**PGW Legislative Holdback**” has the meaning given in Schedule 32 – Post Games Works.
- 1.219 “**PGW Letter of Credit**” has the meaning given in Schedule 32 – Post Games Works.
- 1.220 “**PGW Minor Deficiencies**” has the meaning given in Schedule 32 – Post Games Works.

- 1.221 **“PGW Minor Deficiencies List”** has the meaning given in Schedule 32 – Post Games Works.
- 1.222 **“PGW Substantial Completion”** has the meaning given in Schedule 32 – Post Games Works.
- 1.223 **“PGW Substantial Completion Date”** has the meaning given in Schedule 32 – Post Games Works.
- 1.224 **“PGW Substantial Completion Certificate”** has the meaning given in Schedule 32 – Post Games Works.
- 1.225 **“PGW Substantial Completion Notice”** has the meaning given in Schedule 32 – Post Games Works.
- 1.226 **“PGW Substantial Completion Payment”** has the meaning given in Schedule 32 – Post Games Works.
- 1.227 **“PGW Substantial Completion Payment Date”** has the meaning given in Schedule 32 – Post Games Works.
- 1.228 **“Plant”** means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of HMQ as defined in Schedule 15 – Output Specifications.
- 1.229 **“Post Games Works”** has the meaning given in Schedule 32 – Post Games Works.
- 1.230 **“Post Games Works Occupancy Permit”** has the meaning given in Schedule 32 – Post Games Works.
- 1.231 **“Product”** means or **“Products”** mean material, machinery, equipment and fixtures forming the Works but does not include machinery and equipment used to prepare, fabricate, convey or erect the Works, which is referred to as construction machinery and equipment.
- 1.232 **“Prohibited Act”** has the meaning given in Section 48.1(a) of the Project Agreement.
- 1.233 **“Project”** has the meaning given in the recitals to the Project Agreement.
- 1.234 **“Project Agreement”** has the meaning given in the recitals to the Project Agreement.
- 1.235 **“Project Co”** has the meaning given in the introductory paragraph of the Project Agreement.
- 1.236 **“Project Co Amount”** has the meaning given in Schedule 23 – Compensation on Termination.

- 1.237 “**Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of the Substantial Completion Certificate in accordance with the Final Commissioning Program.
- 1.238 “**Project Co Commissioning Tests**” means all commissioning tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.239 “**Project Co Construction Event of Default**” means a Project Co Event of Default relating to a failure or breach by Project Co to perform, observe or comply with any covenants, agreements, obligations or liabilities with respect to the Design and Construction Work, excluding a default by (i) the Construction Guarantor under the Performance Guarantee of Construction Guarantor or (ii) the Construction Parent Guarantor under the Performance Guarantee of Construction Parent Guarantor.
- 1.240 “**Project Co Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.241 “**Project Co Delay**” has the meaning given in Section 13.7(b) of the Project Agreement.
- 1.242 “**Project Co Delay Notice**” has the meaning given in Section 13.7(b) of the Project Agreement.
- 1.243 “**Project Co Event of Default**” has the meaning given in Section 34.1(a) of the Project Agreement.
- 1.244 “**Project Co Group**” means Project Co together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co.
- 1.245 “**Project Co Party**” means:
- (a) the Construction Contractor;
 - (b) any person engaged by Project Co and/or the Construction Contractor from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Works (or any of them); and
 - (c) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “**Project Co Parties**” shall be construed accordingly.
- 1.246 “**Project Co Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by Project Co in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents and agreements from any third parties (including all Development Approvals and the approval of the Fire Marshal of Ontario), needed to

perform the Works in accordance with the Project Agreement other than any HMQ Permits, Licences, Approvals and Agreements and including those Project Co Permits, Licences, Approvals and Agreements which are the responsibility of Project Co to obtain as set out in the Output Specifications.

- 1.247 “**Project Co PGW Commissioning**” has the meaning given in Schedule 32 – Post Games Works.
- 1.248 “**Project Co Proposal Extracts**” means the documents attached as Schedule 13 - Project Co Proposal Extracts.
- 1.249 “**Project Co Representative**” means the person designated as such by Project Co on or prior to Commercial Close and any permitted replacement.
- 1.250 “**Project Co Variation Notice**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.251 “**Project Data**” means:
- (a) all Design Data; and
 - (b) any other materials, documents and or data acquired, brought into existence or used in relation to the Works or the Project Agreement,
- other than the Jointly Developed Materials and Background Information and other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.252 “**Project Debt Interest Cost**” means the budgeted amount of aggregate interest charges in respect of the Debt Amount used to calculate the Cost of the Financing portion of the Guaranteed Price.
- 1.253 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.254 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.
- 1.255 “**Proprietor**” has the meaning given in Section 40.6(a) of the Project Agreement.
- 1.256 “**Province**” means Her Majesty the Queen in Right of Ontario.
- 1.257 “**Quality Plans**” has the meaning given in Section 15.1(a) of the Project Agreement.
- 1.258 “**Recovery Amount**” has the meaning given in Section 44.3(g) of the Project Agreement.
- 1.259 “**Recoverable Tax**” has the meaning given in Section 4.18(c) of the Project Agreement.

- 1.260 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Specific Change in Law.
- 1.261 “**Relevant Convictions**” means a conviction under the *Criminal Code* (Canada) for which no pardon has been granted.
- 1.262 “**Relief Event**” has the meaning given in Section 32.1(a) of the Project Agreement.
- 1.263 “**Request for Payment Approval**” has the meaning given in Section 3.2(d) of the Project Agreement.
- 1.264 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on August 3, 2011.
- 1.265 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;
 - (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (e) is subject to a material claim of HMQ or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in HMQ’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
 - (f) has a material interest in the production of tobacco products.

- 1.266 “**Review Procedure**” means the procedure set out in Schedule 10 - Review Procedure.
- 1.267 “**Risk Assessment Document**” means [REDACTED].
- 1.268 “**RFP Submission Deadline**” means January 31, 2012.
- 1.269 “**Scheduled Final Completion Date**” means 90 days following Substantial Completion.
- 1.270 “**Scheduled PGW Final Completion Date**” has the meaning given in Schedule 32 – Post Games Works.
- 1.271 “**Scheduled PGW Substantial Completion Date**” has the meaning given in Schedule 32 – Post Games Works.
- 1.272 “**Scheduled Substantial Completion Date**” means July 15, 2014, as such date may be extended pursuant to Section 30 of the Project Agreement.
- 1.273 “**Second Interim Payment**” means [REDACTED].
- 1.274 “**Second Scheduled Interim Payment Date**” means September 30, 2013.
- 1.275 “**Security**” means the Bonds, the Insurance and any other security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents.
- 1.276 “**Security Documents**” means [REDACTED].
- 1.277 “**Senior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.278 “**Senior Debt Service Amount**” means [REDACTED].
- 1.279 “**Senior Lenders**” means [REDACTED].
- 1.280 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.281 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affects access by Project Co to such markets.

- 1.282 “**Shop Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by Project Co to illustrate details of a portion of the Works, indicating materials, methods of construction and attachment or anchorage, erection diagrams, connections, explanatory notes and other information necessary for completion of the Works.
- 1.283 “**Site**” means Parcel A and Parcel B.
- 1.284 “**Site Conditions**” means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.285 “**Site Signage and Hoarding Plan**” means a plan in respect of the obligations set out in Section 16.4 of the Project Agreement.
- 1.286 “**Specific Change in Law**” means any Change in Law that principally affects, or principally relates only to, the construction or operation of international sporting competition facilities in the Province.
- 1.287 “**Sports Governing Authorities**” means a sports organization that has a regulatory or sanctioning function including Pan American Sports Organization, International Paralympic Committee, international sports federations and national sports federations, as the case may be.
- 1.288 “**Sports Governing Authority Certifications**” means the certifications issued by Sports Governing Authorities required for the Pan American Games and Para Pan American Games events planned for the Facility.
- 1.289 “**Stakeholder Operations**” means the operations of City, UofT and TO2015 at the Facility, including the operation of the Facility and the hosting of the Pan American Games and Para Pan American Games.
- 1.290 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.291 “**Start-Up Meeting**” has the meaning given in Section 11.2(a) of the Project Agreement.
- 1.292 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Works, including the Construction Contractor, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.293 “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor, and any other Subcontractor at any tier in relation to any aspect of the Works.
- 1.294 “**Substantial Completion**” means the point at which (i) the Facility has been completed in accordance with the Project Agreement; (ii) the Occupancy Permit has been issued; (iii) all

Sports Governing Authority Certification(s) required for the Facility have been received; (iv) a certificate of substantial performance with respect to the Works (excluding the Post Games Works) is published pursuant to Section 32(1) of the CLA; and (v) all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.

- 1.295 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d) of the Project Agreement.
- 1.296 “**Substantial Completion Date**” means the date on which Substantial Completion is achieved as evidenced by the Substantial Completion Certificate, as such date shall be stated therein.
- 1.297 “**Substantial Completion Notice**” has the meaning given in Section 24.4(b) of the Project Agreement.
- 1.298 “**Substantial Completion Payment**” means [REDACTED].
- 1.299 “**Substantial Completion Payment Date**” means the 10th Business Day after the Substantial Completion Date.
- 1.300 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Works.
- 1.301 “**Surety**” means the person issuing the Bonds.
- 1.302 “**Tax**” or “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “**Taxes**” shall not include the HMQ Taxes.
- 1.303 “**Technical Reports**” means the Environmental Reports, the Geotechnical Reports and the Risk Assessment Document.
- 1.304 “**Termination Date**” means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.305 “**Third Party Beneficiaries**” has the meaning given at Section 51.7(a)(i) of the Project Agreement.
- 1.306 “**Third Party Operations**” means any testing or monitoring of the environmental condition of the Site being undertaken by UofT or City, and use of Parcel B for parking and access to UofT.

- 1.307 “**Title Encumbrances**” means the Encumbrances listed in Schedule 16 - Title Encumbrances and any other Encumbrance consented to by HMQ and reasonably required in connection with the development of the Facility and the Works.
- 1.308 “**Toronto 2015**” or “**TO2015**” means the Toronto Organizing Committee for the Pan American Games and Para Pan American Games.
- 1.309 “**Trade-Marks**” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.310 “**UofT**” has the meaning given in the recitals to the Project Agreement.
- 1.311 “**Utilities**” means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.312 “**Utility Company**” means any company or companies designated by Project Co to provide Utilities.
- 1.313 “**Variation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.314 “**Variation Confirmation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.315 “**Variation Directive**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.316 “**Variation Enquiry**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.317 “**Variation Procedure**” means the procedure set out in Schedule 22 - Variation Procedure.
- 1.318 “**Warranty Letter of Credit**” has the meaning given to it in Section 11.25(a) of the Project Agreement.
- 1.319 “**Warranty Letter of Credit Holdback**” has the meaning given to it in Section 11.25(b)(ii) of the Project Agreement.
- 1.320 “**Warranty Period**” has the meaning given to it in Section 11.23(c) of the Project Agreement.
- 1.321 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Facility, including rectification of any Minor Deficiencies and the performance of all other obligations of Project Co under the Project Agreement, and for clarity includes the Post Games Works.
- 1.322 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;
 - (b) occurs after the date of the Project Agreement;

- (c) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Facility which is not Works or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
- (d) was not reasonably foreseeable at the date of the Project Agreement by an experienced contractor carrying out activities and/or performing design and/or other operations similar to those to be carried out and/or performed by any Project Co Party in relation to the Project.

1.323 “**Works Committee**” has the meaning given in Section 14.1(a) of the Project Agreement.

1.324 “**Works Milestone**” means any of the following milestones in the Works Schedule,

- (a) completion of excavation;
- (b) completion of foundations;
- (c) completion of backfill operations;
- (d) completion of superstructure;
- (e) completion of the building envelope (including roof membrane, exterior cladding, exterior doors, louvers, windows, glazing systems, flashings, and sealants);
- (f) completion of interior concrete block and steel stud partitions (sheathing excepted);
- (g) completion of HVAC, plumbing, and electrical rough-ins;
- (h) completion of soft and hard landscaping;
- (i) completion of interior finishes (flooring, interior sheathing, painting, ceiling tile); and
- (j) completion of life-safety systems (public address, fire alarm, sprinkler systems) and security systems,

and, for clarity, includes the applicable date for achieving such milestone (as such date may be extended pursuant to Section 30 of the Project Agreement); and “**Works Milestones**” means, collectively, all of such “**Works Milestones**”.

1.325 “**Works Report**” has the meaning given in Section 13.6 of the Project Agreement.

1.326 “**Works Schedule**” has the meaning given in Section 13.2(a) of the Project Agreement.

1.327 “**Works Submittals**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.

- 1.328 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).
- 2. Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 - Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and

- interpreted as if the words “Project Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of HMQ or any HMQ Party shall be construed having regard to the interactive nature of the activities of HMQ, HMQ Parties and Project Co and further having regard to:

- (a) acts contemplated by the Output Specifications; or
 - (b) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and HMQ's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
 - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.22 Where the Project Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.23 Where the Project Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of days before a stipulated date or event or "by" a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.24 Where the Project Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Toronto, Ontario.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.

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- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or HMQ they shall be construed and interpreted as synonymous and to read “Project Co shall” or “HMQ shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to HMQ shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the international sporting facility sector in Ontario will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

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

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information and of the Site carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

SCHEDULE 2

COMPLETION DOCUMENTS

In this Schedule 2, "certified" shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

1. DOCUMENTS TO BE DELIVERED BY PROJECT CO

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than HMQ and in form and substance satisfactory to HMQ, acting reasonably) is to be delivered by Project Co to HMQ on or prior to the Financial Close Target Date:

- 1.1 an original of this Project Agreement;
- 1.2 an original of the Lenders' Direct Agreement;
- 1.3 an original of the Independent Certifier Agreement;
- 1.4 an original of the Insurance Trust Agreement;
- 1.5 an original notice of appointment of the Project Co Representative;
- 1.6 the Lending Agreements;
- 1.7 the Design and Construction Contract;
- 1.8 originals of the Performance Guarantee of Construction Guarantor and the Performance Guarantee of Construction Parent Guarantor;
- 1.9 an original of the Assignable Subcontract Agreement for Design and Construction Contract;
- 1.10 those Assignable Subcontract Agreements designated by HMQ;
- 1.11 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by Project Co in accordance with this Project Agreement;
- 1.12 an original of the Bonds required in accordance with this Project Agreement or as HMQ may direct in accordance with the Insurance Trust Agreement.
- 1.13 an original of the acknowledgement and undertaking in the form attached as Appendix A to this Schedule 2;

- 1.14 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.15 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;
- 1.16 a certificate of an officer of the Construction Guarantor and a certificate of an officer of the Construction Parent Guarantor, each substantially in the form attached as Appendix B to this Schedule 2;
- 1.17 an original of the opinion from counsel to Project Co, the Construction Contractor, the Construction Guarantor, the Construction Parent Guarantor and such other Project Co Parties as HMQ may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to HMQ and its counsel; and
- 1.18 such other documents as the parties may agree, each acting reasonably.

2. DOCUMENTS TO BE DELIVERED BY HMQ

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, where HMQ is a party to such document, executed by HMQ and, if applicable, any HMQ Party or Governmental Authority) is to be delivered by HMQ to Project Co on or prior to the Financial Close Target Date:

- 2.1 an original of this Project Agreement;
- 2.2 an original of the Lenders' Direct Agreement;
- 2.3 an original of the Independent Certifier Agreement;
- 2.4 an original of the Insurance Trust Agreement;
- 2.5 an original of the Assignable Subcontract Agreement for Design and Construction Contract;
- 2.6 an original notice of appointment of the HMQ Representative;
- 2.7 a certificate of an officer of HMQ and a declaration of management signed by an officer of HMQ substantially in the forms attached as Appendix D and Appendix E respectively to this Schedule 2; and
- 2.8 such other documents as the parties may agree, each acting reasonably.

APPENDIX A

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* ("HMQ")

AND TO: The Ministry of Infrastructure

RE: Project agreement (as amended, supplemented or modified from time to time, the "**Project Agreement**") dated the [●] day of [●], 20[●] between HMQ and [●] ("**Project Co**")

1. The undersigned acknowledges that:
 - (a) The Project will proceed as an alternative financing and procurement project under the MOI's *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in the IPFP Framework.
 - (b) The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - (i) The public interest is paramount.
 - (ii) Value for money must be demonstrable.
 - (iii) Appropriate public control/ownership must be preserved.
 - (iv) Accountability must be maintained.
 - (v) All processes must be fair, transparent and efficient.
 - (c) The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
2. The undersigned undertakes to comply with all Applicable Law in any direction or order issued by HMQ to the extent that the direction or order affects the Works.
3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

DATED this _____ day of _____, 20[●].

[●]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

[EXECUTION PAGE FOR UNDERTAKING AND ACKNOWLEDGEMENT]

APPENDIX B

FORM OF PROJECT CO/PROJECT CO PARTY OFFICER'S CERTIFICATE

Certificate of an Officer of

[•]

(the "Corporation")

TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown Agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* ("HMQ")

AND TO: [REDACTED]

AND TO: [COUNSEL TO PROJECT CO]

AND TO: [LENDERS' AGENT]

AND TO: [COUNSEL TO LENDERS]

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

1. Constating Documents
 - (a) The Corporation is a subsisting corporation duly incorporated under the laws of [the Province of Ontario].
 - (b) Attached hereto as **Schedule "A"** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the "**Articles**"). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
 - (c) Attached hereto as **Schedule "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**") enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.

- (d) Attached hereto as **Schedule "C"** is a true and complete copy of a unanimous shareholders' agreement between the shareholders of the Corporation and the Corporation (the "**Unanimous Shareholders' Agreement**") executed on or before the date hereof. The Unanimous Shareholders' Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [●] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders' Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the [**Business Corporations Act (Ontario) (the "Act")**], the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders' Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders' Agreement or in any other agreement binding on the Corporation which:
 - (i) restrict or limit the powers of the Corporation to enter into:

- (1) a certain project agreement with HMQ made as of [●], 20[●] (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**") pursuant to which the Corporation will design, build and finance [**the Facility**];
 - (2) a lenders' direct agreement between the Corporation, HMQ and the Lenders' Agent; and
 - (3) a design and construction contract between the Corporation and [●] (the "**Construction Contractor**");
 - (4) an insurance trust agreement between the Corporation, HMQ, the Lenders' Agent and [●];
 - (5) [**NTD: List other documents delivered at Financial Close.**],
(collectively, the "**Documents**"); or
- (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule "D"** are true and complete copies of the resolutions of the [**directors/shareholders**] of the Corporation (the "**Resolutions**"), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
 - (i) the Articles, By-laws or the Unanimous Shareholders' Agreement;
 - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or [**Ontario**] governmental body by which it is bound;
 - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound;or

- (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.
- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or [Ontario] governmental authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

3. No Breach or Default

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under the Articles, By-laws, Unanimous Shareholders' Agreement or under any other agreement binding on the Corporation.

4. Specimen Signatures

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

NAME	POSITION	SIGNATURE

5. Capital

Listed below are all of the issued and outstanding shares in the capital of the Corporation and the registered owner of such shares:

ISSUED SHARES

REGISTERED OWNER

Attached hereto as **Schedule "E"** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation) securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this _____ day of _____, 20[●].

Name:

Title:

APPENDIX C

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

[INSERT DATE]

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8

[REDACTED]

Dear Sirs/Mesdames:

Re: [Pan Am [Facility] Project]

We have acted as counsel to [●] ("**Project Co**"), [●] (the "**Construction Contractor**") in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build and finance agreement for the new Pan Am Aquatics Centre, Field House and Canadian Sports Institute Ontario facility in the City of Toronto. **[NTD: Additional parties to be added depending on consortium structure and/or the financing package.]**

This opinion is being delivered to Ontario Infrastructure and Lands Corporation, as agent for Her Majesty the Queen in Right of Ontario ("HMQ") and its counsel pursuant to Section 1.16 of Schedule 2 to the project agreement made as of [date] between HMQ and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**").

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as counsel to Project Co and the Construction Contractor, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of [date]):

1. the Project Agreement; and

2. the following project documents (collectively, the "Implementation Documents"):
- (a) the Design and Construction Contract;
 - (b) the Insurance Trust Agreement;
 - (c) the Lenders' Direct Agreement;
 - (d) the Assignable Subcontract Agreement for Design and Construction Contract;
 - (e) the Assignable Subcontract Agreements;
 - (f) the Lending Agreements;
 - (g) the Performance Bond;
 - (h) the Multiple Obligee Rider to the Performance Bond;
 - (i) the Labour and Material Payment Bond;
 - (j) the Multiple Obligee Rider to the Labour and Material Payment Bond;
 - (k) the Performance Guarantee of Construction Guarantor; and
 - (l) the Performance Guarantee of Construction Parent Guarantor.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the "**Documents**", and each is individually referred to as a "**Document**". **[NTD: Additional documents to be added depending on consortium structure and/or the financing package.]**

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof.

We do not act as corporate counsel to **[Project Co or the Construction Contractor]**, nor have we participated in the general maintenance of their corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of each of Project Co and the Construction Contractor dated as of the date hereof (the "**Officer's Certificates**") as to certain factual matters.

Searches and Reliance

We have conducted, or have caused to be conducted, the searches identified in Schedule "A" (the "**Searches**") for filings or registrations made in those offices of public record listed in Schedule "A".

Pan Am Aquatics/Field House/CSIO Project

The Searches were conducted against the current name and all former names of Project Co and the Construction Contractor (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule "A".

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer's Certificates.

We have relied exclusively, and without any independent investigation or enquiry, on the Officer's Certificates and the certificates of public officials with respect to certain factual matters.

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the **[Ministry of Government Services (Ontario)]** of even date, copies of which are attached as Schedule "B".

In connection with the opinions set forth in paragraphs 5, 8, 11, 17 and 20 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of **[●]** dated **[●]**, **20[●]** (the "**CC Opinion**"), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

Assumptions

For the purposes of the opinions expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Project Co and the Construction Contractor) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Project Co and the Construction Contractor) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and

delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.

4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Project Co and the Construction Contractor) to Project Co and the Construction Contractor.

Opinions

Based upon and subject to the foregoing, and to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

Incorporation and Existence

1. Project Co is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
2. The Construction Contractor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

Corporate Power and Capacity

3. Project Co has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Project Agreement, and to enter into and perform its obligations under each of the Documents to which it is a party.
4. The Construction Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

Corporate Authorization

5. Project Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
6. The Construction Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

Execution and Delivery

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

Enforceability

9. Each of the Documents to which Project Co is a party constitutes a legal, valid and binding obligation of Project Co, enforceable against it in accordance with its terms.
10. Each of the Documents to which the Construction Contractor is a party constitutes a legal, valid and binding obligation of the Construction Contractor, enforceable against it in accordance with its terms.

No Breach or Default

11. The execution and delivery by Project Co of the Documents to which it is a party does not, and the performance by Project Co of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which Project Co is subject.
12. The execution and delivery by the Construction Contractor of the Documents to which it is a party does not, and the performance by the Construction Contractor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Contractor is subject.

Regulatory Approvals

13. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by Project Co of the Documents to which it is a party and the performance of its obligations thereunder.
14. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction Contractor of the Documents to which it is a party and the performance of its obligations thereunder.

Qualifications

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.
3. The enforceability of any Document will be subject to the limitations contained in the Limitations Act, 2002 (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
4. Pursuant to the Currency Act (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
5. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
6. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of Project Co notwithstanding any agreement to the contrary.
8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
9. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a

- court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
 11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.
 12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
 13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
 14. Any award of costs is in the discretion of a Court of competent jurisdiction.
 15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on HMQ for which it would be contrary to public policy to require Project Co to indemnify HMQ or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
 16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

[INSERT NAME OF LAW FIRM]

APPENDIX D
FORM OF
CERTIFICATE OF AN OFFICER OF
ONTARIO INFRASTRUCTURE AND LANDS CORPORATION
(the “Corporation”)

TO: [PROJECT CO]

AND TO: [COUNSEL TO PROJECT CO]

AND TO: [LENDERS’ AGENT]

AND TO: [LENDERS' COUNSEL]

RE: Project agreement (as amended, supplemented or modified from time to time, the "**Project Agreement**") dated the [●] day of [●] between the Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, and [●] ("**Project Co**")

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

1. Attached hereto as **Schedule “A”** is a true and complete copy of (i) the resolutions of the directors of the Corporation regarding the execution of public works projects undertaken by the Corporation and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the Corporation relating to delegation of signing authority (collectively, the “**Execution Resolutions**”), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
2. Attached hereto as **Schedule “B”** is a true and complete copy of the resolutions of the directors the Corporation approving the selection of Project Co as the designated proponent for the Pan Am Aquatics Centre, Field House and Canadian Sports Institute Ontario Project (the “**Project Resolutions**”). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
3. To the knowledge of the undersigned, after due inquiry as of the date hereof, the Ministry of Infrastructure (the “**Minister**”) has not given a direction pursuant to Subsection 4(3) of the

Pan Am Aquatics/Field House/CSIO Project

Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c.9, Schedule 32 (the “Act”) that limits the scope of the objects of the Corporation as they are set out in Subsection 4(1) of the Act.

- 4. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver Project Documents (as such a term is defined in the Execution Resolutions referenced in Item 1(i) above) relating to the Pan Am Aquatics Centre, Field House and Canadian Sports Institute Ontario Project on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

<u>Name</u>	<u>Position</u>	<u>Signature</u>
[•]	_____	_____
[•]	_____	_____
[•]	_____	_____
[•]	_____	_____

DATED this _____ day of _____, 20[•].

 Name: [•]
 Title: Secretary

APPENDIX E

FORM OF DECLARATION OF MANAGEMENT

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

(“the Corporation”)

DECLARATION OF MANAGEMENT

WHEREAS the Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, and [●] propose to enter into a Project Agreement relating to the Pan Am Aquatics Centre, Field House and Canadian Sports Institute Ontario Project in Toronto, Ontario (the “**Project**”);

AND WHEREAS the Corporation will from time to time enter into agreements for the design and construction of the Pan Am Aquatics Centre, Field House and Canadian Sports Institute Ontario (CSIO) Project assigned to the Corporation by the Minister of Infrastructure and as well as ancillary agreements, instruments, certificates and other documents required to give effect to, or contemplated to be delivered in accordance with the Pan Am Aquatics Centre, Field House and Canadian Sports Institute Ontario Project (collectively, “**Contract Documents**”);

NOW THEREFORE THE CORPORATION’S MANAGEMENT HEREBY DECLARES THAT:

1. by resolution of the board of directors of the Corporation passed on [●], the board of directors of the Corporation has authorized the Corporation’s management (for and in the name of and on behalf of the Corporation) to execute and deliver the Contract Documents and do all such other acts and things as the Corporation’s management may determine to be necessary or advisable to carry out the transactions contemplated by the applicable Contract Documents;
2. the Corporation’s management may execute and deliver the Contract Documents to which the Corporation may become a party and any other documents, instruments or agreements delivered in connection with the Contract Documents from time to time (collectively, together with the Contract Documents, the “**Documents**”) all in such form and on such terms as the management of the Corporation executing such Documents in accordance with this declaration may approve, such approval to be evidenced conclusively by the execution of such Documents by the Corporation’s management; and

Pan Am Aquatics/Field House/CSIO Project

3. the Contract Documents to be executed and delivered by the Corporation in connection with the Pan Am Aquatics Centre, Field House and Canadian Sports Institute Ontario (CSIO) Project and the transactions and obligations contemplated thereunder are for the purpose of carrying out the objects of the Corporation and the Corporation shall not and will not assert the contrary against any person dealing with the Corporation or any person who has acquired an interest in the Project from the Corporation.

THIS DECLARATION may be signed in counterparts, and all such counterparts, when taken together, shall constitute one and the same declaration, effective on this date.

DATED this _____ day of _____, 20[●].

Name: [●]
Title: Secretary

SCHEDULE 3

DESIGN AND CONSTRUCTION CONTRACT

THIS DESIGN AND CONSTRUCTION CONTRACT is made as of the [•] day of [•], 2012.

BETWEEN:

PCL AQUATICS CENTRE 2012 LTD.

(“**Project Co**”)

- and -

PCL CONSTRUCTORS CANADA INC.

(the “**Construction Contractor**”)

WHEREAS:

- A. Pursuant to a project agreement dated as of the [•] day of [•], 2012 between Project Co and HMQ (such agreement, together with all amendments, supplements and modifications thereto and restatements or replacements thereof, being hereinafter called the “Project Agreement”), Project Co has agreed to perform the Design and Construction Work.
- B. Pursuant to the Project Agreement, Project Co has agreed to enter into this Design and Construction Contract with the Construction Contractor, pursuant to which the Construction Contractor has agreed to perform the Design and Construction Work.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) This Design and Construction Contract shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement, applied *mutatis mutandis* and unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Project Agreement. For greater certainty, the Definitions and Interpretation shall be read or construed so as to conform to Sections 1.1(b) and (c) below.

- (b) The provisions of the Project Agreement relating to the Design and Construction Work (as set out in the definition of “Design and Construction Work”) are incorporated by reference *mutatis mutandis* into this Design and Construction Contract. In the event of any conflict or inconsistency between the provisions of this Design and Construction Contract and the Project Agreement, the provisions of this Design and Construction Contract shall govern and prevail. For greater certainty, the provisions of this Design and Construction Contract relating to payment shall be interpreted and operate independently from the comparable provisions in the Project Agreement. Notwithstanding the foregoing, and for greater certainty, the Construction Contractor covenants and agrees to comply with the provisions of Section 8.1 of the Project Agreement (provided the term “Project Documents”, as used in Section 8.1, shall not include the Lending Agreements, Schedule 4 – Lenders’ Direct Agreement, Schedule 12A – Performance Guarantee of Construction Guarantor, or Schedule 12B – Performance Guarantee of Construction Parent Guarantor) and Section 8.2 of the Project Agreement (provided that the term “Ancillary Documents”, as used in Section 8.2, shall be read as “sub-subcontracts”). For further certainty, Section 11.23, Section 11.24, Section 16.5(a), Article 26, Article 37, Article 39, Sections 47.3(a) and (b), Section 47.4 and Schedule 27 – Dispute Resolution Procedure of the Project Agreement and such provisions are hereby incorporated by reference *mutatis mutandis* into this Design and Construction Contract. Provided further that the term “Ancillary Documents” in Section 34.1(a)(xvi) shall be read as “Design and Construction Contract”.
- (c) Without limiting the application of Section 1.1(a) and notwithstanding Section 1.1(b), any definition or principle of interpretation set out in Schedule 1 – Definitions and Interpretations to the Project Agreement, or any provision of any Project Document (other than this Design and Construction Contract), to the contrary, the following provisions of the Project Agreement shall not apply to this Design and Construction Contract and the Construction Contractor shall have no obligation with respect thereto, whether related to performance, compliance, observance or otherwise:
- (i) Recitals
 - (ii) Article 2
 - (iii) Sections 4.2, 4.3, 4.4, and 4.9
 - (iv) Article 6
 - (v) Sections 8.3 and 8.4
 - (vi) Section 34.1(a)(iv)

- (vii) Sections 40.1 to 40.4
 - (viii) Sections 47.3(c) and (d)
 - (ix) Article 49
 - (x) Schedule 2 – Completion Documents
 - (xi) Schedule 4 – Lenders’ Direct Agreement
 - (xii) Schedule 5 – Assignable Subcontract Agreement for Design and Construction Contract
 - (xiii) Schedule 12A – Performance Guarantee of Construction Guarantor
 - (xiv) Schedule 12B – Performance Guarantee of Construction Parent Guarantor
 - (xv) Schedule 20 – Payments and Holdbacks
 - (xvi) Schedule 24 – Financial Model
 - (xvii) Schedule 31 – Project Co Information.
- (d) Where used herein, the phrase “the Project Agreement applied *mutatis mutandis*”, “incorporated by reference *mutatis mutandis*” and derivatives thereof, means that the applicable provisions of the Project Agreement shall be read and construed with all appropriate changes, including substituting references in the Project Agreement, where the context permits, as follows:
- (i) HMQ with Project Co, except for those references in Sections 9.1(c), 39.4(a), 39.7, 39.9(b), 50.1 and 51.17 of the Project Agreement, in respect of which, the term “HMQ” shall remain “HMQ”;
 - (ii) Project Co with the Construction Contractor; and
 - (iii) the Project Agreement with the Design and Construction Contract.

2. CONSTRUCTION WORK

2.1 Design and Construction Work

- (a) Subject to the provisions of Article 1 and the provisions of this Design and Construction Contract, the Construction Contractor shall perform all of the Design and Construction Work in compliance with this Design and Construction Contract and in such a manner so as not to cause Project Co to be in breach of its

obligations to HMQ pursuant to the Project Agreement in respect of the Design and Construction Work.

- (b) For greater certainty, the Construction Contractor shall not be obligated by this Design and Construction Contract for any covenant, agreement, undertaking or obligation of Project Co related to the Financing or the Cost of the Financing, including any obligations of Project Co under Section 8.4(a) of the Project Agreement, each of which are hereby expressly excluded from the scope of this Design and Construction Contract.

3. GUARANTEED PRICE AND ADJUSTMENTS

3.1 Guaranteed Price and Adjustments

- (a) The Guaranteed Price hereunder, excluding HST, shall be the Guaranteed Price under the Project Agreement less the Cost of the Financing as set out in Schedule 24 – Financial Model to the Project Agreement.
- (b) The Guaranteed Price hereunder will not be subject to adjustment despite changes in the Design and Construction Work, unless such changes in the Design and Construction Work constitute a Variation. The Parties further agree that the Guaranteed Price hereunder will only be adjusted where this Design and Construction Contract specifically and expressly refer to an adjustment to the Guaranteed Price hereunder, and no claim for an adjustment to the Guaranteed Price hereunder on any legal or equitable basis outside of this specific and express right to an adjustment of the Guaranteed Price hereunder set out in this Design and Construction Contract will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price hereunder must be provided for in a Variation under Schedule 22 – Variation Procedure of the Project Agreement, which Schedule has been incorporated herein pursuant to Section 1.1(b) hereof.

4. PAYMENTS

4.1 Payments to the Construction Contractor

All payments required to be made by Project Co to the Construction Contractor hereunder, including base progress payments, the certified cost to complete, the Substantial Completion Payment, the First Interim Payment, the Second Interim Payment, the PGW Substantial Completion Payment, the HMQ Holdback, the PGW Holdback, and any Legislative Holdbacks with respect thereto shall be paid by Project Co to the Construction Contractor, together with applicable HST, in accordance with the provisions of Appendix 1 to this Design and Construction Contract and the applicable provisions of the Project Agreement applied *mutatis mutandis*. All provisions in the Project Agreement respecting such payments, including provisions with respect to the calculation, determination and payment thereof and the set-off, withholding and

deduction therefrom, shall apply *mutatis mutandis* to this Design and Construction Contract with the intent that payment of such amounts under the Project Agreement shall be deemed to be full satisfaction of any corresponding payment obligations to the Construction Contractor under this Design and Construction Contract.

4.2 **HST**

All payments to be made by Project Co to the Construction Contractor shall also include applicable HST.

4.3 **No Other Entitlement**

The Construction Contractor shall not be entitled to any payments or compensation under or in connection with this Design and Construction Contract, except for payments made under Section 4.1.

5. **VARIATIONS**

The Design and Construction Work and the Guaranteed Price hereunder, as such terms are applied and interpreted for the purposes of this Design and Construction Contract, are subject to change, adjustment or variation only in accordance with the provisions of the Project Agreement. For greater certainty, the Construction Contractor shall not be entitled to any adjustment or variation to the Design and Construction Work, the Guaranteed Price hereunder or the Scheduled Substantial Completion Date or the Scheduled PGW Substantial Completion Date except if and to the extent allowed to Project Co pursuant to the provisions of the Project Agreement.

6. **INDEPENDENT CERTIFIER**

The Construction Contractor acknowledges the appointment and role of the Independent Certifier pursuant to the Project Agreement and agrees to be bound by the decisions, directions and instructions of the Independent Certifier pursuant to those provisions of the Project Agreement incorporated herein, as such decisions, directions and instructions apply to the performance of the Design and Construction Work by the Construction Contractor.

7. **CROSS DEFAULT**

A Project Co Construction Event of Default shall constitute a default by the Construction Contractor under the Design and Construction Contract, provided that, for greater certainty, if the Construction Contractor has received a copy of the notice of default provided to Project Co in accordance with Article 49 of the Project Agreement, the Construction Contractor shall not be entitled to any notice of or time period to remedy such Project Co Construction Event of Default.

8. LIMITS ON LIABILITY

For greater certainty, the limits on liability set out in Article 45 of the Project Agreement shall apply *mutatis mutandis* to this Design and Construction Contract.

9. BONDS

Construction Contractor shall obtain and deliver to Project Co the Bonds on or before the Financial Close Target Date and shall provide satisfactory evidence with respect thereto to Project Co on or before the Financial Close Target Date. Each Bond shall be properly executed by a Surety or by an agent or an attorney in fact for the Surety, in which latter case, Construction Contractor is required to submit with such Bond a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to Project Co to evidence the authority of the Agent or attorney in fact.

10. GENERAL**10.1 Notices to Parties**

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

If to the Construction Contractor: **[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

If to Project Co: **[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

10.2 Notice to Independent Certifier

In addition to the notice requirements set out in Section 10.1, where any Notice is to be provided or submitted to the Independent Certifier, it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

[REDACTED]

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

10.3 Facsimile

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 10.3.

10.4 Change of Address

Either Party to this Design and Construction Contract may, from time to time, change any of its contact information set forth in Section 10.1 or 10.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

10.5 Deemed Receipt of Notices

- (a) Subject to Sections 10.5(b), 10.5(c) and 10.5(d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

10.6 Miscellaneous

For greater certainty, and without limiting the application of the applicable sections of the Project Agreement which are applied to this Design and Construction Contract *mutatis*

mutandis, as aforesaid, this Design and Construction Contract is to be governed and interpreted on a basis consistent with the provisions of Article 51 of the Project Agreement. Without limiting the generality of the foregoing:

- (a) the Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Design and Construction Contract (and without limiting the foregoing, the Construction Contractor will at any time, and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by Project Co in order to cure any defect in the execution and/or delivery of this Design and Construction Contract); and
- (b) this Design and Construction Contract shall enure to the benefit of the Parties hereto and their respective permitted successors and assigns and be binding upon the Parties hereto and their respective successors and assigns.

11. CONTRACT CANCELLATION FEE

The Construction Contractor acknowledges and agrees that there will be no cost associated with the cancellation of this Design and Construction Contract for the purposes of the calculation of the HMQ Default Termination Sum and the Non-Default Termination Sum under the provisions of Schedule 23 – Compensation on Termination of the Project Agreement, other than cancellation charges and other costs associated with the termination of any commitments relating to the Design and Construction Work under this Design and Construction Contract that the Construction Contractor makes, enters into or incurs in respect of any such work and that are otherwise payable pursuant to the provisions of Schedule 23 – Compensation on Termination of the Project Agreement.

[EXECUTION PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Design and Construction Contract as of the date first above written.

PCL AQUATICS CENTRE 2012 LTD.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation

PCL CONSTRUCTORS CANADA INC.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation

**APPENDIX 1 TO SCHEDULE 3
PAYMENTS AND HOLDBACKS**

1. APPLICATIONS FOR PAYMENT

- 1.1 Applications for payment on account may be made monthly as the Design and Construction Work progress.
- 1.2 Project Co and the Construction Contractor agree that for the purpose of calculating payment hereunder and for the amount of any Legislative Holdback under the Design and Construction Contract, such determination shall be based only upon the Cost of the Works.
- 1.3 Application for payment by the Construction Contractor shall be dated the last day of the agreed monthly payment period and the amount claimed shall be based on the value, proportionate to the Cost of the Works, of the Design and Construction Work performed forming part of the Cost of the Works including Products delivered to the Site at that date. The application for payment shall also include and separately state the value of the Design and Construction Work performed with respect to Variation Confirmations or Variation Directives the payment of which Project Co is responsible for and which are included within Additional HMQ Payments. Applications for payment shall be made to the Independent Certifier and to the Lenders' Consultant at the same time. The Lenders' Consultant shall be responsible for verifying the application for payment to the Lender.
- 1.4 The Construction Contractor shall submit to the Independent Certifier and the Lenders' Consultant, at least 14 days before the first application for payment, a schedule of values for the parts of the Design and Construction Work so as to facilitate a valuation of applications for payment. The schedule of values shall be made out in such form, broken down in such detail and supported by such evidence as Project Co and the Independent Certifier and the Lenders' Consultant may reasonably direct and when accepted by the Independent Certifier and the Lenders' Consultant and Project Co, shall be used as the basis for applications for payment, unless it is found to be in error.
- 1.5 Claims for Products delivered to the Site but not yet incorporated into the Design and Construction Work shall be supported by such evidence as the Independent Certifier may reasonably require to establish the value and delivery of the Products.
- 1.6 The Construction Contractor shall submit to Project Co, the Independent Certifier and the Lenders' Consultant a statement based on the schedule of values, a WSIB Certificate of Clearance, the update of the Works Schedule prepared in accordance with Section 13.2 of the Project Agreement and an updated cash flow with each application for payment.
- 1.7 With the second and all subsequent applications for payment, except the final payment and release of holdback applications, the Construction Contractor shall submit a Statutory Declaration on CCDC Form 9A (2001).

2. PROGRESS PAYMENTS

- 2.1 The Independent Certifier will issue to Project Co, no later than 10 Business Days after the receipt of an application for payment from the Construction Contractor submitted in accordance with Section 1 of this Appendix 1, a certificate addressed to HMQ of the progress of the Design and Construction Work in relation to the schedule of values, a copy of which shall be provided to Project Co, the Construction Contractor and the Lenders' Consultant. Contemporaneously, the Independent Certifier will issue a certificate for payment to Project Co of Additional HMQ Payments payable by Project Co with respect to the application for payment from the Construction Contractor in the amount applied for or in such other amount as the Independent Certifier determines to be properly due. If the Independent Certifier requires amendments to the application, the Independent Certifier will promptly notify the Construction Contractor in writing giving reasons for the amendment. The Lenders' Consultant will be responsible, no later than 5 Business Days from receipt of the certificate of the progress of the Design and Construction Work in relation to the schedule of values from the Independent Certifier, for issuing certificates for payment to Lender and the Construction Contractor respecting base progress payments. Project Co and the Independent Certifier shall not be responsible for any delay in issuing a certificate for payment in respect of or for payment of base progress payments on account of the activities of the Lenders' Consultant and/or the Lender.
- 2.2 Payment to the Construction Contractor on account of base progress payments and monthly progress payments with respect to Additional HMQ Payments shall be made no later than 10 Business Days after the date of a certificate for payment issued by the Lenders' Consultant or the Independent Certifier, as the case may be.
- 2.3 Applications for progress payments will continue to be provided to the Lenders' Consultant so long as any amount that has been held back by Project Co pursuant to the Design and Construction Contract for the Design and Construction Work completed prior to the Substantial Completion Date remains unpaid.
- 2.4 Notwithstanding the time periods provided regarding the approval and certification of payment by the Independent Certifier or the Lenders' Consultant in Section 2.1 of this Appendix 1 and for payment in Section 2.2 of this Appendix 1, respectively, the total period of time between receipt of the application for payment by the Construction Contractor and payment by Project Co shall be no more than 25 Business Days, except with respect to any amount held back from such payment by Project Co in accordance with the Design and Construction Contract.
- 2.5 **Construction Liens**
- .1 Notwithstanding anything else in this Appendix 1 – Payments and Holdbacks, in the event a claim for a construction lien is registered against the Site arising from the performance of the Design and Construction Work, and unless the

Construction Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, or Project Co receives any written notice of lien arising from the performance of the Design and Construction Work, Project Co shall be entitled to withhold such portion of any payment otherwise due to the Construction Contractor in an amount Project Co reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by Project Co in connection therewith, including such amount on account of costs of the lien claimant such that Project Co may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the *Construction Lien Act* (Ontario), until such time as such claim has been dealt with as provided below.

- .2 In the event that a written notice of a construction lien arising from the performance of the Design and Construction Work is received by Project Co, and unless the Construction Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ acting reasonably, the Construction Contractor shall, within 30 days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the *Construction Lien Act* (Ontario).
- .3 If a construction lien arising from the performance of the Design and Construction Work is registered against the Site, and unless the Construction Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, the Construction Contractor shall, within 30 days, at its sole expense, vacate or discharge the lien from title to the Site. If the lien is merely vacated, the Construction Contractor shall, if requested, undertake Project Co's defence of any subsequent action commenced in respect of the lien at the Construction Contractor's expense.
- .4 If the Construction Contractor fails or refuses to vacate or discharge a construction lien or written notice of lien arising from the performance of the Design and Construction Work within the time prescribed above, and unless the Construction Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, Project Co shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by Project Co in doing so (including legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of the Construction Contractor, and Project Co may deduct such amounts from the amounts otherwise due or owing to the Construction Contractor.

- .5 Without limiting any of the foregoing, the Construction Contractor shall satisfy all judgments and pay all costs resulting from any construction liens arising from the performance of the Design and Construction Work or any actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against Project Co by any person that provided services or materials to the Site which constituted part of the Design and Construction Work.
- .6 The provisions of Sections 2.5.1 through 2.5.5 inclusive, of this Appendix 1, do not apply to construction liens (i) filed by the Construction Contractor which are claimed as a result of any default of Project Co to make payments to the Construction Contractor in accordance with the terms of the Design and Construction Contract or (ii) filed by any HMQ Party, including for greater certainty HMQ's own forces or HMQ's other contractors, which are claimed as a result of work in relation to the Project.

3. PAYMENT OF HOLDBACK UPON SUBSTANTIAL COMPLETION

- 3.1 After the issuance of the Substantial Completion Certificate under Section 24.4(d) of the Project Agreement, the Construction Contractor shall:
 - .1 submit an application for payment of the holdback amount;
 - .2 submit a written request for release of holdback including a declaration that no written notices of lien arising from the performance of the Design and Construction Work have been received by it;
 - .3 submit a Statutory Declaration CCDC 9A (2001); and
 - .4 submit an original WSIB Certificate of Clearance.
- 3.2 After the later of (i) the receipt of the documents set out in Section 3.1 of this Appendix 1, and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the *Construction Lien Act* (Ontario), the Independent Certifier shall issue a certificate for payment of the holdback amount.
- 3.3 Prior to the date of the release of the holdback, the Construction Contractor shall have removed from the Site all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion or to correct any remaining Minor Deficiencies.
- 3.4 Subject to the provisions of Section 2.5 of this Appendix 1 and the removal of claims for lien preserved or perfected pursuant to the *Construction Lien Act* (Ontario) arising from the performance of the Design and Construction Work, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the second

Business Day following the receipt of the certificate for payment of the holdback amount pursuant to Section 3.2 of this Appendix 1.

4. COMPLETION

4.1 The Construction Contractor shall provide As-Built Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event within 30 days of the Substantial Completion Date.

4.2 Save and except with Project Co's prior written approval, the Construction Contractor shall complete all Minor Deficiencies and assign and provide all of the Project Deliverables that remain outstanding no later than 120 days from the date when Substantial Completion is certified, unless the reasons for any delay are acceptable to Project Co or the delay is caused by Project Co.

5. FINAL PAYMENT

5.1 Subject to the other requirements of this Design and Construction Contract, the unpaid balance of the Guaranteed Price hereunder shall become payable to the Construction Contractor on the later of:

.1 the 2nd Business Day following the expiration of all liens pursuant to the *Construction Lien Act* (Ontario); and

.2 the 2nd Business Day following the Final Completion Date

subject to Project Co's right under the Design and Construction Contract to withhold payment from the unpaid balance of the Guaranteed Price hereunder including for any amounts required pursuant to Section 6 of this Appendix 1, and any sums required to satisfy any lien or trust claims arising from the Design and Construction Work.

6. WITHHOLDING OF PAYMENT

6.1 If because of climatic or other conditions reasonably beyond the control of the Construction Contractor, there are items of work that cannot be performed, payment in full for that portion of the Design and Construction Work which has been performed, as certified by the Independent Certifier, shall not be withheld or delayed by Project Co on account thereof, but Project Co may withhold, until the remaining portion of the Design and Construction Work is finished, only such amount that the Independent Certifier determines is sufficient and reasonable to cover the cost of performing such remaining Design and Construction Work.

7. NON-CONFORMING WORKS

- 7.1 No payment by Project Co under the Design and Construction Contract nor partial or entire use or occupancy of the Design and Construction Work by Project Co shall constitute an acceptance of any portion of the Design and Construction Work or Products which are not in accordance with the requirements of the Design and Construction Contract.

SCHEDULE 4

LENDERS' DIRECT AGREEMENT

THIS LENDERS' DIRECT AGREEMENT is made as of the • day of •, 2012.

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

(“**HMQ**”)

AND:

THE TORONTO-DOMINION BANK, acting as agent for and on behalf of the Lenders

(the “**Lenders' Agent**”)

AND:

PCL AQUATICS CENTRE 2012 LTD.

(“**Project Co**”)

WHEREAS:

- A. HMQ and Project Co have entered into the Project Agreement.
- B. Under the Lending Agreements, the Financing is to be provided to Project Co by the Lenders to finance the payment of the Project under the Project Agreement, conditional, among other things, on Project Co executing and delivering the Lending Agreements.
- C. The Lenders' Agent has agreed to enter into this Lenders' Direct Agreement with HMQ and Project Co in relation to the Lending Agreements, the exercise of its rights under the Lending Agreements and the remedying of breaches by Project Co under the Project Agreement.
- D. With a view to ensuring that HMQ is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with HMQ throughout the Project Term.
- E. The Parties hereto agree that in relation to any defaults under the Lending Agreements and/or the Project Agreement and any enforcement action which either wishes to take

under any security document entered into in support of the obligations of Project Co thereunder, their joint efforts and cooperation will be needed, together with such statutory approvals and consents as may then be required, given the nature of HMQ as agent for Her Majesty The Queen in Right of Ontario.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Lenders' Direct Agreement, all capitalized terms not otherwise defined in this Lenders' Direct Agreement shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:

- (a) **"Appointed Representative"** means any of the following to the extent so identified in an Appointed Representative Notice:
 - (i) the Lenders' Agent, the Lenders or any Affiliate of either of them;
 - (ii) a receiver or receiver and manager or any permutation thereof of Project Co appointed under the Lending Agreements or appointed by a court of competent jurisdiction;
 - (iii) a person directly or indirectly owned or controlled by the Lenders' Agent or the Lenders; or
 - (iv) any other person approved by HMQ (such approval not to be unreasonably withheld or delayed).
- (b) **"Appointed Representative Notice"** has the meaning given to it in Section 7.2.
- (c) **"Article"** and **"Section"** mean and refer to the specified article and section or subsection of this Lenders' Direct Agreement.
- (d) **"Design and Construction Contract Assignment"** has the meaning given to it in Section 7.3(c).
- (e) **"Enforcement Action"** means any acceleration of amounts due and owing under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Lending Agreements.
- (f) **"Enforcement Event"** means an event of default under the Lending Agreements or any event which permits an Enforcement Action.
- (g) **"Enforcement Rights"** means the rights as against Project Co to enforce or terminate the Project Agreement under Article 34 therein.

- (h) “**Lenders**” means [REDACTED].
- (i) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (j) “**Lending Agreements**” has the meaning given to it in the Project Agreement.
- (k) “**Lien**” means the lien provided for under Section 14(1) of the *Construction Lien Act* (Ontario).
- (l) “**Notice Period**” means the period starting on the date of delivery of a Project Co Default Notice and ending 120 days later.
- (m) “**Party**” means any of HMQ, Project Co or the Lenders’ Agent, and “**Parties**” means all of HMQ, Project Co and the Lenders’ Agent.
- (n) “**Pre-Qualified Proponent**” means an entity listed in Appendix A to this Lenders’ Direct Agreement.
- (o) “**Project Agreement Assignment**” means an assignment of the Project Agreement by an Appointed Representative to a Replacement Project Co as contemplated in Section 7.3(a).
- (p) “**Project Co Default Notice**” has the meaning given to it in Section 6.1.
- (q) “**Project Co Event of Default**” means the occurrence of an event under the Project Agreement that upon the expiry of any cure periods provided for therein would entitle HMQ to terminate the Project Agreement.
- (r) “**Proposal Submission**” means the proposal submitted by Project Co in accordance with the Request for Proposals.
- (s) “**Qualifying Bank**” means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the Bank Act (Canada); or
 - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls funds in excess of [REDACTED],
- provided such institution is not a Restricted Person or a person whose standing or activities (1) are inconsistent with HMQ’s role in the Province of Ontario, or (2) may compromise the reputation or integrity of TO2015, City, UofT, HMQ or any HMQ Party, or the Pan American Games/Para Pan American Games, so as to affect public confidence in the Pan American Games/Para Pan American Games.
- (t) “**Qualifying Bank Transaction**” means:

- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
- (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
- (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise,

but does not include a trade of bonds issued as provided for under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing.

- (u) **“Rectification Obligations”** has the meaning given in Section 7.3(c).
- (v) **“Replacement Design and Construction Contract”** has the meaning given to it in Section 7.3(c).
- (w) **“Replacement Construction Contractor”** means a replacement contractor under a Design and Construction Contract Assignment or a Replacement Design and Construction Contract entered into pursuant to Section 7.3 who must either be a contractor that is a Pre-Qualified Proponent or that is acceptable to HMQ, acting reasonably.
- (x) **“Replacement Project Agreement”** has the meaning given to it in Section 7.3.
- (y) **“Replacement Project Co”** means a replacement project company under a Project Agreement Assignment or a Replacement Project Agreement entered into pursuant to Section 7.3, that must either be (i) a project company that is a Pre-Qualified Proponent or a wholly-owned subsidiary of a Pre-Qualified Proponent (in which event the Pre-Qualified Proponent must be the Construction Guarantor, or, as determined by HMQ acting in its sole discretion, a party of comparable financial strength, capacity and stability under the Replacement Project Agreement) or (ii) a project company that is acceptable to HMQ, acting reasonably.
- (z) **“Response Period”** has the meaning given to it in Section 4.1(c).
- (aa) **“Step-In Date”** means the date on which HMQ receives a Step-In Notice from the Lenders’ Agent.
- (bb) **“Step-In Notice”** means the notice given by the Lenders’ Agent to HMQ pursuant to Section 7.1 stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.

- (cc) “**Step-In Period**” means the period from the Step-In Date up to and including the Step-Out Date.
- (dd) “**Step-Out Amount**” has the meaning given to it in Section 8.3.
- (ee) “**Step-Out Dates**” means the earlier to occur of (i) the expiry of the periods provided for in Sections 6.3(a) and 6.3(b), as the case may be, and (ii) the date on which HMQ receives a Step-Out Notice.
- (ff) “**Step-Out Notice**” has the meaning given to it in Section 8.1.

1.2 Interpretation

- (a) The provisions of Sections 2.1 - 2.32, inclusive, of Schedule 1 – Definitions and Interpretation of the Project Agreement are hereby incorporated in their entirety and all references in same to “**Project Agreement**” shall be read as “**Lenders’ Direct Agreement**”.
- (b) This Lenders’ Direct Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Lenders’ Direct Agreement.

Appendix No.	Description
Appendix A	Pre-qualified Proponents

2. CONFLICT IN DOCUMENTS

- 2.1 In the event of ambiguities, conflicts or inconsistencies between or among this Lenders’ Direct Agreement and the Project Agreement, this Lenders’ Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of HMQ set out in this Lenders’ Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency. Notwithstanding any provision of any other Ancillary Document, no review by HMQ of the Lending Agreements shall constitute an acceptance of or acquiescence to any of the Lending Agreements or any term or condition thereof by HMQ, and this Lenders’ Direct Agreement and the Project Agreement shall not be subject to any of the terms and conditions of the Lending Agreements.

3. TERM

- 3.1 This Lenders’ Direct Agreement shall terminate automatically on the date on which all obligations that may be or become owing by Project Co to the Lenders’ Agent or the Lenders under the Lending Agreements have been satisfied in full.

- 3.2 Promptly, and in no event more than 30 days following its occurrence, the Lenders' Agent shall provide notice to HMQ of the date referred to in Section 3.1.
- 3.3 HMQ hereby provides to the Lenders, the Lenders' Agent and Project Co and agrees to provide to Replacement Project Co, a non-exclusive license to have access to and to use the Site on the same terms and conditions as set out in Section 16.1 of the Project Agreement.

4. AGREEMENTS AND SECURITY

- 4.1 (a) Project Co and the Lenders' Agent shall not amend or modify any Lending Agreements other than as expressly provided for under the terms of those agreements and so long as such amendment:
- (i) is consistent in all material respects with the Financial Model;
 - (ii) does not increase the Cost of the Financing; and
 - (iii) does not increase the amount of any Compensation Payment, if and when payable, or costs of prepayment that were contained in the financing term sheet in the Proposal Submission,

and shall provide prompt notice to HMQ of any amendments or modifications accompanied by a copy thereof.

- (b) Project Co and HMQ shall not amend or modify the Project Agreement or any Ancillary Documents to which Project Co or HMQ are parties, without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent (subject to Section 6.4 of this Lenders' Direct Agreement) shall not be withheld if the relevant amendment or modification does not:
- (i) adversely affect the ability of the Lenders' Agent or the Lenders to exercise its rights under the Lending Agreements;
 - (ii) adversely affect the security of Lenders under the Lending Agreements; or
 - (iii) increase the liability of the Lenders' Agent, the Lenders or Project Co under the relevant agreement.

The Lenders' Agent shall respond to any request for consent under this Section 4.1(b) within 15 days of receipt thereof, failing which the Lenders' Agent shall be deemed to have consented to the relevant amendment or modification.

- (c) Project Co and HMQ acknowledge and agree that they will not, without the consent of the Lenders' Agent proceed to execute or implement any Variation and HMQ acknowledges and agrees that it will not issue any Variation Directive,

which, in either case, is in respect of a discretionary expansion of the construction scope of the Works initiated by HMQ and which would:

- (i) materially alter the scope of the Works; or
- (ii) materially impact financing of the Project or otherwise materially and adversely alter the risk profile of the Project,

provided the Parties further acknowledge and agree that where such Variation or Variation Directive (A) costs less than [REDACTED], or (B) when aggregated with all such other Variations and Variation Directives previously implemented, costs less than [REDACTED], such Variation Order or Variation Directive shall be deemed not to materially alter the scope of the Works or impact the financing of the Project or otherwise materially and adversely alter the risk profile of the Project. When the Lenders' Agent's approval in respect of a Variation Order or Variation Directive is required in accordance with this Section 4.1(c), the Lenders' Agent will respond to a written request within 10 Business Days ("Response Period") of receiving such request for its approval. If the Lenders' Agent intends not to approve the Variation or the Variation Directive, the Lenders' Agent will notify HMQ within the Response Period and will set out its concerns in such notification. If the Lenders' Agent's concerns can be addressed on a basis acceptable to HMQ and the Lenders' Agent, then HMQ may proceed with such Variation or Variation Directive and will concurrently implement or cause to be implemented such agreed-upon solution, including, as appropriate, by way of an amendment to the Variation or Variation Directive or by a related Variation or Variation Directive.

- 4.2 Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- 4.3 The Lenders' Agent acknowledges having received a copy of each of the Ancillary Documents.
- 4.4 HMQ acknowledges having received a copy of each of the Lending Agreements entered into as at Financial Close and consents to the granting of security by Project Co over the Project Agreement and Ancillary Documents contained in the Lending Agreements.
- 4.5 Project Co and the Lenders' Agent acknowledge that, subject to the provisions of the *Construction Lien Act* (Ontario), none of Project Co, the Lenders' Agent or the Lenders shall, under the Project Agreement or any of the Ancillary Documents, acquire any interest in the Site or the Project (other than the licence to access the Site provided in Section 3.3 of this Lenders' Direct Agreement or in Section 16.1(a) of the Project Agreement) notwithstanding any provision therein to the contrary and that HMQ shall at all times retain the fee simple interest in and freehold title to the Site and the Project to be constructed on the Site under the Project Agreement.

- 4.6 Without limitation of any of their respective rights and remedies under the Ancillary Documents, Project Co and the Lenders' Agent acknowledge that nothing in this Lenders' Direct Agreement or any of the Ancillary Documents, including the Design and Construction Contract, shall limit or shall be construed as limiting any authority and responsibility of HMQ under the *Ontario Infrastructure and Lands Corporation Act* (Ontario) or, subject to Section 9.1(c) of the Project Agreement, any directions to HMQ or to the board of directors of IO made by a Governmental Authority under Applicable Law, or from being in compliance with all Applicable Law.
- 4.7 The Parties agree that they will enter into the Insurance Trust Agreement contemporaneously with the execution of this Lenders' Direct Agreement.

5. ENFORCEMENT OF SECURITY BY AGENT

- 5.1 The Lenders' Agent shall concurrently with notice to Project Co notify HMQ and the Surety of any Enforcement Event, any notice of default delivered pursuant to the Lending Agreements, any Enforcement Action, any notice from the Lenders' Agent to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders' Agent or the Lenders under the Lending Agreements or any notice from the Lenders' Agent to Project Co to demand repayment thereof.
- 5.2 The Lenders' Agent shall appoint the Lenders' Consultant who shall be responsible to advise the Lenders' Agent and the Lenders with respect to the amount of any Legislative Holdback to be maintained in accordance with the Project Agreement. Project Co agrees that it shall, in respect of all payments under the Project Agreement, comply with Part IV of the *Construction Lien Act* (Ontario). The Lenders' Agent shall cause the Lenders' Consultant to provide HMQ with a copy of any written assessment or report prepared by the Lenders' Consultant in relation to the status or progress of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent. The Lenders' Agent acknowledges and agrees that this Section 5.2 shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, a copy of any and all of its written assessments and reports to HMQ.
- 5.3 HMQ may conduct a subsearch of the Site at any time and from time to time and notify the Lenders' Agent and Project Co if any Lien has been registered against the Site arising from performance of the Works (save and except for any Liens in respect of work done by contractors directly engaged by HMQ for which Project Co has not assumed responsibility pursuant to an assignment under Section 11.17(c) of the Project Agreement, and provided in such case that Project Co has not assumed responsibility for payment of such contractors), and if such a Lien has been registered, Project Co shall immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated or discharged. The Lenders' Agent acknowledges and agrees with HMQ that neither the Lenders' Agent nor the Lenders shall be entitled to rely on HMQ to conduct a subsearch or on any subsearch result of HMQ and that the result of any such subsearch

provided by HMQ is, subject to the obligations of Project Co and the Lenders' Agent hereunder, for information only.

- 5.4 The Lenders' Agent agrees to conduct a subsearch of the Site prior to the advance of any Financing and if a Lien has been registered against the Site arising from the performance of the Works (save and except for any Liens in respect of work done by contractors directly engaged by HMQ for which Project Co has not assumed responsibility pursuant to an assignment under Section 11.17(c) of the Project Agreement, and provided in such case that Project Co has not assumed responsibility for payment of such contractors), the Lenders' Agent shall direct Project Co to proceed to immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated or discharged or to make alternative arrangements to bond or otherwise secure the amount of the Lien and costs associated therewith satisfactory to the Lenders' Agent, acting reasonably, and doing so shall be a condition precedent to the making of any advance of the Financing.

6. PROJECT CO EVENT OF DEFAULT

- 6.1 Subject only to the rights expressly afforded to the Lenders' Agent in this Article 6, HMQ shall serve notice to the Lenders' Agent, with a copy to Project Co, of a Project Co Event of Default (the "**Project Co Default Notice**") contemporaneously with any notice delivered by HMQ to Project Co under the Project Agreement. Without limiting the rights and remedies of Lenders' Agent hereunder and without prejudice to Lenders' Agent's right to enforce the Lending Agreements against Project Co, upon the occurrence of a Project Co Event of Default, Lenders' Agent shall forthwith serve notice of default on the Surety and make demand on the Surety under the Performance Bond if the Project Co Event of Default is also a default by the Construction Contractor of its obligations under the Design and Construction Contract (a "**Construction Event of Default**").
- 6.2 At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 6.3), HMQ shall not exercise any right it may have to terminate the Project Agreement or, except to the extent required to protect legal rights, comply with Applicable Law or preserve its right to make a claim to recover under the Performance Bond, exercise any other rights or remedies for a Project Co Event of Default unless:
- (a) HMQ delivers to the Lenders' Agent a Project Co Default Notice setting out the nature of the alleged default in reasonable detail; and
 - (b) in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has not been cured by or on behalf of Appointed Representative within 30 days following the time periods set forth in the Project Agreement, or Appointed Representative (either itself or by others on its behalf) is not diligently proceeding to cure the breach in accordance with Section 34.1(a) of the Project Agreement within the time periods set forth in the Project Agreement, including for greater certainty, prior to the Longstop Date; or

- (c) in the case of a Project Co Event of Default which is incapable of being cured, the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.

6.3 During the Step-In Period, HMQ shall not exercise any right it may have to terminate the Project Agreement or, except to the extent required to protect legal rights, comply with Applicable Law or preserve its right to make a claim or recover under the Performance Bond, exercise any other rights or remedies in respect of a Project Co Event of Default:

- (a) if, in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has been cured by or on behalf of Appointed Representative within 30 days of the time periods set forth in the Project Agreement, or Appointed Representative (either itself or by others on its behalf) is diligently proceeding to cure the breach in accordance with Section 34.1(a) of the Project Agreement within the time periods set forth in the Project Agreement, including for greater certainty, prior to the Longstop Date;
- (b) if, in the case of a Project Co Event of Default which is either:
 - (i) not capable of being cured (which, by way of example, would include an event described in Section 34.1(a)(i) of the Project Agreement), or
 - (ii) capable of being cured in the determination of the Lenders' Agent (acting reasonably) only by assigning the Project Agreement to a Replacement Project Co or entering into a Replacement Project Agreement as provided under Section 7.3, a Project Agreement Assignment with a Replacement Project Co or a Replacement Project Agreement with a Replacement Project Co has been entered into in accordance with Section 7.3,

within 120 days of the delivery of the Project Co Default Notice. HMQ and Appointed Representative may agree to extend such time period where Appointed Representative is proceeding diligently. In the case of either a Project Agreement Assignment or a Replacement Project Agreement having been entered into, the Works thereunder is to be completed on or before the date falling 180 days after the Longstop Date.

6.4 The Lenders' Agent will not take or consent to any action, including any action contemplated in Section 7.3 of this Lenders' Direct Agreement, or any other action otherwise permitted or contemplated in this Lenders' Direct Agreement, if such action would compromise the enforceability of the Security or HMQ's entitlement to claim or recover under the Security, unless the Lenders' Agent first obtains the prior approval of HMQ which may be given or withheld in HMQ's sole discretion. The Lenders' Agent hereby indemnifies and saves HMQ and its directors, officers, employees, agents and representatives harmless from and against any Direct Losses which may be brought against, suffered, sustained or incurred by any of them as a result of, in respect of, or

arising out of any breach by the Lenders' Agent of the provisions of this Section 6.4, arising from the wilful misconduct or gross negligence of the Lenders' Agent.

7. LENDER'S STEP-IN RIGHTS

7.1 Subject to Sections 6.2(b) and 7.2 and without prejudice to the Lenders' Agent's rights to enforce the Lending Agreements against Project Co, the Lenders' Agent may give HMQ a Step-In Notice at any time:

- (a) during which a Project Co Event of Default is subsisting (whether or not a Project Co Default Notice has been served);
- (b) during the Notice Period; or
- (c) during which an Enforcement Event is subsisting.

7.2 At the time the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to HMQ of the identity of its proposed Appointed Representative.

7.3 Subject to Section 6.3(a), upon issuance of a Step-In Notice, Appointed Representative shall cause Project Co to remedy the Project Co Event of Default and shall have the right for such purpose to enforce any of the Enforcement Rights including the right, subject to the prior approval of HMQ, acting reasonably, and subject to the terms and conditions of the Bonds, to:

- (a) assign Project Co's interest in the Project Agreement and the other Ancillary Documents to a Replacement Project Co (the "**Project Agreement Assignment**"), subject to the agreement by the Replacement Project Co to assume the terms and conditions of the Project Agreement and the other Ancillary Documents; or
- (b) terminate the Project Agreement pursuant to the Enforcement Rights, and cause a replacement project agreement to be entered into with a Replacement Project Co (the "**Replacement Project Agreement**") on terms substantially similar to the Project Agreement; and
- (c) (i) assign the Construction Contractor's interest in the Design and Construction Contract to a Replacement Construction Contractor (the "**Design and Construction Contract Assignment**") subject to the agreement by the Replacement Construction Contractor to assume the terms and conditions of the Design and Construction Contract; or (ii) terminate the Design and Construction Contract and to enter into a replacement construction contract with a Replacement Construction Contractor (the "**Replacement Design and Construction Contract**") on terms substantially similar to the Design and Construction Contract;

provided that in either case, the Replacement Project Co covenants in the Project Agreement Assignment or the Replacement Project Agreement, as applicable, to (i) remedy any curable breach of Project Co under the Project Agreement, whether in respect of payment or performance and whether arising prior to or during the Step-In Period, (ii) vacate any Liens from the Site arising from the performance of the Works, whether arising prior to or during the Step-In Period (other than in the circumstances set out in Section 6.3(b)(ii)), and in the case of items (i) and (ii), subject to and within the time period for curing Project Co Events of Default as set out in Section 6.3(a), and (iii) provide replacement or ensure continued maintenance of the Security under the Project Agreement (items (i), (ii) and (iii) of this Section 7.3 are collectively referred to as the “**Rectification Obligations**”). Upon any Project Agreement Assignment, the Project Agreement shall be deemed to be terminated on the date of such Project Agreement Assignment with respect to Project Co, and the provisions of Section 38.2 of the Project Agreement, shall be deemed to apply as if compensation had been paid by HMQ pursuant to Section 3.1 of Schedule 23 – Compensation on Termination, and the Replacement Project Co shall have no liability for the non-performance of Project Co arising prior to the date of such Project Agreement Assignment, unless same is encompassed in the Rectification Obligations, provided the foregoing shall not limit the rights of HMQ to subsequently deduct from payments owing by HMQ under the Project Agreement those amounts which it would otherwise be entitled to deduct under the Project Agreement.

- 7.4 At the time of a Project Agreement Assignment or the entering into of a Replacement Project Agreement under Section 7.3, the Lenders’ Agent shall be required to cause the Replacement Project Co to enter into a construction contract, on terms substantially similar to the Design and Construction Contract and an assignable subcontract agreement, on terms substantially similar to the form of the Assignable Subcontract Agreement for Design and Construction Contract, and to make such other arrangements satisfactory to HMQ under which the Replacement Project Co stands in the place of Project Co under the Lending Agreements, the Project Agreement and the Ancillary Documents.
- 7.5 During the Step-In Period, HMQ shall deal with Appointed Representative instead of Project Co in connection with all matters related to the Project Agreement. Project Co agrees to be bound by all such dealings between HMQ and Appointed Representative to the same extent as if they had been between HMQ and Project Co.
- 7.6 For greater certainty, Lenders’ Agent acknowledges and agrees that its rights as Obligor under the Performance Bond shall be limited to the enforcement of the obligations of the Surety, as more particularly described in the Performance Bond, and shall be subject to Lenders’ Agent’s obligation as an Obligor to pay the Balance of the Design and Construction Contract Price. If Lenders’ Agent receives any benefit from the Surety under the Performance Bond or from the insurer under the Subguard Policy being a component of the Security and fails to complete or cause to have completed the obligations of the Construction Contractor under the Design and Construction Contract, Lenders’ Agent shall pay to HMQ an amount equal to the amount of proceeds received by Lenders’ Agent from the Surety and not applied toward obtaining the completion of

the unperformed obligations of the Construction Contractor under the Design and Construction Contract. For the purposes of this Section 7.6, the terms “Obligee”, “Surety”, and “Balance of the Design and Construction Contract Price” have the meanings given to them under the Performance Bonds.

8. STEP-OUT RIGHTS

- 8.1 Appointed Representative may, at any time during the Step-In Period, deliver written notice (a “**Step-Out Notice**”) to HMQ to terminate the Step-In Period on the Step-Out Date.
- 8.2 On termination of the Step-In Period, where the Project Agreement has been assigned to the Replacement Project Co or a Replacement Project Agreement has been entered into as contemplated in Section 7.3, HMQ and Appointed Representative shall be released from any obligations to the other arising during the Step-In Period, except as may arise under Sections 6.4, 7.6 or 8.6(iii).
- 8.3 On termination of the Step-In Period, if (i) the Project Co Event of Default has not been cured, or (ii) the Project Agreement has not been assigned to a Replacement Project Co or a Replacement Project Agreement has not been entered into and any outstanding Project Co Event of Default has not been cured, then HMQ shall confirm that, as consideration for the rights and benefits assigned to HMQ pursuant to Section 8.3(c) below, it shall pay to Project Co, an amount equal to the amount that would have been paid by HMQ upon termination of the Project Agreement pursuant to the provisions of Section 3.1 of Schedule 23 – Compensation on Termination (and calculated and payable in accordance therewith) as if the date of such confirmation were the Termination Date (the “**Step-Out Amount**”) and upon such confirmation:
- (a) any rights and obligations between Appointed Representative on the one hand and HMQ on the other hand, arising during the Step-In Period, shall be mutually released, except as may arise under Section 6.4, Section 7.6 or Section 8.6(ii);
 - (b) subject to payment of the Step-Out Amount by HMQ, HMQ shall have no further obligation to Appointed Representative or Project Co to pay the Substantial Completion Payment to the Lenders’ Agent, the Lenders, Appointed Representative or Project Co on the achievement of Substantial Completion of the Works;
 - (c) The Lenders’ Agent shall permit HMQ thereupon to have the full benefit and entitlement to the Assignable Subcontract Agreement for Design and Construction Contract and the Assignable Subcontract Agreements without regard to any interest therein of the Lenders’ Agent, the Lenders or Project Co, and the Lenders’ Agent agrees that HMQ may thereafter proceed to enforce all of its rights under the Assignable Subcontract Agreement for Design and Construction Contract and/or the Assignable Subcontract Agreements without regard to any rights in favour of the Lenders’ Agent, the Lenders or Project Co;

- (d) the provisions of Section 38.2(a) of the Project Agreement shall, subject to payment of the Step-Out Amount by HMQ, be, subject to Section 8.5, deemed to apply as between Project Co and HMQ, *mutatis mutandis*, and the obligation to make base progress payments pursuant to the Design and Construction Contract shall devolve to and thereafter be assumed by HMQ; and
- (e) the provisions of Sections 4.3 to 4.8, inclusive, of the Project Agreement shall no longer apply.

If an Enforcement Event has not been cured on the termination of the Step-In Period as aforesaid, then HMQ may confirm that, as consideration for the rights and benefits assigned to HMQ pursuant to Section 8.3(c), it shall pay to Project Co or as Project Co may direct, the Step-Out Amount, and the provisions of Sections 8.3(a), (b), (c), (d) and (e) above shall apply upon such confirmation. For greater certainty, nothing in this Section 8.3 shall affect the rights and obligations of the Construction Contractor under the Design and Construction Contract. Project Co hereby irrevocably directs payment of the Step-Out Amount to the Lenders' Agent or as the Lenders' Agent may direct as security for the Financing.

- 8.4 There will not be more than one Step-In Period following the issuance by HMQ of any one Project Co Default Notice.
- 8.5 HMQ acknowledges and agrees that if HMQ proceeds to exercise its rights as Obligee under the Performance Bond, unless HMQ has arranged for a replacement Financing through Project Co, a Replacement Project Co or a substitute project co, then HMQ shall be obligated to make the base progress payments pursuant to the Design and Construction Contract and to pay the applicable HST subject to and in accordance with the requirements of the Construction Contract.
- 8.6 HMQ hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Assignable Subcontract Agreements except in accordance with the terms of the Assignable Subcontract Agreement. For greater certainty, and subject to (i) the consent of HMQ, acting reasonably, (ii) the terms and conditions of or the ensured continuation of the Bonds and; (iii) the undertaking of the Lenders' Agent and/or the Appointed Representative that, upon the exercise of any Step-Out Rights pursuant to Section 8, the Lenders' Agent and/or the Appointed Representative shall cause to be assigned to HMQ, or as HMQ may direct, all subcontracts which are assigned to or at the direction of the Lenders' Agent and/or the Appointed Representative as hereinafter provided, to the extent required in connection with the exercise by the Appointed Representative of the rights and remedies set forth in Section 7.3, HMQ covenants and agrees with the Lenders' Agent that it shall, upon written request of the Lenders' Agent and as the Lenders' Agent and/or the Appointed Representative may direct, in respect of each subcontract which is the subject of any Assignable Subcontract Agreement (an "ASA"), issue (A) an Assignment Notice (in accordance with and as defined in Section 3(c) of the ASA), to the subcontractor party thereto indicating therein as Assignee (as defined in Section 3(e)), the Lenders' Agent, the Appointed Representative or as the

Lenders' Agent or the Appointed Representative may otherwise direct, or (B) a Direct Assignment Notice (in accordance with and as defined in Section 3(f) of the ASA) to the subcontractor party thereto indicating therein as Project Co Assignee (as defined in Section 3(f) of the ASA) any Replacement Construction Contractor.

9. PAYMENT DIRECTION OF SUBSTANTIAL COMPLETION PAYMENT AND COMPENSATION PAYMENT

9.1 HMQ acknowledges the assignment by Project Co of the Substantial Completion Payment, the First Interim Payment, the Second Interim Payment, the PGW Substantial Completion Payment, the HMQ Holdback, the Warranty Letter of Credit Holdback, the PGW Holdback, any Compensation Payment and any Step-Out Amount to the Lenders' Agent under the security granted to the Lenders' Agent by Project Co under the Lending Agreements. Project Co hereby irrevocably directs HMQ to pay the Substantial Completion Payment, the First Interim Payment, the Second Interim Payment, the PGW Substantial Completion Payment, the HMQ Holdback, the Warranty Letter of Credit Holdback, the PGW Holdback, any Compensation Payment, and any Step-Out Amount which becomes payable to Project Co in accordance with the Project Agreement, to the Lenders' Agent or as the Lenders' Agent may direct. HMQ acknowledges such direction and agrees to pay the Substantial Completion Payment, the First Interim Payment, the Second Interim Payment, the PGW Substantial Completion Payment, the HMQ Holdback, the Warranty Letter of Credit Holdback, the PGW Holdback, any Compensation Payment, and any Step-Out Amount to the Lenders' Agent in accordance with such direction. Project Co acknowledges and agrees that payment by HMQ of the Substantial Completion Payment, the First Interim Payment, the Second Interim Payment, the PGW Substantial Completion Payment, the HMQ Holdback, the Warranty Letter of Credit Holdback, the PGW Holdback, any Compensation Payment in accordance with this Section 9.1 to the Lenders' Agent or as the Lenders' Agent may direct, constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to make the Substantial Completion Payment, the First Interim Payment, the Second Interim Payment, the PGW Substantial Completion Payment, the HMQ Holdback, the Warranty Letter of Credit Holdback, the PGW Holdback, any Compensation Payment, or any Step-Out Amount as the case may be. For greater certainty, no Compensation Payment shall be payable on a termination of the Project Agreement by Appointed Representative as a result of Appointed Representative exercising its rights under Section 7.3(b) of this Lenders' Direct Agreement.

10. ASSIGNMENT

10.1 HMQ may assign or otherwise dispose of the benefit of the whole (but not part) of its interest in this Lenders' Direct Agreement to any person to whom HMQ assigns or otherwise disposes of its interest in the Project Agreement and the other Ancillary Documents pursuant to Section 47.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment or disposition. Such assignee shall assume the obligations and acquire the rights of HMQ under this Lenders'

Direct Agreement. Upon any such assignment or disposition, HMQ shall be released from all of its obligations hereunder to the extent such obligations are assumed by the assignee. Project Co and the Lenders' Agent shall, at HMQ's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

- 10.2 The Lenders' Agent may only assign or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and with the prior written consent of HMQ, such consent not to be unreasonably withheld or delayed. The Lenders' Agent shall cause the assignee to enter into an assumption agreement of this Lenders' Direct Agreement in form and substance reasonably satisfactory to HMQ with Project Co and HMQ. Project Co and HMQ shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- 10.3 Project Co may not assign or otherwise dispose of any interest in this Lenders' Direct Agreement.
- 10.4 Project Co shall cause the Lending Agreements to include terms specifying that any Lender shall deliver a notice to HMQ no later than 5 Business Days before any proposed Qualifying Bank Transaction undertaken by such Lender. On the fifth Business Day following delivery of such notice to HMQ, the proposed transaction shall be deemed to be a Qualifying Bank Transaction for purposes of this agreement unless HMQ has, during such 5 Business Day period, provided notice in writing to Project Co that, in HMQ's view, the counterparty to the proposed transaction is not a Qualifying Bank (which notice shall set out the basis for HMQ's position). If, after delivery by HMQ of such notice it is agreed or determined that the counterparty to the proposed transaction is not a Qualifying Bank, then Section 10.5 shall apply.
- 10.5 Project Co shall cause the Lending Agreements to include terms specifying that no Lender shall proceed with any:
- (a) disposition by such Lender of any of its rights or interests in the Lending Agreements;
 - (b) grant by such Lender of any rights of participation in respect of the Lending Agreements; or
 - (c) disposition or grant by such Lender of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise,

to a lending institution that is not a Qualifying Bank, without the prior written consent of HMQ, acting in its sole discretion, except that such consent shall not be required where the disposition is a trade of bonds issued as provided for under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing. HMQ shall respond to any request for consent under this Section 10.5 within 10 Business

Days but in no event will any failure to respond by HMQ be deemed to be consent to the proposed transaction.

11. NOTICES

11.1 Notices to Parties

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

If to HMQ: Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario, M5G 2C8

Attention: [REDACTED]
Fax: [REDACTED]

With a copy to: Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario, M5G 2C8

Attention: [REDACTED]
Fax: [REDACTED]

If to the Lenders’ Agent: [REDACTED]

Attention: [REDACTED]
Fax: [REDACTED]

If to Project Co: [REDACTED]

Attention: [REDACTED]
Fax: [REDACTED]

11.2 Facsimile

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party’s failure to comply with this Section 11.2.

11.3 Change of Address

Any Party to this Lenders’ Direct Agreement may, from time to time, change any of its contact information set forth in Section 11.1 by prior Notice to the other Party, and such

change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

11.4 Deemed Receipt of Notices

- (a) Subject to 11.4(b), a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing. Subject to Section 11.4(c), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 11.4(c) and 11.4(d), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.4.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

12. GENERAL

12.1 Amendments

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

12.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any such right, power or remedy, in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of the right, power, or remedy or with respect to any other such right, power, or remedy.

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

12.3 Relationship Between the Parties

Each of the Parties acknowledges that it is contracting on its own behalf and not as agent for any other person. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties or between any of the Parties and the Province, any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between HMQ, the Province, and any Affiliate, representative or employee of Project Co or the Lenders' Agent.

12.4 Entire Agreement

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

12.5 No Reliance

- (a) Each of the Parties acknowledges that:
- (i) it has not entered into this Lenders' Direct Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Lenders' Direct Agreement or not, except those expressly made, given or repeated in this Lenders' Direct Agreement, and the only remedy or remedies available in respect of any misrepresentation or untrue statement or warranty made to it shall be those expressly provided for in this Lenders' Direct Agreement; and
 - (ii) this Section 12.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Lenders' Direct Agreement which was induced by fraud, for which the remedies available shall be all those available under Applicable Law.

12.6 Severability

If any provision of this Lenders' Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such

invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Lenders' Direct Agreement. If any such provision of this Lenders' Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Lenders' Direct Agreement as near as possible to its original intent and effect.

12.7 **Enurement**

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

12.8 **Governing Law and Jurisdiction**

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Lenders' Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

12.9 **Cumulative Remedies**

Except as otherwise set forth in this Lenders' Direct Agreement, the rights, powers and remedies of each Party set forth in this Lenders' Direct Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Lenders' Direct Agreement.

12.10 **Further Assurance**

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

12.11 **Costs**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Lenders' Direct Agreement.

12.12 **Counterparts**

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

12.13 Language of Agreement

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

12.14 Confidentiality

The Lenders' Agent shall comply with the obligations on the part of Project Co contained in Articles 40 and 41 of the Project Agreement and this obligation shall survive the termination of this Lenders' Direct Agreement.

12.15 Tombstone Marketing

For the purpose of "tombstone marketing", and in the case of HMQ, other promotional purposes, each of HMQ, the Lenders' Agent, the Lenders and Project Co (collectively, the "Grantors" and individually, a "Grantor") authorizes and consents to the reproduction, disclosure and use by any of them (collectively, the "Grantees" and individually, a "Grantee") of the names and identifying logos of any of the Grantors and the transactions herein contemplated, to enable each Grantee to publish promotional "tombstones". Each Grantor acknowledges and agrees that each Grantee shall be entitled to determine, in its discretion, whether to use such information and that no compensation will be payable by any Grantee resulting therefrom. No Grantee shall have any liability whatsoever to any Grantor or any of its employees, officers, directors, affiliates or shareholders, in obtaining and using such information in accordance with this Section 12.15. Notwithstanding the foregoing, each Grantee agrees to provide the applicable Grantor with a mock up of any such information prior to any publication and to obtain the applicable Grantor's consent to the use thereof, which consent shall not be unreasonably withheld.

12.16 Copyright Notice

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Lenders' Direct Agreement as of the date first above written.

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation

THE TORONTO-DOMINION BANK

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation

PCL AQUATICS CENTRE 2012 LTD.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation.

APPENDIX A

PRE-QUALIFIED PROPONENTS

[REDACTED]

SCHEDULE 5

**FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT
FOR DESIGN AND CONSTRUCTION CONTRACT**

THIS AGREEMENT made as of the • day of •, 2012, between

PCL AQUATICS CENTRE 2012 LTD.

(hereinafter called “**Project Co**”)

OF THE FIRST PART,

- and -

PCL CONSTRUCTORS CANADA INC.

(hereinafter called “**Construction Contractor**”)

OF THE SECOND PART,

- and -

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

(hereinafter called “**HMQ**”)

OF THE THIRD PART.

WHEREAS pursuant to a project agreement dated as of the • day of •, 2012 between Project Co and HMQ (such agreement, together with all amendments, supplements and modifications thereto and restatements or replacements thereof, being hereinafter called the “**Project Agreement**”), Project Co has agreed to construct or cause to be constructed the Project as defined in the Project Agreement;

AND WHEREAS Project Co and the Construction Contractor entered into a design and construction contract made as of even date herewith (such construction contract, together with all amendments, supplements and modifications thereto and restatements or replacements thereof, which may hereafter be made in accordance with the terms thereof and this Agreement, being hereinafter called the “**Design and Construction Contract**”);

AND WHEREAS under the Project Agreement, Project Co has agreed to assign to HMQ all right, title and interest of Project Co in and to the Design and Construction Contract as collateral security for the observance and performance of the obligations of Project Co under the Project Agreement;

AND WHEREAS under the Project Agreement, Project Co has agreed to cause the Construction Contractor to enter in to this Agreement;

NOW THEREFORE, in consideration of the premises and the covenants herein contained, and the sum of [REDACTED], the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. As additional security for the observance and performance of the obligations of Project Co under the Project Agreement (the “**Obligations**”), Project Co hereby irrevocably, assigns, transfers and sets over (the “**Assignment**”) to and in favour of HMQ as and by way of a specific assignment and transfer all of the right, title and interest of Project Co in, and with respect to, the Design and Construction Contract and all benefit, power and advantage of Project Co to be derived therefrom and otherwise to enforce the rights of Project Co thereunder (collectively, the “**Assigned Rights**”), provided that the Assignment of the Assigned Rights provided for in this Agreement shall only be effective upon the termination of the Project Agreement as a result of a default or event of default by Project Co thereunder and may be exercised by HMQ at its option in its sole discretion (as defined in the Project Agreement) at any time or times thereafter subject to and in accordance with the provisions of this Agreement.
2. Unless and until notification is given to Construction Contractor in accordance with any of the notices referred to in Subsections 3(e), (f) and (g) below, Project Co shall be entitled to enforce all of the benefits and powers under the Design and Construction Contract and to deal with, and be obligated to, Construction Contractor in respect of the Design and Construction Contract and matters arising therefrom in the same manner and to the same extent as if Project Co had not made the Assignment in Section 1 hereof.
3. Construction Contractor hereby
 - (a) acknowledges and consents to any Assignment that may occur pursuant to this Agreement and confirms that any such Assignment that may occur pursuant to this Agreement is permitted pursuant to the provisions of the Design and Construction Contract;
 - (b) agrees not to:
 - (i) terminate or agree to the termination of all or any part of the Design and Construction Contract;

- (ii) make or agree to any amendment, restatement, supplement or other modification of, or waive or exercise any of its rights under, the Design and Construction Contract that materially adversely affect Project Co's ability to perform its obligations under the Project Agreement or that has the effect of increasing any liability of HMQ, whether actual or potential;
- (iii) enter into, or permit the entry into by any other person of, any agreement replacing all or part of the Design and Construction Contract;
- (iv) sell, assign, transfer, charge, subcontract, sub participate or otherwise dispose of any interest in the Design and Construction Contract except as may be permitted under Section 47.1 of the Project Agreement, applied mutatis mutandis,

without the prior written consent of HMQ, not to be unreasonably withheld or delayed, provided that such consent shall not be withheld and shall be provided in reasonable time, where the relevant matter will not materially adversely affect Project Co's ability to perform its obligations under the Project Agreement or have the effect of increasing any liability of HMQ, whether actual or potential;

- (c) agrees to give HMQ prompt written notice of any default by Project Co under the Design and Construction Contract, provided, however, in the event that HMQ exercises the option in accordance with this Agreement and effects the Assignment within 5 Business Days of receipt by HMQ of the notice, the Construction Contractor shall not be entitled to exercise any right to terminate the Design and Construction Contract that Construction Contractor may have under the Design and Construction Contract arising from or in relation to any event taking place prior to such Assignment;
- (d) represents and warrants to HMQ that as of the date hereof, the Design and Construction Contract is valid, binding upon the parties thereto and in full force and effect, unamended and constitutes the entire agreement between Project Co and Construction Contractor with respect to the subject matter thereof and that Construction Contractor is in compliance with and has performed its obligations contained in the Design and Construction Contract which are required to be complied with and/or performed to date and that, as far as Construction Contractor is aware, Project Co is in compliance with and has performed its obligations contained in the Design and Construction Contract which are required to be complied with and/or performed to date;
- (e) agrees that, immediately upon receipt by Construction Contractor of written notice (the "**Assignment Notice**") from HMQ that the Design and Construction Contract is being assigned to HMQ, the Lenders (as hereinafter defined), or the Lenders' or HMQ's nominee (in any event, such party identified in such written

notice being the “Assignee”), the Assignee shall have all of the right, title, benefit and interest of Project Co pursuant to the Design and Construction Contract, without Construction Contractor’s consent and without the payment of any penalty or other amount, and Construction Contractor shall deal with the Assignee as if it had been originally named in place of Project Co in the Design and Construction Contract;

- (f) agrees that the Assignee may, at any time after the giving of the Assignment Notice in subsection 3(e) above, give written notice (the “**Successive Assignment Notice**”) to Construction Contractor of a further assignment of the Design and Construction Contract to a new project company (the “**Project Co Assignee**”), and that immediately upon receipt of any Successive Assignment Notice, the Project Co Assignee shall have all of the right, title, benefit and interest of Project Co pursuant to the Design and Construction Contract without Construction Contractor’s consent and without the payment of any penalty or other amount and Construction Contractor shall deal with the Project Co Assignee as if it had been originally named in place of Project Co in the Design and Construction Contract;
 - (g) agrees that, notwithstanding subsections 3(e) and (f) herein contained, HMQ may give written notice (the “**Direct Assignment Notice**”) to Construction Contractor of the assignment of the Design and Construction Contract directly to the Project Co Assignee, and that immediately upon receipt of the Direct Assignment Notice, the Project Co Assignee shall have all of the right, title, benefit and interest of Project Co pursuant to the Design and Construction Contract without Construction Contractor’s consent and without the payment of any penalty or other amount and the Construction Contractor shall deal with the Project Co Assignee as if it had been originally named in place of Project Co in the Design and Construction Contract; and
 - (h) agrees, upon the reasonable request of HMQ, from time to time, to provide a certificate to HMQ as to the status of the Subcontract including a description of any events, which, with the passage of time or the giving of notice or both, would constitute a default thereunder.
4. Nothing herein contained shall render HMQ or the Lenders liable to any person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including, but not limited to the payment of any money thereunder or in respect thereto, of Project Co under the Design and Construction Contract, unless and until HMQ has given the Assignment Notice to Construction Contractor, the giving of which Assignment Notice the Construction Contractor acknowledges is in the sole discretion of HMQ, in which event, the Assignee (and if applicable, any Project Co Assignee) shall then become liable for the obligations, covenants and agreements of Project Co under the Design and Construction Contract, provided that from and after the date of the Successive Assignment Notice to Construction Contractor, the Assignee shall have no liability

- whatsoever to the Construction Contractor for any default or for any damages arising in respect of a matter or matters occurring under the Design and Construction Contract from and after that date, and provided further, that if HMQ gives the Direct Assignment Notice, HMQ or the Lenders shall have no liability whatsoever to the Construction Contractor for any default or for any damages arising in respect of a matter or matters occurring under the Design and Construction Contract at any time.
5. Construction Contractor acknowledges and agrees that all of the right, title and interest of Project Co in the Design and Construction Contract has been, or may be, assigned by Project Co to the Lenders' Agent and to such additional Lender(s) as may participate with such named lender from time to time (collectively, the "**Lenders**") as security for the obligations of Project Co to Lenders (the "**Lenders' Assignment**"). The rights of HMQ hereunder to take or direct an assignment of the Design and Construction Contract are expressly subject to the rights of Lenders under the Lenders' Direct Agreement (as defined in the Project Agreement) to exercise its rights under the Lenders' Assignment prior to the exercise by HMQ of its rights under this Agreement to take or direct an assignment of the Design and Construction Contract, and if there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Lenders' Direct Agreement with respect to the exercise of rights under the Assignment herein, or the exercise of rights under the Lenders' Assignment, the provisions of the Lenders' Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.
 6. Project Co agrees that all costs and expenses incurred by HMQ or Lenders in curing or attempting to cure any default by Project Co under the Design and Construction Contract, together with interest thereon at the rate described in Subsection (ii) of the definition of Payment Compensation Amount in Schedule 1 – Definitions and Interpretation to the Project Agreement shall be payable by Project Co to HMQ or Lenders, as the case may be, on demand. Without limiting the foregoing, if Project Co fails to make any such payment to HMQ as required hereunder, the amount of such a payment shall be deemed to be an amount which is due to HMQ by Project Co pursuant to the terms of the Project Agreement.
 7. Construction Contractor acknowledges receipt of the Lenders' Direct Agreement, a copy of which is attached as Appendix A hereto and hereby consents to and agrees to be bound by the provisions thereof.
 8. Any notice, request or demand required or permitted to be given hereunder shall be in writing and shall be served personally, sent by prepaid registered mail or by confirmed facsimile transmission addressed as follows:
 - (a) in the case of Project Co:

[REDACTED]

Attention: [REDACTED]
Fax: [REDACTED]

(b) in the case of HMQ:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario, M5G 2C8

Attention: [REDACTED]
Fax: [REDACTED]

with a copy to the HMQ Representative:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario, M5G 2C8

Attention: [REDACTED]
Fax: [REDACTED]

with a copy to the Lenders' Agent:

[REDACTED]

Attention: [REDACTED]
Fax: [REDACTED]

(c) in the case of the Construction Contractor:

[REDACTED]

Attention: [REDACTED]
Fax: [REDACTED]

Any party may from time to time change its address and recipient for service by notice to the other party or parties given in the manner aforesaid.

Notices which are served in the manner aforesaid shall be deemed sufficiently served for all purposes of this Agreement, in the case of those personally served or transmitted by facsimile transmission, on the date of such service or transmission, provided same is a Business Day (as hereinafter defined), and if not on the next following Business Day, and in the case of those given by registered mail, on 5 Business Days following the mailing thereof. Provided that in the event normal mail service is interrupted by strikes, slow-down or other cause, then the party sending the notice shall utilise any similar service

which has not been so interrupted in order to ensure the prompt receipt of the notice, request or demand by the other party or parties, and for the purpose of this Section such service shall be deemed to be personal service or facsimile transmission. Business Day shall mean a day which is not: (i) a Saturday or Sunday; or (ii) a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario.

9. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
10. This Agreement shall be conclusively deemed to be a contract made under and shall for all purposes be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
11. Construction Contractor shall from time to time and at all times hereafter, upon the reasonable written request of HMQ so to do, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be desirable in the opinion of HMQ, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of this Agreement.
12. This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

[EXECUTION PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the parties have executed this Assignable Subcontract Agreement for Design and Construction Contract by affixing their corporate seals under the hands of their proper signing officers duly authorized in that behalf.

PCL AQUATICS CENTRE 2012 LTD.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation.

PCL CONSTRUCTORS CANADA INC.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation.

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

APPENDIX A

[Attach Lenders' Direct Agreement (Schedule 4) to execution copy of this Agreement.]

SCHEDULE 6

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of [•] day of [•], 2012

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

(“**HMQ**”)

AND:

PCL AQUATICS CENTRE 2012 LTD., a corporation incorporated under the laws of Alberta

(“**Project Co**”)

AND:

ALTUS GROUP LTD., a corporation incorporated under the laws of Ontario

(the “**Independent Certifier**”)

WHEREAS:

- A. **HMQ** and **Project Co** (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the **PA Parties** wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The **PA Parties** and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

NOW THEREFORE in consideration of the mutual covenants and agreements of the **PA Parties** and the Independent Certifier herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the **PA Parties** and the Independent Certifier covenant and agree as follows:

1. DEFINITIONS

1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
 - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
 - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
 - (ii) **“Certification Services Variation”** is any change to the Certification Services.
 - (iii) **“Contract Material”** means all material:
 - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
 - (iv) **“Fee”** means the fees payable by HMQ and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
 - (v) **“Intellectual Property”** means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.

- (vi) “**PA Parties**” and “**PA Party**” have the meanings given in the recitals to this Independent Certifier Agreement.
- (vii) “**Project Agreement**” means that certain project agreement made on or about the date hereof between HMQ and Project Co with respect to the design, construction and financing of the Pan Am Aquatics Centre, Field House and Canadian Sports Institute Ontario (CSIO) Project.

2. INTERPRETATION

2.1 Interpretation

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
 - (i) words denoting the singular number include the plural and vice versa;
 - (ii) words denoting individuals include corporations and vice versa;
 - (iii) headings are for convenience only and do not affect interpretation;
 - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
 - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
 - (vii) words denoting any gender include all genders;
 - (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
 - (ix) a reference to “\$” is to Canadian currency;
 - (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
 - (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and

(xii) unless otherwise indicated, all time periods will be strictly construed.

2.2 Obligations and Exercise of Rights by PA Parties

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.
- (d) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Section 9.4 and 9.5 of this Independent Certifier Agreement.

3.2 Acknowledgement of Independent Certifier

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

3.4 Duty of Independent Judgment

- (a) In exercising its Certification Services, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
 - (ii) act reasonably and professionally;
 - (iii) act in a timely manner:
 - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
 - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
 - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.

3.5 Authority to Act

- (a) The Independent Certifier:
- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and

- (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

3.6 Knowledge of the PA Parties' Requirements

- (a) The Independent Certifier warrants that:
 - (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
 - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
 - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
 - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at or on the Facility and Site including restrictions on any such access or protocols that are required; and
 - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

3.7 Co-ordination and Information by Independent Certifier

- (a) The Independent Certifier must:
 - (i) fully cooperate with the PA Parties;
 - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
 - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
 - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
- (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as a technical advisor to the Lenders or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
 - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program, the PGW Commissioning Program and the Final Commissioning Program shall:
- (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, The Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
 - (ii) have demonstrated competence in the commissioning of comparable projects;
 - (iii) have an understanding of the appropriate CSA standards related to commissioning for comparable athletics facilities, as well as other applicable standards; and
 - (iv) have an understanding of the commissioning process and the reports to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but the pre-commissioning and post-commissioning activities.

- (c) The Independent Certifier shall furnish HMQ with evidence satisfactory to HMQ of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program, the PGW Commissioning Program and the Final Commissioning Program.

3.10 Minimize Interference

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

4. ROLE OF THE PA PARTIES

4.1 Assistance

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

4.2 Instructions in Writing

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

4.3 Information and Services

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

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
- (i) the Independent Certifier must give notice in writing to the Project Co Representative or the HMQ Representative, as the case may be, of the details of the information,

documents or particulars demonstrating the need and the reasons why they are required; and

- (ii) Project Co or HMQ, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site or Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
 - (i) observance of the reasonable rules of Project Co as to safety and security for the Site and the Works;
 - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site and the Works; and
 - (iii) not causing any damage to the Site or the Works.

4.6 PA Parties Not Relieved

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. CERTIFICATION QUALITY PLAN

5.1 Certification Quality Plan

- (a) The Independent Certifier must:
 - (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the HMQ Representative and the Project Co Representative;

- (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the HMQ Representative and the Project Co Representative;
- (iii) if satisfactory to each of the HMQ Representative and the Project Co Representative, implement such certification quality plan; and
- (iv) if not satisfactory to each of the HMQ Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the HMQ Representative and the Project Co Representative, and implement it if satisfactory to each of the HMQ Representative and the Project Co Representative.

5.2 Certification Quality Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
 - (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
 - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the HMQ Representative or the Project Co Representative.

6. SUSPENSION

6.1 Notice

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
 - (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
 - (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:
 - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension

directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and

- (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Sections 6.1(a)(i).

6.3 Recommencement

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

7. INSURANCE AND LIABILITY

7.1 Independent Certifier's Professional Indemnity Insurance

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:

- (i) professional liability insurance:

- (A) in the amount of [REDACTED] per claim and [REDACTED] in the aggregate, a deductible of not more than [REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and

- (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and

- (ii) comprehensive general liability insurance in the amount of [REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than [REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.

- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

7.2 Workers' Compensation Insurance

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as

required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

8. PAYMENT FOR SERVICES

8.1 Payment of Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay one-half of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overheads and profit, all labour and materials, insurance costs and all other overhead including any fees or other charges required by law to perform the Certification Services. For clarity, all travel expenses are not to be included in the Fee.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of [REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

9. CERTIFICATION SERVICES VARIATIONS

9.1 Notice of Certification Services Variation

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
 - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
 - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the HMQ Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.

- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

9.2 No Adjustment

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

9.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

9.4 Certification Services Variation Procedure

- (a) The HMQ Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the HMQ Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the HMQ Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
- (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

9.5 Cost of Certification Services Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
- (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);

- (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the HMQ Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION

10.1 Term

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
- (i) the PGW Final Completion Date; or
 - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

10.3 Termination for Breach

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

10.4 Termination for Financial Difficulty or Change in Control

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
- (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or

- (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

10.5 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

10.6 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
 - (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
 - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

10.7 Procedure upon Termination

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4 or 10.5 or otherwise), the Independent Certifier must:
 - (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
 - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
 - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to

enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

10.8 Effect of Termination

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

10.9 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
- (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);
 - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
 - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.2 Independent Certifier to Save PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
 - (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
 - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.
- (d) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix D – Conduct of Claims to this Independent Certifier Agreement.

12. GENERAL

12.1 Entire Agreement

- (a) Except where provided otherwise in this Independent Certifier Agreement, this Independent Certifier Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Independent Certifier Agreement.

12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.

- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

- (a) No waiver made or given by a party under or in connection with this Independent Certifier Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

12.4 Notices

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

If to HMQ:	777 Bay Street, 9 th Floor Toronto, ON M5G 2C8
c/o Ontario Infrastructure and Lands Corporation	

Fax: [REDACTED]
Attn.: [REDACTED]

If to Project Co:	[REDACTED]
-------------------	------------

Fax: [REDACTED]
Attn: [REDACTED]

If to Independent Certifier:	[REDACTED]
------------------------------	------------

Fax: [REDACTED]
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and

- (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

12.6 Governing Laws and Jurisdictions

- (a) This Independent Certifier Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The PA Parties and the Independent Certifier agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Independent Certifier Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Independent Certifier Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

12.7 HMQ Designate

- (a) At any time and from time to time, the Province may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Independent Certifier Agreement and Project Co and the Independent Certifier may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Province has notified Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Province shall advise Project Co and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this Independent Certifier Agreement shall be in no way affected by reason of any such designation. Project Co and the Independent Certifier acknowledge the right of the Province to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

12.8 Confidentiality

- (a) The Independent Certifier must ensure that:
 - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
 - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

12.9 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

12.10 Amendment

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

12.11 Severability

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

12.12 Enurement

- (a) This Independent Certifier Agreement shall enure to the benefit of, and be binding on, each of the parties and their respective successors and permitted transferees and assigns.

12.13 Counterparts

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

12.14 Copyright Notice

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

[EXECUTION PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the parties have executed this Independent Certifier Agreement as of the date first above written.

**ONTARIO INFRASTRUCTURE AND
LANDS CORPORATION, a Crown agent,
continued under the *Ontario Infrastructure
and Lands Corporation Act, 2011***

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

PCL AQUATICS CENTRE 2012 LTD.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation.

ALTUS GROUP LTD.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

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APPENDIX A

CERTIFICATION SERVICES

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall provide the following:

- (a) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a Dispute related to the development of the design;
- (b) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works;
- (c) Review information relating to Delay Events and Compensation Events;
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consult with the relevant party;
- (e) In accordance with Section 14.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee;
- (f) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions, and to report any risks;
- (g) Monitor the Commissioning Tests (as indicatively described in Schedule 14 - Outline Commissioning Program to the Project Agreement) and other tests, including re-tests, to be performed as set out in the Final Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion;
- (h) Monitor the testing during Project Co PGW Commissioning, and other tests, including re-tests, to be performed as part of Project Co PGW Commissioning or as otherwise required for Project Co to achieve PGW Substantial Completion and PGW Final Completion;
- (i) Prior to any certification, consider the views and comments of both Project Co and HMQ in relation to the satisfaction of the conditions for certification;
- (j) Conduct inspections of the Works as necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement;
- (k) Review relevant documentation, including floor area schedules, certificates and approvals, Permits, Licences, Approvals, and Agreements, certifications, test results, quality assurance

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- audits, letters of assurance from professionals, schedules of equipment and staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement;
- (l) Monitor the requirements, progress and results of all Project Co Commissioning, Project Co PGW Commissioning and HMQ Commissioning;
 - (m) Monitor the conduct of the Commissioning Tests during any seasonal performance testing prescribed in the Final Commissioning Program including, without limitation, any re-tests, review of Commissioning Tests and results, copies of any certificates or other Permits, Licences, Approvals, and Agreements received by Project Co in connection with any Commissioning Tests conducted during the seasonal performance testing, review and accepting performance testing forms required to be delivered pursuant to the Final Commissioning Program and to perform such other similar responsibilities (other than performing Commissioning Tests or performance of inspections) with respect to any matter relating to commissioning of the Facility after Substantial Completion, as applicable, as either party may request and to report to each of the parties thereon;
 - (n) Identify any errors or omissions made during the conduct of any such Commissioning Tests referenced in item (m) above and to advise Project Co and HMQ with respect to the implications of those errors and omissions, to the extent that the Independent Certifier may reasonably be aware;
 - (o) Certify completion of the Interim Payment Requirements in accordance with Section 24.18 of the Project Agreement;
 - (p) Upon receipt of notice from Project Co requesting the issuance of the Substantial Completion Certificate or the Final Completion Certificate, as applicable, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate;
 - (q) Upon receipt of notice from Project Co requesting the issuance of the PGW Substantial Completion Certificate or the PGW Final Completion Certificate, as applicable, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate;

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- (r) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (l) of this Appendix A until the issuance of the applicable certificate;
- (s) Prepare, in consultation with Project Co and HMQ, as soon as reasonably practicable and, in any event within, the time period specified in Section 24.8(a) of the Project Agreement, the Minor Deficiencies List and the PGW Minor Deficiencies List, which Minor Deficiencies List and PGW Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies or the PGW Minor Deficiencies and a schedule for the completion and rectification of the Minor Deficiencies or the PGW Minor Deficiencies;
- (t) Both prior to and following Substantial Completion, review Project Co cash allowance expenditures against the installations in respect of the Cash Allowance Items and the Cash Allowance Amount;
- (u) Review and observe installation of all equipment, furniture, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “Installed Equipment”) into or onto the Facility by HMQ or any agent or contractor of HMQ either before or after Substantial Completion and provide a report to HMQ and Project Co identifying any damage to the Facility which has been caused as a result of the installation of such Installed Equipment into or onto the Facility by HMQ, its contractors and/or agents;
- (v) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement;
- (w) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services;
- (x) Provide advice on other matters that may arise that both PA Parties may jointly require; and
- (y) Review the reports and plans prepared by Project Co, and provide the determination required from the Independent Certifier, pursuant to Section 13.7 of the Project Agreement.

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APPENDIX B

INDEPENDENT CERTIFIER FEE

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APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

The following personnel shall be involved in the performance of the Certification Services:

[REDACTED]

APPENDIX D

CONDUCT OF CLAIMS

This Appendix D shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both HMQ and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

- (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2);
 - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) none of the Indemnifiers complies in any material respect with Section (3).
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. For greater certainty, the Independent Certifier acknowledges and agrees that where HMQ is the Beneficiary, HMQ may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and

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- (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

Any person taking any of the steps contemplated by this Appendix D shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Independent Certifier Agreement.

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**SCHEDULE 8
LIST OF PROJECT CO PARTIES**

[REDACTED]

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SCHEDULE 9

KEY INDIVIDUALS

A. Key Individuals - Works

Project Co Party	Position/Function	Name and Contact Information
Design Team	[REDACTED]	[REDACTED]
Design Team	[REDACTED]	[REDACTED]
Design Team	[REDACTED]	[REDACTED]
Design Team	[REDACTED]	[REDACTED]
Design Team	[REDACTED]	[REDACTED]
Construction Contractor	[REDACTED]	[REDACTED]
Construction Contractor	[REDACTED]	[REDACTED]
Construction Contractor	[REDACTED]	[REDACTED]
Construction Contractor	[REDACTED]	[REDACTED]
Project Co	[REDACTED]	[REDACTED]
Project Co	[REDACTED]	[REDACTED]
Project Co	[REDACTED]	[REDACTED]
Project Co	[REDACTED]	[REDACTED]

SCHEDULE 10

REVIEW PROCEDURE

1. WORKS SUBMITTALS

1.1 The provisions of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by Section 11, Project Co Responsibilities and Construction Obligations, of this Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by HMQ in accordance with the Review Procedure prior to Substantial Completion or PGW Substantial Completion, or after Substantial Completion or PGW Substantial Completion in respect of the completion of Minor Deficiencies or PGW Minor Deficiencies, respectively, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in this Schedule 10).

2. SCHEDULE FOR WORKS SUBMITTALS

2.1 The Project Co shall develop a Works Schedule in accordance with Section 13 of this Project Agreement that incorporates the design and plan certification process for the project. The design development and plan submission schedule shall take into account required staged Design Development Submittals as per Section 11.1 of this Project Agreement.

2.2 The Works Schedule shall include sufficient time for coordination and required approvals from all regulatory agencies and project stakeholders, as well as time required for construction trade coordination logistics.

2.3 The Works Schedule shall provide for a progressive and orderly flow of Works Submittals from Project Co to the HMQ Representative to allow sufficient time for review of each Works Submittal by the HMQ Representative taking into account both the resources necessary to be available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.

2.4 The Works Schedule and any amendment to the Works Schedule shall allow a period of 10 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Works Submittal, provided that if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1 of this Schedule 10.

- 2.5 Project Co shall, in scheduling Works Submittals and in the construction of the Works, allow adequate time prior to performing the construction of the Works that are the subject of the Works Submittals, for review of the Works Submittals and for Project Co to make changes to Works Submittals that may be required if comments are received on the Works Submittals, such review and required changes to be in accordance with this Schedule 10.
- 2.6 If the Works Schedule indicates that a large number of Works Submittals will be made at one time, the HMQ Representative may, at the HMQ Representative's discretion, request a longer period for review or a staggering of the Works Submittals, and Project Co shall review and revise the Works Schedule accordingly, taking into account both the resources necessary to be available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.
- 2.7 Project Co shall submit all Works Submittals to HMQ in accordance with the current Works Schedule.

3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

- 3.1 Unless otherwise specified by the HMQ Representative, Project Co shall issue 3 printed copies of all Works Submittals to HMQ, together with an electronic copy in a format agreed by the Parties acting reasonably and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Works Submittals and the date of receipt and content of all returned Works Submittals and comments thereon.
- 3.3 All Works Submittals shall be in English.
- 3.4 All Works Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional engineers or architects) shall, where applicable, be so signed and sealed.
- 3.5 All Works Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Works Submittal and Project Co's proposed course of action relating to the Works Submittal and the Works that are the subject of the Works Submittal.
- 3.6 All Works Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications, any other applicable Schedule to the Project Agreement and to any Design Data that has previously been subject to review.

- 3.7** All Works Submittals shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Works Submittals and for each Works Submittal:
- (a) the document number(s) or drawing number(s);
 - (b) revision numbers (if applicable);
 - (c) document or drawing title(s);
 - (d) name of entity that prepared the Works Submittal;
 - (e) the Works Submittal history showing date and delivery information and/or log number of all previous submissions of that Works Submittal; and
 - (f) identification of any previous Works Submittal superseded by the current Works Submittal.

4. COMMENTS

- 4.1** The HMQ Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.2 of this Schedule 10. The HMQ Representative shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 3 comments:
- (a) “REVIEWED”;
 - (b) “REVIEWED AS NOTED”; or
 - (c) “REJECTED”.
- 4.2** The comment “REVIEWED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Works Submittals.
- 4.3** The comment “REVIEWED AS NOTED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the HMQ Representative’s review. Project Co shall correct these Works Submittals and provide a copy of the corrected Works Submittals to the HMQ Representative. Project Co shall comply with and implement such Works Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “REVIEWED AS NOTED”, then Project Co will be required to modify the Works Submittals and the Works, as required to ensure that the Works comply with the Output Specifications, any other applicable Schedule to the Project Agreement, and the Project Co Proposal Extracts and

Project Co may be required, at the HMQ Representative's discretion, to resubmit relevant Works Submittals. In such circumstances the HMQ Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 4.4** The comment "REJECTED" will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, contain significant deficiencies or do not generally conform to the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Works Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer period as Project Co may reasonably require, and (unless the Works Submittal is re-submitted within 5 Business Days) shall give the HMQ Representative not less than 5 Business Days' notice of when the Works Submittals shall be resubmitted. The HMQ Representative will then review such re-submitted Works Submittals and assign a comment to the corrected Works Submittal. The Works Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.5** Where the HMQ Representative issues the comment "REVIEWED AS NOTED" or "REJECTED", the HMQ Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the HMQ Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 4.6** If, at any time after assigning any comment to a Works Submittal, the HMQ Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the HMQ Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 of this Schedule 10 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Works. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.7** For the purpose of facilitating and expediting the review and correction of Works Submittals, the HMQ Representative and the Project Co Representative may meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8** Where a Works Submittal is voluminous, the HMQ Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page

together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “REVIEWED” by HMQ.

- 4.9** In lieu of returning a Works Submittal, the HMQ Representative may by letter notify Project Co of the comment assigned to the Works Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

5. DISPUTES

- 5.1** If Project Co disputes any act of HMQ or the HMQ Representative in respect of a Works Submittal under this Schedule 10, Project Co shall promptly notify the HMQ Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The HMQ Representative shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the HMQ Representative confirms the original comment, Project Co may request the Independent Certifier to resolve the Dispute and render a decision within 5 Business Days of such request.

- 5.2** If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 10.2 of this Schedule 10, either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

- 5.3** Notwithstanding the provisions of Sections 5.1 and 5.2 of this Schedule 10, HMQ may direct that Project Co to revise the Works Submittals in accordance with the comments of HMQ and proceed to perform and complete the Works on the basis of such revised Works Submittals. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with Section 46 of the Project Agreement and Schedule 27 - Dispute Resolution Procedure.

6. EFFECT OF REVIEW

- 6.1** Any review and comment by HMQ or the HMQ Representative of any Works Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Works and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for HMQ. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co’s obligations or liabilities in respect of the Works under this Project

Agreement or exclude or limit HMQ's rights in respect of the Works under this Project Agreement.

7. WORKS SUBMITTAL EXPLANATION

7.1 At any time, the HMQ Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, at no additional cost to HMQ, to explain to the HMQ Representative and HMQ's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications or any other Schedule to the Project Agreement, as applicable.

8. REVISIONS

8.1 Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.

8.2 Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.

8.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the As Built Drawings.

8.4 Project Co shall keep all Design Data current. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

9. AUDIT BY THE HMQ REPRESENTATIVE

9.1 Without limiting any other right under this Project Agreement, the HMQ Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.

9.2 If during an audit or at any other time it is discovered by HMQ or Project Co (or resolved pursuant to Section 9.3 of this Schedule 10) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Works to which they relate and shall advise the HMQ Representative of all such corrections and modifications.

9.3 Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1 of this Schedule 10, shall be referred in the first instance to the Independent Certifier for resolution.

10. VARIATIONS

10.1 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.

10.2 If, having received comments from the HMQ Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to HMQ of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, HMQ may, at its election, (a) issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or (b) amend its comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with, either party may proceed to resolve the matter in accordance with Section 5 of this Schedule 10 including for clarity, the exercise by HMQ of its rights under Section 5.3 of this Schedule 10. Subject to the foregoing sentence, any failure by Project Co to notify HMQ in accordance with this Section 10.2 that Project Co considers compliance with any comments of the HMQ Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the HMQ Representative's comments shall be without cost to HMQ and without any extension of time.

APPENDIX A

MINIMUM DESIGN AND CONSTRUCTION

SUBMITTAL REQUIREMENTS

1. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 100% DESIGN DEVELOPMENT STAGE

Project Co shall provide the following Design Development Submittals to HMQ for review and comment in accordance with this Schedule 10:

1.1. Design development documents in accordance with the requirements set forth in Section 11.1 of the Project Agreement, including:

- (a) Design Brief including:
 - (i) A narrative description of all areas of the design;
 - (ii) All comments and revisions to end of Commercial Close;
 - (iii) A detailed table of contents with tabs provided for major sections (i.e. architectural, mechanical, electrical, physical security and LEED).
- (b) Site plan (prepared at 1:500 scale) showing:
 - (i) Full ground floor plan (see description below for Floor/Roof Plans);
 - (ii) Full hard/soft landscape plan showing integration of landscaping features/areas with floor plan elements and entrances;
 - (iii) Treatment of main approach to public entrance;
 - (iv) Treatment of local transit stop area(s);
 - (v) Vehicular drop-off and street right-of-way improvements;
 - (vi) Site furnishings;
 - (vii) Additional Site features, including natural features, storm water management structures and design of outdoor spaces;
 - (viii) Vehicle access/egress driveways to and from Site, including parking entrance ramp, loading dock access and location, and service vehicle parking; and

- (ix) Connection to existing offsite parking and roadways.
- (c) Site servicing plan (prepared at 1:500) showing:
 - (i) Storm water management/storm sewer;
 - (ii) Sanitary sewer system;
 - (iii) Water mains - domestic use;
 - (iv) Water mains - fire fighting;
 - (v) Gas utilities;
 - (vi) Fibre optics;
 - (vii) Telecommunications;
 - (viii) Cable TV; and
 - (ix) Hydro utilities.
- (d) Typical Site and landscape details (prepared at 1:10 scale).
- (e) Interior Partition Types describing all components of typical partitions including STC and FRR ratings.
- (f) Exterior Wall and Roof Assembly Types describing all components of typical assemblies.
- (g) Architectural floor plans (prepared at 1:100 scale) of every level, including penthouse(s), service tunnels and roof(s), showing:
 - (i) All walls and partitions in actual thicknesses;
 - (ii) All rooms/areas, colour-coded by component and numbered using the alphanumeric system used in Room Data Sheets in the Output Specifications;
 - (iii) List of additional rooms not previously identified with additional sequential alphanumeric coding as required;
 - (iv) Doors and windows;
 - (v) All millwork/systems furniture and workstation layouts (including filing storage units, shelving);

- (vi) All equipment coordinated with the updated equipment list;
 - (vii) Integration of structural, mechanical and electrical systems in terms of columns, service shafts, risers, etc., in sufficient detail to demonstrate that functional and net area requirements are compliant;
 - (viii) Overall dimensions;
 - (ix) Plan and layout of typical repetitive spaces;
 - (x) Indication of fire areas, fire walls, and smoke zones; and
 - (xi) Floor elevations.
- (h) Enlarged architectural plan details (prepared at 1:50 scale), including all floor plan information described previously, for (but not limited to) key areas listed below:
- (i) F.O.P drawings for the pools and field house (can be provided at 1:100 if mutually agreed);
 - (ii) change rooms;
 - (iii) washrooms;
 - (iv) classrooms;
 - (v) teaching studios;
 - (vi) fitness (upper and lower);
 - (vii) meeting rooms;
 - (viii) typical administration offices;
 - (ix) filtration and chemical room;
 - (x) loading area;
 - (xi) CSIO (sport performance laboratory, recovery/regeneration centre);
 - (xii) atrium (feature wall, climbing wall, reception); and
 - (xiii) computer control room and timing & scoring.

- (i) Structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
 - (i) Foundation plan showing finalized locations and elevations of footings;
 - (ii) Structural system and framing;
 - (iii) Provisions for adaptability, flexibility and expandability, removal and replacement of building systems and equipment;
 - (iv) Provisions for any equipment requirements; and
 - (v) Finalized summary of structural loads.
 - (vi) Column schedules;
 - (vii) Foundation details; and
 - (viii) Typical framing details.

- (j) Mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
 - (i) Detailed floor layouts showing locations of all major mechanical equipment items, pipe mains, risers and branch mains, duct mains including supply return and exhaust;
 - (ii) Routing of main feeds and associated shafts and risers;
 - (iii) Single-line drawings for all services;
 - (iv) Preliminary sizing of equipment;
 - (v) Preliminary plan of provisions for adaptability, flexibility and expandability, removal and replacement of building systems and equipment;
 - (vi) Preliminary plan for provisions for any equipment requirements;
 - (vii) Preliminary study of coordination and confirmation of preliminary fit of structural/electrical/mechanical;
 - (viii) Load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants;

- (ix) Flow estimates for heating and cooling systems, air supply, return and exhaust systems;
 - (x) Plumbing fixture schedules; and
 - (xi) Estimate of annual energy use based on LEED energy modeling.
- (k) Electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
- (i) Preliminary floor layouts showing locations of electrical equipment items, normal and emergency, major feeders and branch feeders, and locations of major pathways for all systems;
 - (ii) Routing of main feeds and associated shafts and risers;
 - (iii) Single-line drawings for all services;
 - (iv) Sizing of equipment;
 - (v) Preliminary plan of provisions for adaptability, flexibility and expandability, removal and replacement of building systems and equipment;
 - (vi) Preliminary plan for provisions for any equipment requirements;
 - (vii) Preliminary study of coordination and confirmation of preliminary fit of structural/electrical/mechanical; and
 - (viii) Load estimates for normal power distribution centres, emergency power distribution centres and heating and cooling plants.
- (l) Reflected ceiling plans (prepared at 1:100 scale) showing all typical rooms, special interest areas, public entrances and all other major public spaces with location of major components shown.
- (m) Typical building sections (prepared at 1:100 scale) showing:
- (i) Relative thickness of floors/walls, including differentiation between opaque and transparent walls;
 - (ii) Major floor elevations, including those below grade;
 - (iii) Finish grades, dotted lines through building section;

- (iv) Relationship to Site contours and other important Site elements as shown in building elevation drawings;
- (v) Major room names; and
- (vi) Ceiling space coordination diagram(s).
- (n) Exterior wall sections (prepared at 1:50 scale) and cladding details (prepared at 1:10 scale), provided with a building science report reviewing envelope design and details.
- (o) Typical cladding details (prepared at 1:10 scale), provided with a building science report reviewing envelope design and details.
- (p) Stair, escalator, and elevator plans, sections and details (scales as appropriate).
- (q) Exterior elevations (prepared at 1:100) showing:
 - (i) Indication of surface materials for all areas;
 - (ii) Different vertical planes differentiated with line weights or shadows;
 - (iii) Finish grades;
 - (iv) Major floor elevations, including those below grade;
 - (v) Sections when elevation is shown by taking vertical cut-through another space;
 - (vi) Significant plantings/Site elements when important in defining space and volume, such as bodies of water, hills, earth berms; and
 - (vii) Significant mechanical and electrical equipment such as roof-top units, chimneys, louvers, transformers, pole lines, etc.
- (r) Interior elevations (prepared at 1:100 or 1:50, as appropriate) for: atrium, change rooms, washrooms, field house, aquatic halls, computer control rooms, classrooms, meeting rooms, teaching studios, administration areas, spectator concourse, public entrances and all other major public spaces.
- (s) Interior finishes colour and materials selection boards which includes a minimum of three (3) complete options for interior finishes.
- (t) Door and hardware schedules and hardware cut sheets.
- (u) Lighting design submittals, including fixture cut sheets.

- (v) Security systems floor plan layouts, locations of all security systems equipment, connection points and control points.
 - (w) Drawings of all millwork/systems furniture elements identified in the Room Data Sheets in the Output Specifications, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
 - (x) Single line audio/visual distribution diagrams showing cable management and equipment rooms, coordinated with the equipment list.
 - (y) Single line information technology distribution diagrams showing cable management and equipment rooms, coordinated with the equipment list.
- 1.2. Construction specifications identifying all systems, materials, and construction execution methods proposed to be used in the project. Specifications to be submitted in Master Format.
- 1.3. Facility Design Acceptability Report, providing detail level appropriate to the documentation provided in this submission stage, and addressing all issues of Facility Design Acceptability found in the Output Specifications.
- 1.4. Updated documents from schedule and all additional documents required by TO2015. Information for TO2015 to review I.R., case management, overall, seating, amenities.
- 1.5. Equipment procurement and coordination plan and equipment list.
- 1.6. Construction quality control plan.
- 1.7. Comprehensive acoustical report reviewing all proposed assemblies and acoustical conditions.
- 1.8. Building section 1:100 and 1:150:
- (a) pools;
 - (b) field house;
 - (c) atrium;
 - (d) seating;
 - (e) spectator concourse; and
 - (f) public areas.

- 1.9. Building vibration analysis as it relates to relevant equipment;
- 1.10. Vertical transportation analysis.
- 1.11. Ontario Building Code and applicable accessibility standards (as required by the Output Specifications) analysis and report from an independent Building Code consultant providing detailed review of the drawings and documentation and confirming compliance with the above regulatory and compliance documents including Fire Code. Project Co is responsible for compliance with all applicable codes and regulations.
- 1.12. Space Program which:
 - (a) Identifies net area of each room and department, listed in terms of floor levels;
 - (b) Lists line by line area variance and grossing factor from Output Specification Space Program;
 - (c) Lists mechanical and electrical spaces;
 - (d) Utilizes the alphanumeric system used in Room Data Sheets in the Output Specifications; and
 - (e) Lists additional rooms not previously identified with additional sequential alphanumeric codes as required.
- 1.13. Micro-climate report to confirm that the findings and anticipated conditions are consistent with the micro-climate studies based on the Design Exemplar scheme included in the Output Specifications. The report will address exhaust re-entrainment, pedestrian level wind and snow studies using water flume and wind tunnel testing to provide a visual indication of snow accumulation, wind patterns, wind flows and emission paths on and around the building(s) to demonstrate that the development will not create unacceptable wind forces and noise levels, or snow fall and accumulation conditions at building entrances, exits, landscaped open spaces and street sidewalks.
- 1.14. LEED registration with CaGBC, LEED checklist and LEED status report, including energy model updates.
- 1.15. Updated Outline Commissioning Program.
- 1.16. Any other Submittals HMQ reasonably requires to understand the Works.

2. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 50% CONSTRUCTION DOCUMENTS STAGE

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

- 2.1. Updated construction documents in accordance with the requirements set forth in Section 11.1 of the Project Agreement including:
- (a) Updated Site plan (prepared at 1:500 scale) showing all previously listed requirements and planting schedule.
 - (b) Updated Site servicing plan (prepared at 1:500) showing all previously listed requirements.
 - (c) Updated and augmented Site and landscape details (prepared at 1:10 scale).
 - (d) Architectural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
 - (i) Full dimensions;
 - (ii) Layout of all spaces;
 - (iii) Fire and Life safety plans;
 - (iv) Material symbols;
 - (v) Door symbols;
 - (vi) Glazed light symbols;
 - (vii) Window types and numbers;
 - (viii) Floor material changes;
 - (ix) Pits, trenches, etc.;
 - (x) Furring notes;
 - (xi) Hatch walls and partitions;
 - (xii) Depressed floor for terrazzo, tile, etc.;
 - (xiii) Curbs for mechanical room penetrations;
 - (xiv) Sump pits, gratings;
 - (xv) Recessed mats;
 - (xvi) Expansion joints;
 - (xvii) Pipe trench;

- (xviii) Convectors;
- (xix) Low partitions; and
- (xx) Folding partitions.
- (e) Updated and augmented enlarged architectural plan details (prepared at 1:50 scale) for all areas required to explain the design intent.
- (f) Updated structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
 - (i) Sections/elevations showing all structural elements;
 - (ii) All legends and schedules; and
 - (iii) Finalized structural loads.
- (g) Updated mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
 - (i) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical;
 - (ii) All legends and schedules;
 - (iii) HVAC, and plumbing details;
 - (iv) Enlarged equipment room and toilet plans;
 - (v) Mechanical room plans;
 - (vi) Control schematics; and
 - (vii) Finalized estimate of annual energy use based on LEED energy modeling.
- (h) Updated electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
 - (i) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical;
 - (ii) All legends and schedules;
 - (iii) Grounding details;

- (iv) Fire alarm riser diagram;
 - (v) Telephone riser diagram;
 - (vi) Paging riser diagram;
 - (vii) Television riser diagram;
 - (viii) Equipment connection data sheet;
 - (ix) Summary of lighting loads for all rooms;
 - (x) Control schematics; and
 - (xi) Electrical details.
- (i) Updated reflected ceiling plans (prepared at 1:100 scale) for all areas, showing:
- (i) Light fixtures;
 - (ii) Grilles;
 - (iii) Diffusers;
 - (iv) Hat detectors;
 - (v) Smoke detectors;
 - (vi) Soffits (dotted);
 - (vii) Folding partitions;
 - (viii) Cubicle tracks;
 - (ix) Curtain tracks;
 - (x) Skylights;
 - (xi) Access panels;
 - (xii) Hatches;
 - (xiii) Major structural members (if sight exposed);
 - (xiv) Hoods (as applicable);
 - (xv) Gas columns (as applicable);

- (xvi) Exit signs; and
- (xvii) Room numbers.
- (j) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements and:
 - (i) Completed ceiling space coordination diagram(s);
 - (ii) Vertical dimensions;
 - (iii) Floor elevations;
 - (iv) Column lines;
 - (v) Room numbers/names;
 - (vi) Rooftop equipment; and
 - (vii) Wall section designations.
- (k) Updated and augmented exterior wall sections (prepared at 1:50 scale) and cladding details (prepared at 1:10 scale), provided with a building science report reviewing envelope design and details.
- (l) Updated and augmented stair and elevator plans, sections and details (scales as required).
- (m) Updated exterior elevations (prepared at 1:100) showing all previously listed requirements and:
 - (i) Window types and numbers;
 - (ii) Entrance types and numbers;
 - (iii) Door types and numbers;
 - (iv) Wall material indication;
 - (v) Coping materials;
 - (vi) Overhead fascia materials;
 - (vii) Top of foundation wall line;
 - (viii) Footing and foundation line;

- (ix) Floor lines;
 - (x) Vertical dimensions;
 - (xi) Signage;
 - (xii) Section lines;
 - (xiii) Column centerlines;
 - (xiv) Louvers;
 - (xv) Stairs and ramps;
 - (xvi) Chimneys;
 - (xvii) Stacks;
 - (xviii) Light fixtures; and
 - (xix) Other mechanical or electrical equipment.
- (n) Updated interior elevations (prepared at 1:50) for all previously listed areas and showing:
- (i) casework indications;
 - (ii) Millwork and detail designations;
 - (iii) Shelving;
 - (iv) Tack board;
 - (v) Whiteboard;
 - (vi) Interior glazed panels (dimensions and details);
 - (vii) Base indication;
 - (viii) Mechanical grilles, thermostats, gas outlets, etc.;
 - (ix) Wall handrails;
 - (x) Graphics;
 - (xi) Equipment;

- (xii) Interior finishes;
 - (xiii) Electrical receptacles speakers, clocks, light fixtures, etc.);
 - (xiv) Plumbing fixture foot controls (as applicable), etc.; and
 - (xv) Locker designation.
- (o) Interior details (scaled as appropriate) showing:
- (i) Base types;
 - (ii) Soffits;
 - (iii) Curbs for mechanical penetrations;
 - (iv) Door details;
 - (v) Hollow metal glazed panels;
 - (vi) Expansion joints;
 - (vii) Fireproofing at beams and columns;
 - (viii) Low walls;
 - (ix) Folding partitions
 - (x) Rolling doors;
 - (xi) Dressing compartments;
 - (xii) Pass-windows;
 - (xiii) Supports – patient lifts (as applicable);
 - (xiv) HCW details;
 - (xv) HCT details;
 - (xvi) Automatic sliding/swing door details;
 - (xvii) Expansion joint details;
 - (xviii) Typical partition construction;
 - (xix) Exhaust hood details (as applicable); and

- (xx) Corner guard details.
 - (p) Updated room finish schedule.
 - (q) Updated door and hardware schedules and hardware cut sheets.
 - (r) Updated lighting design submittals, including fixture cut sheets and illumination level analysis.
 - (s) Updated and augmented security systems floor plans and equipment details, locations of all security systems equipment, connection points and control points.
 - (t) Drawings of all millwork/systems furniture elements identified in the Room Data Sheets in the Output Specifications, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
 - (u) Updated and augmented audio/visual drawings and details.
 - (v) Updated and augmented information technology drawings and details.
- 2.2. Updated construction specifications, including all previously listed requirements.
- 2.3. Report on review and adjustments of mock-ups.
- 2.4. Updated Facility Design Acceptability Report, providing detail level appropriate to the documentation provided in this submission stage, and addressing all issues of Facility Design Acceptability found in the Output Specifications.
- 2.5. Updated building vibration analysis, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by HMQ.
- 2.6. Updated equipment procurement and coordination plan and equipment list.
- 2.7. Updated construction quality plan, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by HMQ.
- 2.8. Updated acoustical report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by HMQ.
- 2.9. Updated vertical transportation analysis, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by HMQ.

- 2.10. Updated Ontario Building Code and applicable accessibility standards (as required by the Output Specifications) analysis and compliance strategy.
- 2.11. Updated Space Program, including all previously listed requirements.
- 2.12. Report on review and adjustments of micro-climate report.
- 2.13. LEED checklist and LEED status report, including energy model updates.
- 2.14. Updated Outline Commissioning Program.
- 2.15. Provide Breakout pricing for Major Plan Equipment for each following sections of the fundamental specifications:
 - (a) 200900 Motors;
 - (b) 200900 Motor Control Centres;
 - (c) 200950 Variable Speed Drives;
 - (d) 223300 Domestic Hotel Water Heaters;
 - (e) 232123 HVAC Pumps;
 - (f) 235223 Condensing Boilers;
 - (g) 235223 Cast Iron Sectional Boilers;
 - (h) 236416 Centrifugal Chillers;
 - (i) 236513 Cooling Towers;
 - (j) 237500 Air Handling Units;
 - (k) 255000 Electronic Controls and Monitoring;
 - (l) 261217 Dry Type Transformers;
 - (m) 261218 Harmonic Mitigation Transformers;
 - (n) 232600 Low Voltage Switchgear;
 - (o) 262417/18 Panel Boards;
 - (p) 262817 Air Circuit Breakers;
 - (q) 262820/21 Circuit Breakers;

- (r) 263210 Diesel Generators;
- (s) 263353 UPS;
- (t) 263623 Automatic Transfer Switches;
- (u) 075216/19-075552/56 Roofing;
- (v) 142400 Hydraulic Elevators; and
- (w) 131113/14/15 Pool Liner/Markings/Bulkheads – Pool Filtration Pump/Backwash System and Sump Pumps/Heat Exchangers and Controls.

2.16. Any other Works Submittals HMQ reasonably requires to understand the Works.

3. MINIMUM SUBMITTAL REQUIREMENTS FOR THE CONSTRUCTION STAGE

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

- 3.1. Site Plan Application Submission: sufficient design documentation (including but not limited to: civil, landscape, traffic and architectural disciplines) necessary to satisfy the City of Toronto and all other Governmental Authorities for the approval of the Site Plan Application. Provide all necessary documentation and attend / organize meetings as required with the City of Toronto to satisfy all City requirements. Provide proof of Site Plan Application submission (copy of receipt) and final approval (copy of approval documentation from the City of Toronto.).
- 3.2. Building Permit Application: Sufficient working drawing (contract documents) documentation necessary to satisfy the City of Toronto and all other authorities having jurisdiction for the approval of the Building Permit. Provide proof of Building Permit Application submission (copy of receipt) and final approval (copy of building permit from the City of Toronto). Provide proof of ESA Plan Review Submission (copy of ESA receipt), and approval (copy of ESA report).
- 3.3. Issued for Construction Documents: Contract documents issued for construction (representing all trades, contracts, subcontracts, etc.) including specifications.
- 3.4. Works Schedule, updated monthly, showing complete sequence of construction by activity, identifying Works of separate stages and other logically grouped activities and indicating:
 - (a) dates for submission, review time, resubmission time and last date for meeting fabrication schedule of all required Shop Drawings and samples;

- (b) the early and late start, early and late finish, float dates and duration of all activities;
 - (c) estimated percentage of completion for each item of the Works at each submission of schedule;
 - (d) changes occurring since previous submission of schedule; and
 - (e) a narrative report defining:
 - (i) problem areas, anticipated delays, and impact on schedule;
 - (ii) corrective action recommended and its effect; and
 - (iii) effect of changes on schedules of Subcontractors.
- 3.5. Shop Drawings and samples which will be processed by HMQ include:
- (a) All exterior cladding, pools, FOP, climbing wall, key interior features (i.e. stairs), seating, scoreboards, lockers, millwork, casework.
 - (b) Coordination drawings of all millwork, casework and modular systems furniture will be reviewed for harmonization of ergonomics, equipment layout and mechanical/electrical outlet locations;
 - (c) All pool installation and pool equipment items;
 - (d) Security systems;
 - (e) All major mechanical equipment and systems; and
 - (f) All major electrical equipment and systems.
- 3.6. Samples are to be provided for all systems and components of the facility in accordance with industry standards. A complete list of samples to be provided to the Design Compliance Consultant for review will be provided within 30 days of Financial Close.
- 3.7. All review comments from submissions to building authorities, insurance authorities and inspection authorities.
- 3.8. Progress photographs, updated monthly, from four vantage points, locations to be determined by HMQ and/or the HMQ Representative.
- 3.9. LEED checklist and LEED status report, including energy model updates, submitted monthly and results of third party energy model review once available.

- 3.10. Mock-ups.
- 3.11. Testing and inspection reports.
- 3.12. Construction Contractor proposed substitutions.
- 3.13. Deficiency reports, updated monthly.
- 3.14. Draft of Final Commissioning Program.
- 3.15. Final Commissioning Plan.
- 3.16. Commissioning Reports: Monthly commissioning reports are to be prepared and submitted in accordance with industry standards. Commissioning reports to be submitted no later than 6 months after commencement of construction.
- 3.17. Testing and Balancing Reports: Final Testing and Balancing Report prepared in accordance with industry standards.
- 3.18. Acoustic Reports: Written report with Octave Band sound level plots and overall A-weighted sound levels for each space measured, Reconcile with NC levels specified in Room Data Sheets.
- 3.19. System Test Reports: a complete list of system test reports to be provided to the Design Compliance Consultant for review will be provided within 30 days of Financial Close
- 3.20. Record Drawings: Detailed log (spreadsheet format) identifying all record drawing documents and operations manuals. Detailed log to include as a minimum the following:
 - (a) Drawing number for all record drawing documents with a summary of the changes made during construction
 - (b) List of all systems and components included in the operations manuals
- 3.21. Substantial Completion Certificate.
- 3.22. Final Completion Certificate.
- 3.23. Draft of PGW Commissioning Program.
- 3.24. PGW Commissioning Program.
- 3.25. PGW Substantial Completion Certificate.
- 3.26. PGW Final Completion Certification.

- 3.27. Site Signage and Hoarding Plan including details and locations of legislated, emergency and promotional signage.
- 3.28. Any other Works Submittals HMQ reasonably requires to understand the Works.

SCHEDULE 11

DESIGN QUALITY PLAN AND CONSTRUCTION QUALITY PLAN

[REDACTED]

SCHEDULE 12A

FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

THIS GUARANTEE is made as of the • day of •, 2012.

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

(“**HMQ**”)

and

PCL CONSTRUCTORS CANADA INC.,

(“**Construction Guarantor**”)

WHEREAS:

- A. HMQ and PCL Aquatics Centre 2012 Ltd. (“**Project Co**”) have entered into a project agreement dated as of the • day of •, 2012 (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Project Agreement**”).
- B. As an inducement to HMQ to enter the Project Agreement with Project Co, Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to HMQ, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work, and in furtherance thereof has agreed to enter into this Guarantee.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions from Project Agreement

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Project Agreement.
- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement.
- (c) For the purpose of this Guarantee only, the term “Design and Construction Work” shall include the Project Co Representations and Warranties set out in Section 6.1(a) of the Project Agreement, except Section 6.1(a)(xx) of the Project Agreement, which Section shall remain excluded from the definition of “Design and Construction Work”, and shall include Section 34.1(a)(iv) of the Project Agreement, and provided that, for the purposes only of this Guarantee:
 - (i) in Section 6.1(a)(vii) of the Project Agreement the term “Project Co Event of Default” shall be read as “Project Co Construction Event of Default” as that term is defined in Schedule 1 to the Project Agreement.

1.2 Survival

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

2. GUARANTEE

2.1 Guarantee

- (a) Construction Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to HMQ, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings and obligations of Project Co under the Project Agreement under Section 8.4(a) or with respect to Financing or any provision other than the Design and Construction Work.
- (b) Notwithstanding any other provision of this Guarantee, the Construction Guarantor’s undertakings and obligations are derivative of and not in excess of Project Co’s obligations under the Project Agreement and the Construction Guarantor retains all rights, claims, defences and limitations of liability possessed by Project Co under the terms of the Project Agreement or arising from the parties’ performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Project Co, including, for greater certainty, that the alleged non-performance or non-observance by Project Co of the Guaranteed Obligations arise out of or are a

result of an HMQ Event of Default as set out in Section 35.1(a) of the Project Agreement.

2.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by Project Co shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.
- (b) The Guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Project Agreement and Construction Guarantor shall have fully and satisfactorily discharged all of its obligations under this Guarantee.
- (c) The liability of Construction Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no notice to Construction Guarantor shall be required in respect of):
 - (i) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;
 - (ii) any amalgamation, merger or consolidation of Project Co or Construction Guarantor or any sale, lease or transfer of any of the assets of Project Co or Construction Guarantor;
 - (iii) any Change in Ownership of Project Co or Construction Guarantor;
 - (iv) any Delay Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
 - (v) any change in the financial condition of Project Co or Construction Guarantor;
 - (vi) any Project Co Event of Default described in Section 34.1(a)(i) of the Project Agreement, or any resulting release, stay or discharge of any Guaranteed Obligation;

- (vii) any lack or limitation of power, incapacity or disability on the part of Project Co or any other irregularity, defect or informality on the part of Project Co with respect to the Guaranteed Obligations;
 - (viii) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, Construction Guarantor in respect of the Guaranteed Obligations or this Guarantee;
 - (ix) the exercise of any rights under the Lending Agreements, including the right of Lenders to cure any Project Co Event of Default by or on behalf of Project Co hereunder and/or to assume the obligations of Project Co and complete the Design and Construction Work in the manner provided in the Project Agreement;
 - (x) the assignment by HMQ in accordance with the provisions of Section 47.2 of the Project Agreement; or
 - (xi) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against Construction Guarantor.
- (d) The obligations and liabilities of Construction Guarantor hereunder shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Project Co or Construction Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) HMQ shall not be bound to exhaust its recourse against Project Co or others or any securities (including the Security described in Schedule 25 of the Project Agreement) or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the Construction Guarantor and Construction Guarantor renounces all benefits of discussion and division.
- (f) It is the intent and purpose hereof that Construction Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, Construction Guarantor hereby waives notice of acceptance of this Guarantee and of the non-performance by Project Co, diligence, presentment, protest, dishonour, demand for performance from HMQ and notice of non-

performance or failure to perform on the part of Project Co and all other notices whatsoever. The Guarantee hereunder is a guarantee of performance and compliance. In order to hold Construction Guarantor liable hereunder, there shall be no obligation on the part of HMQ at any time to demand or resort for performance to Project Co, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that Project Co be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and HMQ shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against Project Co are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, Project Co shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such default, the Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.

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

3. REPRESENTATIONS AND WARRANTIES

3.1 Construction Guarantor Representations and Warranties

- (a) Construction Guarantor represents and warrants to HMQ that as of the date of this Guarantee:
- (i) Construction Guarantor is a corporation incorporated and validly existing under the laws of the Province of Alberta, is in good standing with the Alberta Registrar of Corporations with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Guarantee and the Ancillary Documents to which it is a party and to perform its obligations hereunder and thereunder;
 - (ii) Construction Guarantor has the requisite power, authority and capacity to execute and deliver and perform this Guarantee and the Ancillary Documents to which it is a party, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee and the Ancillary Documents to which it is a party to be done, executed, delivered or performed;
 - (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Guarantee or any of the Ancillary Documents to which it is party and such documents and agreements are in full force and effect as of the date hereof;
 - (iv) this Guarantee and the Ancillary Documents (when executed and delivered) to which Construction Guarantor is a party, have been duly authorized, executed, and delivered by Construction Guarantor and constitute legal, valid, and binding obligations of Construction Guarantor, enforceable against Construction Guarantor in accordance with their respective terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and

- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (v) the authorization, execution, delivery and performance by Construction Guarantor of this Guarantee and the Ancillary Documents to which it is a party do not violate or conflict with, or constitute a default under:
 - (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Construction Guarantor;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) Project Co is an affiliate of the Construction Guarantor;
- (vii) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against Construction Guarantor, at law or in equity, before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Construction Guarantor or in any impairment of its ability to perform its obligations under this Guarantee or any Ancillary Documents to which it is a party, and Construction Guarantor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment; and
- (viii) Construction Guarantor is able to meet its obligations as they generally become due.

4. NOTICES

4.1 Notices to Parties

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

If to Construction Guarantor:

[REDACTED]

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

If to HMQ:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8

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

With a copy to:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8

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

4.2 Facsimile

Where any Notice is provided or submitted to a party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 4.2.

4.3 Change of Address

Either party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 by prior Notice to the other party, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such Notice unless a later effective date is given in such Notice.

4.4 Deemed Receipt of Notices

(a) Subject to Sections 4.4(b), (c) and (d):

- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Article 4.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

4.5 Service on HMQ

Where any Notice is required to be served on HMQ, the obligation to serve such Notice shall be fulfilled by serving it on HMQ in accordance with the provisions of this Article 4.

5. GENERAL

5.1 Amendments

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

5.2 Waiver

- (a) No waiver made or given by a party under or in connection with this Guarantee shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other party. No waiver made with respect to any right, power or

remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

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

5.3 Entire Agreement

Except where provided otherwise in this Guarantee, this Guarantee, together with the Project Agreement and the Ancillary Documents, constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Guarantee.

5.4 Severability

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

5.5 Enurement

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

5.6 Governing Law and Jurisdiction

- (a) This Guarantee shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

5.7 Cumulative Remedies

Except as otherwise set forth in this Guarantee, the rights, powers and remedies of each party set forth in this Guarantee are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Guarantee or the Project Agreement or Ancillary Documents.

5.8 Further Assurance

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

5.9 Costs

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Guarantee.

5.10 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Guarantee and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Guarantee shall be in English.

5.11 Proof of Authority

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

5.12 Counterparts

This Guarantee may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any party providing its signature in faxed form shall

promptly forward to the other party an original signed copy of this Guarantee which was so faxed.

5.13 Joint and Several

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

5.14 Copyright Notice

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation

PCL CONSTRUCTORS CANADA INC.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation

SCHEDULE 12B

PERFORMANCE GUARANTEE OF CONSTRUCTION PARENT GUARANTOR

THIS GUARANTEE is made as of the • day of •, 2012.

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

(“**HMQ**”)

and

[REDACTED],

(“**Construction Parent Guarantor**”)

WHEREAS:

- C. HMQ and PCL Aquatics Centre 2012 Ltd. (“**Project Co**”) have entered into a project agreement dated as of the • day of •, 2012 (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Project Agreement**”).
- D. As an inducement to HMQ to enter the Project Agreement with Project Co, Construction Parent Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to HMQ, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work, and in furtherance thereof has agreed to enter into this Guarantee.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions from Project Agreement

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Project Agreement.
- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement.
- (c) For the purpose of this Guarantee only, the term “Design and Construction Work” shall include the Project Co Representations and Warranties set out in Section 6.1(a) of the Project Agreement, except Section 6.1(a)(xx) of the Project Agreement, which Section shall remain excluded from the definition of “Design and Construction Work”, and shall include Section 34.1(a)(iv) of the Project Agreement, and provided that, for the purposes only of this Guarantee:
 - (i) in Section 6.1(a)(vii) of the Project Agreement the term “Project Co Event of Default” shall be read as “Project Co Construction Event of Default” as that term is defined in Schedule 1 to the Project Agreement.

1.2 Survival

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

2. GUARANTEE

2.1 Guarantee

- (a) Construction Parent Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to HMQ, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings and obligations of Project Co under the Project Agreement under Section 8.4(a) or with respect to Financing or any provision other than the Design and Construction Work.
- (b) The maximum aggregate liability of Construction Parent Guarantor hereunder shall not exceed **[REDACTED]**. This limit shall be exclusive of: (i) any insurance proceeds received pursuant to policies of insurance to the extent required under the Project Agreement and any liability for losses that would have been covered by insurance up to the amount of the required insurance and deductibles but in respect of which insurance proceeds are not available due to a, failure, act or omission on the part of Project Co or any person for whom Project Co is responsible, including any Subcontractors, as applicable; (ii) all amounts paid by Project Co or Construction Parent Guarantor which are subsequently

repaid to Project Co or Construction Parent Guarantor by HMQ; (iii) any claim by HMQ in respect of wilful misconduct or deliberate acts of wrongdoing by Project Co or Construction Parent Guarantor; (iv) any claim for Direct Losses by HMQ in respect of Project Co abandoning the Project (other than as a consequence of a breach by HMQ of its obligations under the Project Agreement); (v) claims for death or personal injury; (vi) third party claims in tort against HMQ (excluding claims by the Lenders (as defined under the Project Agreement) or an HMQ Party) to the extent such claims arise from the negligence or breach of contract of Project Co or parties for whom Project Co is responsible, including any Subcontractors; (vii) third party claims in tort against HMQ, or an HMQ Party for which indemnity is sought against Project Co to the extent such claims arise from the negligence or breach of contract of Project Co or parties for whom Project Co is responsible; (viii) expenses incurred by HMQ in enforcing a claim under the Project Agreement to the extent of Project Co's liability for same to HMQ for such expenses; and (ix) liabilities arising under any encumbrance created or caused by Project Co or those for whom Project Co is responsible (but excluding any encumbrance arising as a result of HMQ's actions, including non-payment pursuant to the terms of the Project Agreement).

- (c) Notwithstanding any other provision of this Guarantee, the Construction Parent Guarantor's undertakings and obligations are derivative of and not in excess of Project Co's obligations under the Project Agreement and the Construction Parent Guarantor retains all rights, claims, defences and limitations of liability possessed by Project Co under the terms of the Project Agreement or arising from the parties' performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Project Co, including, for greater certainty, that the alleged non-performance or non-observance by Project Co of the Guaranteed Obligations arise out of or are a result of an HMQ Event of Default as set out in Section 35.1(a) of the Project Agreement.

2.2 General Provisions Relating to the Guarantee

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

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

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

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

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

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

3. REPRESENTATIONS AND WARRANTIES

3.1 Construction Parent Guarantor Representations and Warranties

- (a) Construction Parent Guarantor represents and warrants to HMQ that as of the date of this Guarantee:
 - (i) Construction Parent Guarantor is a corporation incorporated and validly existing under the laws of the Province of Alberta, is in good standing with the Registrar of Corporations for the Province of Alberta with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this

Guarantee and the Ancillary Documents to which it is a party and to perform its obligations hereunder and thereunder;

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

- (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) the Construction Parent Guarantor is the parent company of PCL Aquatics Centre Ltd., which in turn is the parent company of Project Co;
- (vii) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against Construction Parent Guarantor, at law or in equity, before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Construction Parent Guarantor or in any impairment of its ability to perform its obligations under this Guarantee or any Ancillary Documents to which it is a party, and Construction Parent Guarantor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment; and
- (viii) Construction Parent Guarantor is able to meet its obligations as they generally become due.

4. NOTICES

4.1 Notices to Parties

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

If to Construction Parent Guarantor:

[REDACTED]

Fax No.: **[REDACTED]**

Attention: **[REDACTED]**

If to HMQ:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario, M5G 2C8

Attention: [REDACTED]
Fax: [REDACTED]

With a copy to:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario, M5G 2C8
Attention: [REDACTED]
Fax: [REDACTED]

4.2 Facsimile

Where any Notice is provided or submitted to a party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 4.2.

4.3 Change of Address

Either party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 by prior Notice to the other party, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such Notice unless a later effective date is given in such Notice.

4.4 Deemed Receipt of Notices

- (a) Subject to Sections 4.4(b), (c) and (d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Article 4.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a

Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.

- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

4.5 Service on HMQ

Where any Notice is required to be served on HMQ, the obligation to serve such Notice shall be fulfilled by serving it on HMQ in accordance with the provisions of this Article 4.

5. GENERAL

5.1 Amendments

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

5.2 Waiver

- (a) No waiver made or given by a party under or in connection with this Guarantee shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other party. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by either party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

5.3 Entire Agreement

Except where provided otherwise in this Guarantee, this Guarantee, together with the Project Agreement and the Ancillary Documents, constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations,

communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Guarantee.

5.4 Severability

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

5.5 Enurement

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

5.6 Governing Law and Jurisdiction

- (a) This Guarantee shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

5.7 Cumulative Remedies

Except as otherwise set forth in this Guarantee, the rights, powers and remedies of each party set forth in this Guarantee are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Guarantee or the Project Agreement or Ancillary Documents.

5.8 Further Assurance

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

5.9 Costs

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Guarantee.

5.10 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Guarantee and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Guarantee shall be in English.

5.11 Proof of Authority

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

5.12 Counterparts

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

5.13 Joint and Several

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

5.14 Copyright Notice

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation

[REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation

SCHEDULE 13

PROJECT CO PROPOSAL EXTRACTS

[REDACTED]

SCHEDULE 14

OUTLINE COMMISSIONING PROGRAM

1. APPLICABLE STANDARDS

- 1.1. Project Co shall plan, schedule, coordinate and execute the commissioning of each item of Equipment and building system provided as part of the Works in accordance with the following standards:
 - (a) 1999 ASHRAE Applications Handbook, Chapter 41, Building Commissioning; and
 - (b) ASHRAE Guidelines 1 – 1996 – The HVAC Commissioning Process.

2. PROJECT CO COMMISSIONING COORDINATOR

- 2.1. Project Co shall appoint a commissioning coordinator (the “**Project Co Commissioning Coordinator**”) to undertake the role described in Schedule 15 – Output Specifications, Volume 5, Section 019100.
- 2.2. The Project Co Commissioning Coordinator shall be an individual, company or agency having a minimum of five (5) years experience in the design or commissioning of mechanical and electrical systems in similar athletics and aquatics facilities, shall be licensed or authorized by the Association of Professional Engineers of the Province of Ontario and shall be familiar with and knowledgeable about each of the standards listed in Section 1.1 of this Schedule 14.

3. COMMISSIONING PARAMETERS

- 3.1. The Project Co Commissioning Coordinator shall convene a meeting of the commissioning team to set commissioning parameters, designate the responsibilities of the various parties and establish the documentation requirements for each phase of the Works and the Project Co Commissioning.
- 3.2. Project Co shall incorporate the commissioning schedule into the Works Schedule.
- 3.3. The Project Co Commissioning Coordinator shall submit reports to the Works Committee regarding the progress of the Project Co Commissioning on a monthly basis, or a bi-weekly basis if requested by HMQ.
- 3.4. Project Co is responsible for the supply, installation, start-up, testing, adjustment and cleaning of each item of equipment and building system provided as part of the Works.
- 3.5. All commissioning work shall be in accordance with LEED Fundamental, EApl, and Enhanced Commissioning, EAc3, credit requirements.

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4. COMMISSIONING TEAM

- 4.1. The commissioning team shall be comprised of:
- (a) a representative of Project Co;
 - (b) 4 representatives of HMQ including the HMQ representative;
 - (c) the Project Co Commissioning Coordinator;
 - (d) the HMQ Commissioning Agent;
 - (e) the Independent Certifier;
 - (f) representatives of the Design Team, and the Construction Contractor;
 - (g) representatives of the Design Compliance Consultant; and
 - (h) representatives of the relevant Equipment manufacturers, as required.
- 4.2. Project Co and each of the Project Co Parties shall assign an individual from each relevant trade to the commissioning team and shall ensure that representatives of the relevant Equipment manufacturers are present during the relevant Project Co Commissioning.
- 4.3. Project Co shall provide all necessary labour, materials, Equipment, testing apparatus and incidentals necessary to completely start-up, verify, performance test and commission each item of Equipment and building system provided as part of the Works.

5. COMMISSIONING PROCEDURES

- 5.1. Project Co shall meet all of the testing, balancing, commissioning and verification requirements outlined in Schedule 15 – Output Specifications, Volume 5, Section 019100. The commissioning team shall ensure that all regulation and code references in the construction documents are current and applicable.
- 5.2. Project Co shall start and bring to normal operating condition each item of Equipment and building system provided as part of the Works.
- 5.3. Project Co shall operate and maintain each item of Equipment and building system provided as part of the Works as required for the duration of the Project Co Commissioning.
- 5.4. Project Co shall modify or replace, re-adjust, re-test, re-balance and re-start any item of Equipment or building system provided as part of the Works that fails to perform as required.

- 5.5. The Project Co Commissioning Coordinator shall lead the commissioning team through the start-up, verification and performance testing check sheets appropriate to each item of Equipment and building system provided as part of the Works.
- 5.6. The Project Co Commissioning Coordinator shall prepare and issue start-up, verification and performance testing check sheets for each item of Equipment and building system provided as part of the Works. Check sheets shall be prepared in accordance with the standards listed in Section 1.1 of this Schedule 14 and shall be modified to reflect the particular needs of the Project.
- 5.7. The Project Co Commissioning Coordinator shall complete the various check sheets. Each member of the commissioning team shall review the check sheets on completion and shall initial each check sheet to indicate their acceptance.

6. COMMISSIONING SUBMITTALS

- 6.1. Project Co shall prepare and submit to the HMQ Commissioning Agent and Independent Certifier detailed commissioning plans for each item of Equipment and building system provided as part of the Works.
- 6.2. Project Co shall prepare and submit to the HMQ Commissioning Agent and Independent Certifier a detailed commissioning schedule for each item of Equipment and building system provided as part of the Works.
- 6.3. Project Co shall prepare and submit to the HMQ Commissioning Agent and Independent Certifier detailed commissioning manuals for each item of Equipment and building system provided as part of the Works.
- 6.4. All commissioning manuals shall be bound in hard cover, D-ring binders with transparent cover on front and spine, personalized to indicate;
 - (a) name and logo of IO;
 - (b) name of the Project;
 - (c) project number;
 - (d) identification of each item of Equipment and building system commissioned; and
 - (e) date each item of Equipment or building system was commissioned.
- 6.5. All commissioning manuals shall have machine printable index dividers to organize each manual by item of Equipment or building system and by commissioning stage and shall include:
 - (a) test reports;

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- (b) Equipment check sheets (start-up, verification and performance) for each item of Equipment provided as part of the Works;
- (c) building systems check sheets (start-up, verification and performance) for each building system provided as part of the Works; and
- (d) interim and final acceptance check sheets for each item of Equipment and building system provided as part of the Works.

7. BUILDING SYSTEMS TO BE COMMISSIONED

7.1. The Project Co Commissioning will include the commissioning of all items of Equipment and building systems provided as part of the Works including, but not limited to, the following:

- (a) Site Development
 - (i) Site Grading
 - (ii) Storm Sewers & Structures
 - (iii) Sanitary Sewers & Structures
 - (iv) Natural Gas Service
 - (v) Electrical Power Service
 - (vi) Underground Communications Services
 - (vii) Irrigation Sprinkler Systems
 - (viii) Plantings
 - (ix) Water mains and appurtenances
- (b) Building Envelope
 - (i) Air/Vapour Barrier
 - (ii) Roofing
 - (iii) Thermal Scan
- (c) Elevators and Lifts
 - (i) Elevators

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- (ii) Dumbwaiters
- (iii) Lifts
- (d) Fire Protection Systems
 - (i) Wet Sprinkler
 - (ii) Dry Sprinkler
 - (iii) Pre-action Sprinkler
 - (iv) Gaseous Fire Protection Systems
 - (v) Total Flooding – FM200/NOVEC 1230
 - (vi) Standpipe & Hose – 1-1/2”
 - (vii) Standpipe & Hose – 2-1/2”/1-1/2”
 - (viii) Fire Pump
 - (ix) Portable Fire Extinguishers
- (e) Plumbing Systems
 - (i) Domestic water pressure booster set
 - (ii) Domestic water distribution
 - (iii) Domestic water heating
 - (iv) Hot water recirculating
 - (v) Compressed air supply
 - (vi) Therapy pools and feedwater systems
 - (vii) Sanitary fixtures
 - (viii) Safety (emergency) fixtures
 - (ix) Storm pumps
 - (x) Sanitary pumps
 - (xi) Existing Equipment

- (f) HVAC Systems
 - (i) Fuel supply
 - (ii) Standby fuel storage and supply
 - (iii) Heating Plant
 - (iv) Steam distribution – 100 psig
 - (v) Steam distribution – 10 psig
 - (vi) Condensate collection & return
 - (vii) Feedwater supply & treatment
 - (viii) Heat recovery systems
 - (ix) Flue gas heat recovery
 - (x) Heat exchangers
 - (xi) Hot water heating – radiation
 - (xii) Hot water heating – reheat
 - (xiii) Hot water/glycol heating – AHU
 - (xiv) Snow melting
 - (xv) Soffit heating
 - (xvi) Chillers
 - (xvii) Cooling towers
 - (xviii) Chilled water distribution
 - (xix) Condenser water distribution
 - (xx) Direct expansion refrigeration
 - (xxi) Supply air distribution
 - (xxii) Return air collection
 - (xxiii) Outdoor air intake

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- (xxiv) Air filtration
- (xxv) Air humidification
- (xxvi) Air de-humidification
- (xxvii) Air heating
- (xxviii) Air cooling
- (xxix) Exhaust air collection
- (xxx) Exhaust air discharge
- (xxxi) Energy recovery
- (xxxii) Pressurization fans
- (xxxiii) Water filtration
- (xxxiv) Chemical treatment
- (g) Building Automation Systems
 - (i) Operator Workstations
 - (ii) Field panels
 - (iii) Network cabling
 - (iv) Valves, dampers and actuators
 - (v) Pumps
 - (vi) Fans
 - (vii) Meters
 - (viii) Heating systems
 - (ix) Ventilating systems
 - (x) Air conditioning systems
 - (xi) Pressurization systems
 - (xii) Humidification systems

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- (xiii) De-humidification systems
- (xiv) Smoke control systems
- (h) Pool Structural, Mechanical and Equipment
 - (i) Fill pool and inspect for leaks prior to system start up
 - (ii) Water filtration systems
 - (iii) Water chemistry systems
 - (iv) Water levelling systems
 - (v) Pumps
 - (vi) Backwash systems
 - (vii) Pool Controls
 - (viii) Make-up Water Systems
 - (ix) Bulkheads
 - (x) Movable bottom
 - (xi) Timing systems and displays
 - (xii) Bubbler system
- (i) Electrical System
 - (i) Utility owned HV feeders
 - (ii) Utility owned HV switchgear
 - (iii) Utility owned HV transformers
 - (iv) High-voltage bus
 - (v) 600-V bus
 - (vi) 600-V switchgear
 - (vii) 600-V feeders
 - (viii) 600-V panel boards

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- (ix) 600-V Motor control centers
- (x) 600-V Transformers
- (xi) Low-voltage feeders
- (xii) Low-voltage panel boards
- (xiii) Low-voltage Motor control centers
- (xiv) Wiring & Equipment connections
- (xv) Electrical devices
- (xvi) Diesel-engine generator sets
- (xvii) Diesel-engine generator controls
- (xviii) Associated systems
- (xix) Automatic Transfer switches
- (xx) Power conditioners
- (xxi) UPS systems
- (xxii) Power factor correction
- (xxiii) Lighting fixtures
- (xxiv) Emergency lighting fixtures
- (xxv) Lighting controls
- (xxvi) Variable frequency drives
- (xxvii) Transient Voltage Surge Suppression
- (xxviii) Fire Detection and Alarm
- (j) Communications Systems
 - (i) Voice (telephone) cabling
 - (ii) Data (computer) cabling
 - (iii) Cable Television cabling

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- (iv) Satellite TV cabling
- (k) Security & Safety Systems
 - (i) Paging
 - (ii) Intercom
 - (iii) Closed-circuit TV
 - (iv) Magnetic door locks
 - (v) Card readers
 - (vi) Systems monitors
 - (vii) Crisis Alarm
 - (viii) Registries
 - (ix) Audio monitoring system

8. EQUIPMENT COMMISSIONING

- 8.1. Unless the Parties otherwise agree, each item of Equipment shall be de-commissioned, commissioned and re-commissioned in accordance with the acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant Equipment vendor.

9. POST GAMES WORK COMMISSIONING

- 9.1. Project Co shall meet all of the requirements of this Schedule 14 – Outline Commissioning Program in its preparation of a PGW Final Commissioning Program.
- 9.2. Project Co shall include in the PGW Final Commissioning Program the recommissioning and/or rebalancing of any system or equipment listed in Section 7 of this Schedule 14 that is affected in any manner by the performance of the Post Games Work. For example, this would include the rebalancing of HVAC systems that may be affected by a change in the air volume of the Facility or a portion thereof.

**SCHEDULE 15
OUTPUT SPECIFICATIONS**

[REDACTED]

Confidential

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SCHEDULE 16

LEGAL DESCRIPTION OF SITE AND TITLE ENCUMBRANCES

A. Legal Description of the Site:

1. Parcel A:

Firstly: Part of PIN 06192-0387 (LT) - Part of Lot 13, Registrar's Compiled Plan 10303, Scarborough, now City of Toronto, designated as Part 1 on Plan 66R-25881;

Secondly: PIN 06192-0388 (LT) - Part of Lot 13, Registrar's Compiled Plan 10303, Scarborough, now City of Toronto, designated as Part 2 on Plan 66R-25881;

Thirdly: PIN 06192-0385 (LT) - Part of Lot 10, Concession 2, Scarborough, now City of Toronto, designated as Part 3 on Plan 66R-25881; and

Fourthly: Part of PIN 06192-0386 (LT) - Part of Lot 10, Concession 2, Scarborough, now City of Toronto, designated as Part 4 on Plan 66R-25881.

2. Parcel B:

Firstly: Part of PIN 06192-0382 (LT) - Part of Lot 15, Registrar's Compiled Plan 10303, and part of Block A, Plan 1220, Scarborough, now City of Toronto, designated as Parts 4 and 16 on Plan 66R-25517; and

Secondly: Part of PIN 06192-0386 (LT) - Part of Lot 10, Concession 2, Scarborough, now City of Toronto, designated as Part 13 on Plan 66R-25517.

B. "Title Encumbrances" means:

Part I – Site Specific Encumbrances

1. Parcel A:

Firstly - Part of PIN 01692-0387 (LT):

None

Secondly - PIN 06192-0388 (LT):

None

Thirdly - PIN 06192-0385 (LT):

SC72205 - By-law No. 3861 of the geographic Township of Scarborough, registered April 23, 1948, designating an area of urban development.

Fourthly - Part of PIN 06192-0386 (LT):

SC72205 - By-law No. 3861 of the geographic Township of Scarborough, registered April 23, 1948, designating an area of urban development.

2. Parcel B:

Firstly - Part of PIN 06192-0382 (LT):

None

Secondly - Part of PIN 06192-0386 (LT):

SC72205 - By-law No. 3861 of the geographic Township of Scarborough, registered April 23, 1948, designating an area of urban development.

Part II – General Title Encumbrances

1. Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by HMQ.
2. Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Site or of which notice in writing shall not at the time have been given to HMQ pursuant to the CLA or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, HMQ has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Site therefrom.
3. The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
4. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind.
5. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Site, which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
6. Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site.

7. Utility easements, registered and unregistered, serving the Site and contiguous lands. It is anticipated that as consequence of the Project, there may be utility easements required to service the Site.

SCHEDULE 17

WORKS REPORT REQUIREMENTS

1. The Works Report shall include the following:
 - (a) an executive summary;
 - (b) design status;
 - (c) Works Schedule summary, including:
 - (i) permits;
 - (ii) construction progress;
 - (iii) progress photos;
 - (iv) construction milestones; and
 - (v) submissions schedule;
 - (d) contractual outstanding decisions;
 - (e) quality assurance and quality control;
 - (f) organization/staffing changes and additions for Project Co and Construction Contractor;
 - (g) health and safety, including:
 - (i) lost time injuries; and
 - (ii) accidents with no lost time;
 - (h) Subcontract status, including:
 - (i) consultants;
 - (ii) Subcontracts awarded;
 - (iii) tenders;
 - (iv) shop drawing submittals status; and
 - (v) labour report (average workforce);

- (i) financial status, including:
 - (i) progress and Variations;
 - (ii) insurance summary;
 - (iii) Construction Contractor default status; and
 - (iv) cash flow projection (capital cost components);
- (j) risk management, including:
 - (i) claims;
 - (ii) liens;
 - (iii) environmental issues;
 - (iv) labour;
 - (v) market conditions;
 - (vi) outstanding disputes;
 - (vii) operational risks; and
 - (viii) other risks;
- (k) cash allowances financials;
- (l) commissioning, occupancy and completion; and
- (m) Equipment status reporting, including:
 - (i) RFP release and close dates;
 - (ii) pending equipment selections;
 - (iii) financial analysis; and
 - (iv) delivery, installation, commissioning and training dates.

SCHEDULE 18

COMMUNICATIONS PROTOCOL

1. GENERAL

1.1. Communications Principles

The Project represents an important infrastructure commitment by the Province. Accordingly, a comprehensive communications and stakeholder relations plan is required to ensure the security aspects of the Facility are protected and the public is informed and engaged where necessary and to meet HMQ's and TO2015's communications requirements. This plan will support effective communications between Project Co and HMQ, and with HMQ stakeholders and the Greater Toronto Area community.

2. HMQ RESPONSIBILITIES

2.1. Lead Communications Role

HMQ will assume the lead communications role. HMQ will take primary responsibility for all communications matters and will be responsible for:

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

2.2. HMQ Communications Responsibilities

HMQ will be responsible for the following matters:

- (a) Communications: To develop a comprehensive communications strategy and program that includes community relations, media relations, marketing, special

events, employee communications and government relations regarding issues related to the Project.

- (b) **Crisis Communications:** To undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. A plan will be developed within 30 days following Financial Close outlining the roles and responsibilities of both HMQ and Project Co during a crisis situation.
- (c) **Stakeholder Related Communication:** To provide all communications related to the provision of Stakeholder Operations.
- (d) **Performance Review:** To review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 3 of this Schedule 18.

3. PROJECT CO RESPONSIBILITIES

3.1. Support Communications Role

Project Co will assume a supporting role with respect to communications related to the Project. Project Co will be responsible for:

- (a) providing identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
- (b) responding to communications issues in accordance with agreed timeframes;
- (c) reviewing and/ or providing communications and/ or technical materials reasonably requested by HMQ for website content;
- (d) updating, in collaboration with HMQ, internal/ external stakeholders, as required, including involvement and participation in community events;
- (e) providing the public/ media reasonable access to the Site for milestone events;
- (f) directing all media enquiries and interview requests to HMQ's lead communications contact;
- (g) maintaining a written record of all material public enquiries, complaints and communications and providing copies to HMQ's lead communications contact on a weekly basis (or immediately if urgent);
- (h) reporting to HMQ on communications matters on an agreed upon basis;
- (i) participating in HMQ communications meetings, as required; and

- (j) during a crisis situation, ensuring and making available sufficient resources to work effectively with HMQ and proactively manage and perform its communications responsibilities.

3.2. Project Co Communications Responsibilities

Project Co will:

- (a) within 30 days following Financial Close and in collaboration with HMQ, develop, maintain and implement a construction liaison and communications plan that includes:
 - (i) a description of Project Co's approach to all communications aspects of the Project;
 - (ii) a description of Project Co's communications team, including the roles and responsibilities for each team member and any Project Co Parties who will provide any aspect of the communications program; and
 - (iii) the identification of proposed communication tools to be used to keep the community and other stakeholders informed with respect to the progress of the Project;
- (b) update the construction liaison and communications plan on an annual basis or as reasonably requested by HMQ;
- (c) coordinate with HMQ in the implementation of the construction liaison and communications plan;
- (d) attend regular meetings with HMQ to discuss communication issues and developments;
- (e) produce monthly progress reports, which will include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;
- (f) through HMQ, provide regular updates to the immediately affected property owners and neighbourhoods on Works related issues with particular attention to communicating the scope, schedule and status of the Works. This will include processes to proactively address any Works related enquiries and issues (e.g., public enquiries and complaints re noise, hours of work, dust, etc.);
- (g) provide regular updates to HMQ related to the management of local traffic during the Works;

- (h) develop, in collaboration with HMQ, a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Works; and
- (i) follow any guidelines provided by HMQ related to signage or advertising at the Site.

4. PUBLIC DISCLOSURE AND MEDIA RELEASES

4.1. Public Disclosure and Media Releases

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

5. CONSTRUCTION SIGNAGE

5.1. Construction Signage Guidelines

Subject to Section 16.4 of the Project Agreement, with respect to any signage that may be erected and maintained at or on the Site or Project, Project Co, Project Co Parties and/or the Lenders, as applicable, shall:

- (a) include the IO logo on the sign;
- (b) include the logo of any of City, UofT or TO2015 only with prior written consent of HMQ, which consent may be unreasonably withheld in HMQ's sole discretion;

- (c) ensure that the signage is no larger than the larger of: (i) an existing HMQ or TO2015 project sign on the Site; or (ii) 16 feet by 8 feet;
- (d) adhere to local by-laws including by-laws regarding placement and size;
- (e) consider signage material suitable for long-term outdoor exposure;
- (f) provide a mock-up of the signage to the HMQ Representative for approval prior to printing;
- (g) be responsible for installation, maintenance and removal of the signage; and
- (h) ensure that all signage conforms to the Site Signage and Hoarding Plan approved by HMQ in accordance with Schedule 10 – Review Procedure.

SCHEDULE 19

HERITAGE GUIDELINES AND PROTOCOLS

The Background Information contains the guidelines, protocols and best practices that Project Co and all Project Co Parties are required to follow pursuant to Section 18.3(b)(iv) of the Project Agreement upon the discovery on the Site of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites.

HERITAGE MANAGEMENT PROCESS

As the manager of provincially owned and leased properties, Ontario Infrastructure and Lands Corporation (OILC) is committed to the wise management of heritage places in Ontario. The Heritage Management Process is the key OILC process for identifying and managing heritage properties in the provincial portfolio. It updates and replaces the Cultural Heritage Process (1994) and Manual of Guidelines (1994) developed for the former Ontario Realty Corporation (ORC) and the former Management Board Secretariat (MBS). The revised process is a condition of the 2004 MBS and MOI Class Environmental Assessment approval.

The Heritage Management Process allows OILC to understand heritage places and to manage them in a manner that protects their values. The Process has two phases: evaluation and conservation. Evaluation is a set of activities that identifies places with significant heritage value through a full understanding of their historical, cultural, community and aesthetic attributes. Conservation is a plan to protect, enhance and promote the values of heritage places over the long term. Conservation is integral to managing heritage places.

The OILC Heritage Management Process Handbook provides detailed information regarding both phases of the Process. The Handbook also includes a series of guides that outline the procedures and roles required to complete evaluation and conservation activities. The Handbook is intended as a guidance and reference document for OILC staff, service providers, client ministries, municipal planners and affected communities.

SCHEDULE 20

PAYMENTS AND HOLDBACKS

1. APPLICATIONS FOR PAYMENT

- 1.1** The provisions of Sections 1 and 2 apply to Additional HMQ Payments made by way of progress payments.
- 1.2** Applications for payment on account of Additional HMQ Payments may be made monthly.
- 1.3** Application for payment by Project Co shall be dated the last day of the agreed monthly payment period and the amount claimed shall be, with respect to Variations or Variation Directives, the payment of which HMQ is responsible for and which are included within Additional HMQ Payments, the value of such additional Works performed, including Products delivered to the Site at that date.
- 1.4** Claims for Products delivered to the Site but not yet incorporated into the Works shall be supported by such evidence as the Independent Certifier may reasonably require to establish the value and delivery of the Products.
- 1.5** Project Co shall submit to HMQ and the Independent Certifier a WSIB Certificate of Clearance, an updated Works Schedule provided in accordance with Section 13.2 of the Project Agreement and an updated cash flow with each application for payment.

2. PROGRESS PAYMENTS

- 2.1** The Independent Certifier will issue to HMQ, no later than 10 Business Days after the receipt of an application for payment from Project Co submitted in accordance with Section 1 of this Schedule 20, a certificate addressed to HMQ of the progress of the Works. The Independent Certifier will issue a certificate for payment to HMQ of Additional HMQ Payments payable by HMQ with respect to the application for payment from Project Co in the amount applied for or in such other amount as the Independent Certifier determines to be properly due. If the Independent Certifier requires amendments to the application, the Independent Certifier will promptly notify Project Co in writing giving reasons for the amendment.
- 2.2** Payment to Project Co on account of a monthly progress payment in respect of Additional HMQ Payments, shall be made no later than 10 Business Days after the date of a certificate for payment issued by the Independent Certifier.
- 2.3** As long as any HMQ Holdback is retained by HMQ or any other amount has been held back by HMQ in respect of Works (excluding any Post Games Works) completed prior to the Substantial Completion Date and remains unpaid or is deducted from the Substantial

Completion Payment, applications for progress payments pursuant to this Schedule 20 will be provided to Lenders' Consultant.

- 2.4** Notwithstanding the time periods provided regarding the approval and certification of payment by the Independent Certifier in Section 2.1 of this Schedule 20, and for payment in Section 2.2 of this Schedule 20, respectively, the total period of time between receipt of the application for payment by Project Co and payment by HMQ shall be no more than 25 Business Days, except with respect to any amount held back from such payment by HMQ in accordance with the Project Agreement.

3. CONSTRUCTION LIENS

- 3.1** Notwithstanding anything else in this Schedule 20 – Payments and Holdbacks, in the event a claim for a construction lien is registered against the Site arising from the performance of the Works, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ, acting reasonably, or HMQ receives any written notice of lien arising from the performance of the Works, HMQ shall be entitled to withhold such portion of any payment otherwise due to Project Co in an amount HMQ reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by HMQ in connection therewith, including such amount on account of costs of the lien claimant such that HMQ may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the CLA, until such time as such claim has been dealt with as provided below.
- 3.2** Without limiting any of the foregoing, Project Co shall satisfy all judgments and pay all costs resulting from any construction liens arising from the performance of the Works or any actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against HMQ by any person that provided services or materials to the Site which constituted part of the Works.
- 3.3** The provisions of Sections 3.1 and 3.2 do not apply to construction liens (i) filed by Project Co which are claimed as a result of any default of HMQ to make payments to Project Co in accordance with the terms of the Project Agreement or (ii) filed by any HMQ Party, including for greater certainty HMQ's own forces or HMQ's other contractors, which are claimed as a result of work in relation to the Project.
- 3.4** With each application for payment, including for the payment of the First Interim Payment and the Second Interim Payment, except the release of holdback applications, Project Co shall submit a Statutory Declaration on CCDC Form 9A (2001).

4. PAYMENT OF LEGISLATIVE HOLDBACK

- 4.1** After the issuance of the Substantial Completion Certificate under Section 24.4 of the Project Agreement, Project Co shall:

- .1 submit an application for payment of the Legislative Holdback amount;
 - .2 submit a written request for release of the Legislative Holdback, including a declaration that no written notices of lien arising from the performance of the Works (excluding the Post Games Works) have been received by it;
 - .3 submit a Statutory Declaration CCDC 9A (2001); and
 - .4 submit an original WSIB Certificate of Clearance.
- 4.2** After the later of (i) the receipt of the documents set out in Section 4.1 of this Schedule 20, and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the CLA, the Independent Certifier shall issue a certificate for payment of the Legislative Holdback.
- 4.3** Prior to the date of the release of the holdback, Project Co shall have removed from the Site all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion or to correct any remaining Minor Deficiencies.
- 4.4** Subject to the provisions of Section 3 of this Schedule 20 and the removal of claims for lien preserved or perfected pursuant to the CLA arising from the performance of the Works, the Legislative Holdback amount authorized by the certificate for payment of the Legislative Holdback amount is due and payable on the second Business Day following the receipt of the certificate for payment of the Legislative Holdback amount pursuant to Section 4.2 of this Schedule 20.
- 5. COMPLETION**
- 5.1** Project Co shall provide As-Built Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event no later than 30 days after the Substantial Completion Date.
- 6. PAYMENT OF POST GAMES WORK LEGISLATIVE HOLDBACK**
- 6.1** After the issuance of the PGW Substantial Completion Certificate under Section 3.4 of Schedule 32 – Post Games Work, Project Co shall:
- .1 submit an application for payment of the PGW Legislative Holdback amount;
 - .2 submit a written request for release of the PGW Legislative Holdback, including a declaration that no written notices of lien arising from the performance of the Post Games Works have been received by it;
 - .3 submit a Statutory Declaration CCDC 9A; and
 - .4 submit an original WSIB Certificate of Clearance.

- 6.2** After the later of (i) the receipt of the documents set out in Section 6.1 of this Schedule 20, and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the *Construction Lien Act* (Ontario), the Independent Certifier shall issue a certificate for payment of the PGW Legislative Holdback amount.
- 6.3** Prior to the date of the release of the PGW Legislative Holdback, Project Co shall have removed from the Site all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve PGW Final Completion or to correct any remaining PGW Minor Deficiencies.
- 6.4** Subject to the provisions of Section 3 of this Schedule 20 and the removal of claims for lien preserved or perfected pursuant to the *Construction Lien Act* (Ontario) arising from the performance of the Post Games Works, the holdback amount authorized by the certificate for payment of the PGW Legislative Holdback amount is due and payable on the second Business Day following the receipt of the certificate for payment of the PGW Legislative Holdback amount pursuant to Section 6.2 of this Schedule 20.

7. WITHHOLDING OF PAYMENT

- 7.1** If because of climatic or other conditions reasonably beyond the control of Project Co, there are items of work that cannot be performed, payment in full for that portion of the Works which has been performed, as certified by the Independent Certifier, shall not be withheld or delayed by HMQ on account thereof, but HMQ may withhold, until the remaining portion of the Works is finished, only such amount that the Independent Certifier determines is sufficient and reasonable to cover the cost of performing such remaining Works.

8. NON-CONFORMING WORKS

- 8.1** No payment by HMQ under the Project Agreement nor partial or entire use or occupancy of the Works by HMQ shall constitute an acceptance of any portion of the Works or Products which are not in accordance with the requirements of the Project Agreement.

SCHEDULE 21

FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT

The following is the form of the Assignable Subcontract Agreement referred to in Section 11.17(d) of the Project Agreement:

THIS AGREEMENT made as of the • day of •, 2012, between

PCL AQUATICS CENTRE 2012 LTD.

(hereinafter called “**Project Co**”)

OF THE FIRST PART,

- and -

PCL CONSTRUCTORS CANADA INC.

(hereinafter called “**Construction Contractor**”)

OF THE SECOND PART,

- and -

•

(hereinafter called “**Subcontractor**”)

OF THE THIRD PART,

- and -

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

(hereinafter called “**HMQ**”)

OF THE FOURTH PART.

WHEREAS pursuant to a project agreement dated as of the [•] day of [•], 201[•] between Project Co and HMQ (such agreement, together with all amendments thereto which may hereafter be made in accordance with the terms thereof, being hereinafter called the “**Project Agreement**”), Project Co has agreed to construct or cause to be constructed the Project as defined in the Project Agreement;

AND WHEREAS Project Co and Construction Contractor entered into a construction contract dated the [•] day of [•], 201[•] (such construction contract, together with all amendments thereto which may hereafter be made in accordance with the terms thereof, being hereinafter called the “**Construction Contract**”);

AND WHEREAS with respect to a portion of the Design and Construction Work under the Construction Contract, Construction Contractor and Subcontractor entered into a subcontract dated the ____ day of _____, _____ (such subcontract together with all amendments thereto which hereafter may be made in accordance with the terms hereof, being hereinafter called the “**Subcontract**”);

AND WHEREAS Construction Contractor has agreed to assign to HMQ all of its right, title and interest in and to the Subcontract as collateral security for the guarantee dated the • day of •, 2012 given by Construction Contractor in favour of HMQ (the “**Guarantee**”);

AND WHEREAS under the Project Agreement, Project Co has agreed to cause Construction Contractor to cause the Subcontractor to enter into this Agreement;

NOW THEREFORE, in consideration of the premises and the covenants herein contained, and the sum of [REDACTED], the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. As additional security for the observance and performance of the obligations of Construction Contractor under the Guarantee (the “**Obligations**”), Construction Contractor hereby irrevocably assigns, transfers and sets over (the “**Assignment**”) to and in favour of HMQ as and by way of a specific assignment and transfer all of the right, title and interest of Construction Contractor in, and with respect to, the Subcontract and all benefit, power and advantage to be derived therefrom and otherwise to enforce the rights of Contractor thereunder (collectively, the “**Assigned Rights**”), provided that the Assignment of the Assigned Rights provided for in this Agreement shall only be effective (i) upon the termination of the Project Agreement as a result of a default or event of default by Project Co thereunder, or (ii) assignment of the Project Agreement to a Replacement Project Co (as defined in the Lenders’ Direct Agreement dated the [•] day of [•], 201[•] between HMQ, The Toronto-Dominion Bank, agent to the lenders to Project Co (the “**Lenders’ Agent**”) and Project Co), and in either case such Assignment of the Assigned Rights may be exercised by HMQ at its option and in its sole and unfettered

discretion at any time or times thereafter, subject to and in accordance with the provisions of this Agreement.

2. Unless and until notification is given to the Subcontractor in accordance with any of the notices referred to in Sections 3(c), 3(d) or 3(e) below, Construction Contractor shall be entitled to enforce all of the benefits and powers under the Subcontract and to deal with, and be obligated to, the Subcontractor in respect of the Subcontract and matters arising therefrom in the same manner and to the same extent as if Construction Contractor had not made the Assignment in Section 1 hereof.
3. Subcontractor hereby:
 - (a) acknowledges and consents to any Assignment that may occur pursuant to this Agreement and confirms that any such Assignment that may occur pursuant to this Agreement is permitted pursuant to the provisions of the Subcontract;
 - (b) agrees to give HMQ and Lenders' Agent prompt written notice of any default by the Construction Contractor under the Subcontract ("**Notice of Default**"), which Notice of Default shall attach an executed copy of the Subcontract as well as a copy of the default notice issued by the Subcontractor to Construction Contractor. Subcontractor agrees that, upon issuance of a Notice of Default, it shall not be entitled to exercise any right it has to terminate the Subcontract for a period of 5 Business Days from the later of (i) the receipt of the Notice of Default by HMQ and Lenders' Agent, and (ii) the date that the Construction Contractor has failed to comply with any applicable cure period in the Subcontract, or, absent a cure period, the expiry of a reasonable period of time to cure such default. If either HMQ or Lenders' Agent (without any obligation to do so) notify the Subcontractor within such 5 Business Day time period that it requires more time to determine whether it can remedy such default by the Construction Contractor, or, in the case of HMQ, exercise the Assignment, Subcontractor shall not be entitled to exercise any right to terminate the Subcontract for a further period of 25 days from the date of receipt of such notice or such longer period as may be reasonably necessary to cure the default, provided that HMQ or Lenders' Agent (as the case may be) are proceeding diligently to cure such default; however, if HMQ exercises the Assignment within such further 25 day period, the Subcontractor shall not be entitled to exercise any right to terminate the Subcontract provided that the Assignee (and if applicable, the GC Assignee) agrees to assume the obligations of the Construction Contractor under the Subcontract and, in that regard, executes and delivers the form of assumption notice attached hereto as Appendix A (the "**Assumption Agreement**"). In the event that HMQ or Lenders' Agent initiates the further 25 day period, referred to above, the Assignee (and if applicable, the GC Assignee) shall compensate the Subcontractor for costs and expenses reasonably incurred for Works performed by the Subcontractor during such further 25 day period including, but not limited to,

mobilization and demobilization costs, provided mobilization and demobilization costs are warranted in the context;

- (c) agrees that, immediately upon receipt by Subcontractor of written notice (the “**Assignment Notice**”) from HMQ that the Subcontract is being assigned to HMQ, Lenders’ Agent’s or HMQ’s nominee (in any event, such party identified in such written notice being the “**Assignee**”), and that the Assignment is pursuant to Section 1, and provided that the Assignee, except as limited herein, agrees to perform its obligations under this Agreement and agrees to assume all of the obligations of the Construction Contractor under the Subcontract and, in that regard, executes and delivers an Assumption Agreement, the Assignee shall have all of the right, title, benefit and interest of Construction Contractor pursuant to the Subcontract, without Subcontractor’s consent and, subject to Section 4(b), without the payment of any penalty, and the Subcontractor shall deal with the Assignee as if it had been originally named in place of Construction Contractor in the Subcontract;
- (d) agrees that the Assignee may, at any time after the giving of the Assignment Notice in Section 3(c) above, give written notice (the “**Successive Assignment Notice**”) to Subcontractor of a further assignment of the Subcontract to a new general contractor of the Project (the “**GC Assignee**”), and that immediately upon receipt of the Successive Assignment Notice, and provided that the GC Assignee, except as limited herein, agrees to assume all of the obligations of the Construction Contractor under the Subcontract and, in that regard, executes and delivers an Assumption Agreement, the GC Assignee shall have all of the right, title, benefit and interest of Construction Contractor pursuant to the Subcontract without Subcontractor’s consent and, subject to Section 4(b), without the payment of any penalty and Subcontractor shall deal with the GC Assignee as if it had been originally named in place of Construction Contractor in the Subcontract;
- (e) agrees that, notwithstanding Sections 3(c) and 3(d) herein contained, HMQ may give written notice (the “**Direct Assignment Notice**”) to Subcontractor of the assignment of the Subcontract directly to the GC Assignee, and that immediately upon receipt of the Direct Assignment Notice, and provided that the GC Assignee, except as limited herein, agrees to assume all of the obligations of the Construction Contractor under the Subcontract and, in that regard, executes and delivers an Assumption Agreement, the GC Assignee shall have all of the right, title, benefit and interest of Construction Contractor pursuant to the Subcontract without Subcontractor’s consent and, subject to Section 4(b), without the payment of any penalty and Subcontractor shall deal with the GC Assignee as if it had been originally named in place of Construction Contractor in the Subcontract; and
- (f) agrees, upon the reasonable request of HMQ from time to time, to provide a certificate to HMQ as to the status of the Subcontract, including a description of

any events which, with the passage of time or the giving of notice or both, would constitute a default thereunder.

4. (a) Nothing herein contained shall render HMQ or Lenders' Agent liable to any person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including, but not limited to the payment of any money thereunder or in respect thereto, of Construction Contractor under the Subcontract, unless and until HMQ has given the Assignment Notice to Subcontractor, the giving of which Assignment Notice Subcontractor acknowledges is in the sole and unfettered discretion of HMQ, in which event, the Assignee (and if applicable, any GC Assignee) shall, subject to the provisions of 4(b), (c), (d), (e) and (f) hereof, then become liable for all the obligations, covenants and agreements of Construction Contractor under the Subcontract, provided that from and after the date of the Successive Assignment Notice to Subcontractor, the Assignee shall have no liability whatsoever to Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under such Subcontract from and after the date of the Successive Assignment Notice, and provided further, that if HMQ gives the Direct Assignment Notice, HMQ or Lenders' Agent shall have no liability whatsoever to Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under the Subcontract at any time, provided in the event of a Successive Assignment Notice or Direct Assignment Notice, the Assignee thereunder shall, except as limited herein, become liable for all of the obligations, covenants, and agreements of the Construction Contractor under the Subcontract;
- (b) Notwithstanding the provisions of Section 4(a), with respect to the period preceding the effective date of the Assignment (the "Pre-Assignment Period"), the only obligations, covenants and agreements of Contractor that Assignee (and if applicable, the GC Assignee) shall be liable for are those payment obligations of Construction Contractor under the Subcontract relating to progress payments outstanding as of the date of the Assignment, claims for payment for change orders, and any other payment obligations relating to claims for delay and acceleration in respect of the performance of the Subcontract and any alleged changes to the schedule which may remain unpaid or outstanding on the date of the Assignment;
- (c) Notwithstanding Section 4(b), the Subcontractor acknowledges and agrees that if during the Pre-Assignment Period, HMQ or Lenders' Agent has made a proper payment to Project Co or the Construction Contractor on account of Design and Construction Work performed by the Subcontractor and the Construction Contractor has failed to make payment to the Subcontractor, the Assignee (and if applicable, the GC Assignee) shall not be responsible for payment of such amount to the Subcontractor;

- (d) Subject to Section 4(c), if, at the date of the Assignment, there are amounts in dispute between the Construction Contractor and Subcontractor relating to the Subcontract as provided for in Section 4(b) hereof, the Assignee shall only be liable for such amounts once the Subcontractor has established entitlement to the amounts claimed under the Subcontract. The Subcontractor acknowledges and agrees that in its assessment of the outstanding claims relating to the Pre-Assignment Period, Assignee (and if applicable, the GC Assignee) shall require a reasonable period of time to review and assess the validity and reasonableness of the claims. Subcontractor shall provide such further information as is reasonably necessary to allow Assignee (and if applicable, the GC Assignee) to make its determination. If the parties cannot agree on the reasonableness of the amounts claimed, then the parties shall seek to establish a mutually agreed dispute resolution process. If such dispute resolution process is not agreed to within 15 days of notice from the Assignee (and if applicable, the GC Assignee), then either party may resort to litigation to resolve the dispute;
 - (e) Except for liability in respect of claims set out in Section 4(b) hereof, neither the Lenders' Agent nor HMQ shall be liable for any other claim for injuries, losses, damages, interest, costs, indemnity, fines, penalties, legal and professional fees and assessments or amounts of any kind whatsoever (including any loss or damage not yet ascertained as at the date of the Assignment) that Subcontractor has as of the date of the Assignment or otherwise shall or hereafter may have for or by reason of or in any way arising out of any cause, matter or thing whatsoever, existing to the effective date of the Assignment; and
 - (f) Subcontractor shall reimburse the Assignee (and if applicable any GC Assignee) for any amounts paid or pre-paid to the Subcontractor by the Assignee (and if applicable any GC Assignee) under Section 4(c) in respect of which the Subcontractor at any time during or after the Pre-Assignment Period has been paid, pre-paid, reimbursed or refunded, directly or through set-off, by HMQ, Project Co, any Project Co Party or any other person on account of work performed or services rendered by Subcontractor during the Pre-Assignment Period.
5. Subcontractor acknowledges and agrees that all of the right, title and interest of Construction Contractor in the Subcontract have been, or may be, without the consent of the Subcontractor or the payment of any penalty or, subject to Section 4(b), other amount, assigned to Lenders' Agent as security for the obligations of Project Co and/or Construction Contractor to Lenders' Agent and that Lenders' Agent may, upon written notification being given to the Subcontractor by Lenders' Agent, that Lenders' Agent is entitled to do so, exercise all of the rights of Construction Contractor under the Subcontract to the same extent as if Lenders' Agent had been originally named in the place of Construction Contractor in the Subcontract, provided the Lenders' Agent, except as limited herein, agrees to assume all of the obligations of the Construction Contractor

under the Subcontract and, in that regard, executes and delivers an Assumption Agreement.

6. Project Co agrees that all costs and expenses incurred by HMQ or Lenders' Agent in curing or attempting to cure any default by Construction Contractor under the Subcontract, together with interest thereon at the rate described in subsection (ii) of the definition of Payment Compensation Amount set out in Schedule 1 Definitions and Interpretation to the Project Agreement shall be payable by Project Co to HMQ or Lenders' Agent, as the case may be, on demand. Without limiting the foregoing, if Project Co fails to make any such payment to HMQ as required hereunder, the amount of such payment shall be deemed to be an amount which is due to HMQ by Project Co pursuant to the terms of the Project Agreement.
7. Any notice, request or demand required or permitted to be given hereunder shall be in writing and shall be served personally, sent by prepaid registered mail or by confirmed facsimile transmission addressed as follows:

in the case of Project Co:

[REDACTED]

Attention: **[REDACTED]**
Fax: **[REDACTED]**

in the case of Construction Contractor:

[REDACTED]

Attention: **[REDACTED]**
Fax: **[REDACTED]**

in the case of the Subcontractor:

•

Attention: •
Fax: •

in the case of HMQ:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8

Attention: [REDACTED]
Fax: [REDACTED]

with a copy to the HMQ Representative:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8

Attention: [REDACTED]
Fax: [REDACTED]

with a copy to Lenders' Agent:

[REDACTED]

Attention: [REDACTED]
Fax: [REDACTED]

Any party may from time to time change its address and recipient for service by notice to the other party or parties given in the manner aforesaid.

Notices which are served in the manner aforesaid shall be deemed sufficiently served for all purposes of this Agreement, in the case of those personally served or transmitted by facsimile transmission, on the date of such service or transmission, provided same is a Business Day (as hereinafter defined), and if not on the next following Business Day, and in the case of those given by registered mail, on 5 Business Days following the mailing thereof. Provided that in the event normal mail service is interrupted by strikes, slow-down or other cause, then the party sending the notice shall utilise any similar service which has not been so interrupted in order to ensure the prompt receipt of the notice, request or demand by the other party or parties, and for the purpose of this Section such service shall be deemed to be personal service or facsimile transmission. Business Day shall mean a day which is not: (i) a Saturday or Sunday; or (ii) a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario.

8. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
9. This Agreement shall be conclusively deemed to be a contract made under and shall for all purposes be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

10. Subcontractor shall from time to time and at all times hereafter, upon the reasonable written request of HMQ so to do, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be desirable in the opinion of HMQ, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of this Agreement.
11. This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

[EXECUTION PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the parties have executed this Assignable Subcontract Agreement by affixing their corporate seals under the hands of their proper signing officers duly authorized in that behalf.

PCL AQUATICS CENTRE 2012 LTD.

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

We have authority to bind the corporation

PCL CONSTRUCTORS CANADA INC.

Per:

Name: [REDACTED]

Title: [REDACTED]

Per:

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation

[SUBCONTRACTOR]

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation

[EXECUTION PAGE FOR ASSIGNABLE SUBCONTRACT AGREEMENT]

APPENDIX A
FORM OF ASSUMPTION AGREEMENT

_____, 20__

[Subcontractor]

Re. Assignable Subcontract Agreement dated _____, 20__ between PCL Aquatics Centre 2012 Ltd., PCL Constructors Canada Inc., [Name of Subcontractor] and Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* (the “ASA”)

With reference to the [Assignment Notice / Successive Assignment Notice/Direct Assignment Notice] dated _____, 20__, [Name of Assignee or GC Assignee] hereby agrees to assume all of the obligations of the Construction Contractor to the Subcontractor under the Subcontract dated _____, 20__, and perform the obligations under the ASA, all in accordance with the provisions of the ASA.

Capitalized terms that are not otherwise defined in this notice shall have those meanings set out in the ASA.

Yours truly,

[Name of Assignee or GC Assignee]

SCHEDULE 22

VARIATION PROCEDURE

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) **“Capital Expenditure”** means a capital expenditure as interpreted in accordance with Canadian GAAP.
 - (ii) **“Direct Cost”** has the meaning given in Appendix A of this Schedule 22.
 - (iii) **“Estimate”** has the meaning given in Section 1.4(a) of this Schedule 22.
 - (iv) **“Project Co Variation Notice”** has the meaning given in Section 2.1(a) of this Schedule 22.
 - (v) **“Variation”** means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
 - (vi) **“Variation Confirmation”** has the meaning given in Section 1.7(a)(ii) of this Schedule 22.
 - (vii) **“Variation Directive”** means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the HMQ Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (viii) **“Variation Enquiry”** has the meaning given in Section 1.3(a) of this Schedule 22.

1.2 General

- (a) HMQ has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22, provided that HMQ shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which HMQ is obligated to proceed with a Variation.

- (b) HMQ shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.
- (c) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.

1.3 Variation Enquiry

- (a) If HMQ proposes or is obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
 - (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether HMQ intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Guaranteed Price (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6.

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to HMQ’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:

- (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
 - (ii) the implementation of the Variation would:
 - (A) infringe Applicable Law;
 - (B) cause to be revoked any of the existing Permits, Licences, Approvals and Agreements required by Project Co to perform the Works, and any such Permits, Licences, Approvals and Agreements is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require any new Permits, Licences, Approvals and Agreements for Project Co to perform the Works, any of which Permits, Licences, Approvals and Agreements will not, using commercially reasonable efforts by Project Co or HMQ, as applicable, be obtainable;
 - (iii) the proposed Variation would have a material and adverse effect on performance of the Works (except those Works which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
 - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
 - (v) HMQ does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
 - (vi) the Variation would, if implemented, result in a change in the essential nature of the Facility;
 - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof); or
 - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to HMQ a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless HMQ in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to HMQ's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
 - (ii) any impact on the Scheduled Substantial Completion Date or the Scheduled PGW Substantial Completion Date, as applicable, and any other schedule impact on the provision of the Facility and completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iii) any impact on the performance of the Works and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iv) any amendments to this Project Agreement (including Schedule 20 – Payments and Holdbacks) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of HMQ to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
 - (v) any impact on the Direct Costs of Project Co and the Subcontractors, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or HMQ); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
 - (vi) either, subject to Section 1.9:
 - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or

- (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (vii) Project Co's preliminary indication of the potential increase or decrease, if any, to the Guaranteed Price;
- (viii) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
- (ix) the proposed methods of certification of any construction or operational aspect of the Works required by the Variation if not covered by the provisions of this Project Agreement,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to HMQ's satisfaction, acting reasonably, that:
 - (i) Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) all costs of Project Co and the Subcontractors are limited to Direct Costs;
 - (iii) Project Co and the Construction Contractor shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co or the Construction Contractor is calculated on any other margin of Project Co or the Construction Contractor), and no other margins or mark-ups;
 - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Contractor;
 - (v) all costs of providing Works, including Capital Expenditures, reflect:
 - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;

- (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
 - (C) any and all changes in risk allocation;
 - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
 - (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Works, the expected usage of utilities and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to HMQ, including using commercially reasonable efforts to mitigate such costs.
- (d) As soon as practicable, and in any event not more than 15 Business Days after HMQ receives an Estimate, Project Co and HMQ shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) If HMQ would be required by Applicable Law or any policy applicable to HMQ to competitively tender any contract in relation to the proposed Variation, HMQ may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
- (f) HMQ may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify HMQ in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 – Dispute Resolution Procedure.

1.7 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 - Dispute Resolution Procedure, HMQ shall either:

- (i) subject to Sections 1.2(b) and 1.7(e), withdraw the Variation Enquiry by written notice to Project Co; or
 - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.8.
- (b) If HMQ does not issue a Variation Confirmation within such 15 Business Days, then, subject to Sections 1.2(b) and 1.7(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.8:
- (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
 - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.7(c)(i), all provisions of this Project Agreement applicable to the Works shall apply to the Works as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.7(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.8, then the Variation Confirmation shall not be effective until:
- (i) Project Co obtains such financing acceptable to HMQ in its sole discretion; or
 - (ii) HMQ in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at HMQ’s sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined by Schedule 27 - Dispute Resolution Procedure; and
 - (ii) HMQ may at any time withdraw a Variation Enquiry and, subject to Section 1.7(f), HMQ shall not be obligated to Project Co in respect of a Variation until

such time as HMQ in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by HMQ or HMQ has waived such requirement,

provided that HMQ may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where HMQ is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, HMQ shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

1.8 Financing

- (a) Subject to Section 1.9, if Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if HMQ requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and HMQ, provided that, Project Co shall not be required to seek financing from any source other than the Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and HMQ within 60 days of the date that HMQ issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ, in its sole discretion, waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) Subject to Section 1.9, if Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide HMQ with details of such financing, and HMQ shall, in its sole discretion, determine whether Project Co should proceed with such financing. If HMQ determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ, in its sole discretion, waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.

- (d) Subject to Section 1.9, HMQ may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ in its sole discretion waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (e) If HMQ waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.8(b), 1.8(c) or 1.8(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and HMQ shall pay for the Variation as provided for in Section 1.10(a)(ii).

1.9 Increase or Decrease in the Cost of the Financing

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

1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by HMQ, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
- (i) the Guaranteed Price shall be adjusted as set out in the Variation Confirmation;
 - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:

- (A) HMQ shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by HMQ and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by HMQ; and
- (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event HMQ and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by HMQ (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 - Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by HMQ in time to make payments to that third party in accordance with its contract with Project Co.

- (b) HMQ shall make payment to Project Co within 20 Business Days of receipt by HMQ of invoices presented to HMQ in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by HMQ in respect of a Variation shall be subject to applicable holdback provisions of the CLA, as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, HMQ shall provide to Project Co copies of any consent or approval issued by HMQ in connection with a proposed Variation.

1.11 Reduction in Works

- (a) If a Variation involves any reduction in Works which results in savings in Direct Costs to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under this Project Agreement in an amount equal to such reduction in Direct Costs and the Substantial Completion Payment shall be reduced accordingly.

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by HMQ and Project Co or if there is a Dispute in relation thereto or if HMQ, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then HMQ may issue a Variation Directive and, following receipt of the Variation Directive:
- (i) Project Co shall promptly proceed with the Variation;
 - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
 - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 - Dispute Resolution Procedure,

provided that, HMQ shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

2. PROJECT CO VARIATIONS

2.1 General

- (a) Project Co shall deliver to HMQ a written notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
- (i) set out details of the proposed Variation in sufficient detail to enable HMQ to evaluate it in full;
 - (ii) specify Project Co’s reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to HMQ; and
 - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If HMQ, in its sole discretion, elects to consider the Variation proposed by Project Co, HMQ may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.

APPENDIX A

CALCULATION OF DIRECT COSTS

1. DIRECT COSTS

1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or the Subcontractors, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:

- (i) wages and benefits paid for labour in the direct employ of Project Co or the Subcontractors while performing that part of the Works on Site;
- (ii) salaries, wages and benefits of Project Co’s or the Subcontractors’ personnel when stationed at the Site office in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of Project Co’s or the Subcontractors’ office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) travel and subsistence expenses of Project Co’s or the Subcontractors’ officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
- (vi) the cost of materials (including hand tools which have a retail value of **[REDACTED]** or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vii) the rental costs of all tools (excluding hand tools which have a retail value of **[REDACTED]** or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;

- (viii) deposits lost;
- (ix) the amount of all Subcontracts with the Subcontractors;
- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by HMQ, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A, Taxes and without limiting the obligation of HMQ to pay HST under the Project Agreement, but excluding:
 - (A) HST;
 - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
 - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Works;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Works, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvi) the cost of financing as calculated pursuant to Section 1.9, including additional financing costs related to any delay caused by the implementation of the Variation;

- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to HMQ;
- (xviii) the cost of any additional insurance or performance security required or approved by HMQ;
- (xix) the cost of obtaining all Permits, Licences, Approvals and Agreements; and
- (xx) reasonable fees and disbursements of Project Co's legal advisors.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Works as a result of the Variation shall not exceed commercially competitive rates available in the Province for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in Toronto, Ontario; and
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Works.

APPENDIX B

APPLICABLE MARGINS

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	<i>For projects under [REDACTED]</i>	<i>For projects between [REDACTED] and [REDACTED]</i>	<i>For projects over [REDACTED]</i>
Project Co (Own Work)	[REDACTED]	[REDACTED]	[REDACTED]
Construction Contractor (Own Work)	[REDACTED]	[REDACTED]	[REDACTED]
Construction Contractor (Subcontracted Work)	[REDACTED]	[REDACTED]	[REDACTED]

SCHEDULE 23

COMPENSATION ON TERMINATION

1 DEFINITIONS

1.1 Definitions

The following terms shall have the following meanings:

- (a) “**Employee Termination Payments**” means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party as a direct result of terminating this Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
- (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
 - (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (b) “**HMQ Default Termination Sum**” has the meaning given in Section 2.1(b) of this Schedule 23.
- (c) “**Invoice Date**” means the date that is the later of:
- (i) the date on which HMQ receives an invoice from Project Co for the relevant termination sum; and
 - (ii) the date on which HMQ receives the supporting evidence required pursuant to Section 5.1(a) of this Schedule 23.
- (d) “**Junior Debt Amount**” means [REDACTED].
- (e) “**Junior Debt Makewhole**” means [REDACTED].
- (f) “**Non-Default Termination Sum**” has the meaning given in Section 4.1(b) of this Schedule 23.

- (g) “**Project Co Amount**” means any amount payable to Project Co as a return and/or profit to Project Co shown in the Financial Model, pro rated by a fraction, the numerator of which is the period between the date of commencement of the Works and the Termination Date, and the denominator of which is the period between the date of commencement of the Works and the Scheduled Substantial Completion Date.
- (h) “**Project Co Default Termination Sum**” has the meaning given to it in Section 3.1(b) of this Schedule 23.
- (i) “**Senior Debt Amount**” means [REDACTED].
- (j) “**Senior Debt Makewhole**” means [REDACTED].
- (k) “**Subcontractor Losses**” means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Subcontractors, the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount; provided that, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
- (i) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
 - (ii) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties’ obligations in relation to the Project; or
 - (iii) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.

2 COMPENSATION ON TERMINATION FOR HMQ DEFAULT OR CONVENIENCE

2.1 Compensation

- (a) If Project Co terminates this Project Agreement pursuant to Section 35 of this Project Agreement or HMQ terminates this Project Agreement pursuant to Section 36.3 of this Project Agreement, HMQ shall pay to Project Co the HMQ Default Termination Sum.

- (b) The “HMQ Default Termination Sum” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
 - (iii) any amount payable by HMQ to Project Co in accordance with Sections 32.2(b) and 33.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and the Subcontractor Losses;
 - (v) any reasonable costs properly incurred by Project Co to wind up its operations; and
 - (vi) the Project Co Amount;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Works, the Project and this Project Agreement) to HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims;
- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:

- (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
- (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms;
- (ix) any amount of the First Interim Payment, Second Interim Payment, Substantial Completion Payment, PGW Substantial Completion Payment and any other amounts paid by HMQ on or before the Termination Date; and
- (x) amounts which HMQ is entitled to set off pursuant to Section 4.13(a)(i) of this Project Agreement,

provided that the HMQ Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(viii) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the HMQ Default Termination Sum, assign such assets and rights to HMQ.
- (d) HMQ shall pay the HMQ Default Termination Sum in accordance with Section 5 of this Schedule 23.

3 COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) If HMQ terminates this Project Agreement pursuant to Section 34 of this Project Agreement, HMQ shall pay to Project Co the Project Co Default Termination Sum.
- (b) The "Project Co Default Termination Sum" shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of this Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) any amount of the First Interim Payment, Second Interim Payment, Substantial Completion Payment, PGW Substantial Completion Payment and any other amounts paid by HMQ on or before the Termination Date;
 - (ii) HMQ's estimate of the cost to complete the Works, which for clarity includes the cost to complete the Post Games Works, including the cost to remedy any

defective or deficient Works determined on a reasonable basis in consultation with the Independent Certifier and HMQ's other consultants and including all reasonable and proper costs incurred by HMQ in re-tendering the Works or any portion thereof;

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

4 COMPENSATION ON TERMINATION FOR RELIEF EVENT OR FORCE MAJEURE

4.1 Compensation

- (a) If either Party terminates this Project Agreement pursuant to Section 36.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 36.2 of this Project Agreement, HMQ shall pay to Project Co the Non-Default Termination Sum.
- (b) The "Non-Default Termination Sum" shall be an amount equal to the aggregate of:

- (i) the Senior Debt Amount and the Senior Debt Makewhole;
- (ii) the Junior Debt Amount;
- (iii) any amount payable by HMQ to Project Co in accordance with Sections 32.2(b) and 33.2(b) of this Project Agreement; and
- (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (v) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Works, the Project and this Project Agreement) to HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims; and
- (vi) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to

the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms;

- (vii) any amount of the First Interim Payment, Second Interim Payment, Substantial Completion Payment, PGW Substantial Completion Payment and any other amounts paid by HMQ on or before the Termination Date; and
- (viii) amounts which HMQ is entitled to set off pursuant to Section 4.13(a)(i) of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vi) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to HMQ.
- (d) HMQ shall pay the Non-Default Termination Sum in accordance with Section 5 of this Schedule 23.

5 GENERAL

5.1 Payment and Interest Following Termination

- (a) In respect of the termination payments to be made pursuant to either Section 2 or 4 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to HMQ an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) In respect of the termination payments to be made pursuant Section 3 of this Schedule 23, as soon as practicable, and in any event, within 120 days after the Termination Date, HMQ shall calculate and notify Project Co of the Project Co Default Termination Sum under Section 3.1(b) of this Schedule 23, and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (c) HMQ shall:
 - (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date or the date of delivery of the notice described in Section 5.1(b) of this Schedule 23, as applicable, and so long as all of demobilization of the Works has been completed; and

- (ii) indemnify Project Co as provided in Section 44.2(c) of this Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
 - (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date or the date of delivery of the notice described in Section 5.1(b) of this Schedule 23, as applicable; and
 - (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (d) In respect of the termination payments to be made pursuant to Section 3 or 4 of this Schedule 23, if the applicable termination sum is negative, HMQ shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify HMQ as provided in Section 44.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

5.2 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

5.3 Undisputed Amounts

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

5.4 Outstanding Debt Amounts

- (a) HMQ shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge

HMQ's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

**SCHEDULE 24
FINANCIAL MODEL**

[REDACTED]

SCHEDULE 25

INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS

1. WORKS PHASE INSURANCE COVERAGE

1.1 Subject to Section 7, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the IO Construction Insurance Program (“**IOICIP**”) the following insurances as further described in Appendix A to this Schedule 25:

- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
- (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability; and
- (c) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).

1.2 Subject to Section 7, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:

- (a) Automobile Liability;
- (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-site operations and activities;
- (c) Aircraft and Watercraft Liability (if any exposure);
- (d) “All Risks” Marine Cargo (if any exposure);
- (e) “All Risks” Contractors’ Equipment;
- (f) Comprehensive Crime; and
- (g) WSIB.

1.3 Subject to Section 7, from and after execution of this Project Agreement and until the PGW Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the IO

Construction Insurance Program (“**IOCIP**”) the following insurances as further described in Appendix A to this Schedule 25:

- (a) Project Specific Professional Liability.

2. POST GAMES WORKS INSURANCE COVERAGE

2.1 Subject to Section 7, in respect of the Post Games Works, from and after the Notice of Commencement of the Post Games Works and until PGW Substantial Completion, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:

- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
- (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by Project Co, the Construction Contractor and each of the Subcontractors involved in the Post Games Works);
- (c) Automobile Liability;
- (d) Aircraft and Watercraft Liability (if any exposure);
- (e) “All Risks” Marine Cargo (if any exposure);
- (f) “All Risks” Contractors’ Equipment;
- (g) Comprehensive Crime; and
- (h) WSIB.

3. NO LIMIT ON RECOVERY

3.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained by HMQ or by Project Co, shall in no way limit Project Co’s liability or obligations to HMQ or HMQ’s liability or obligations to Project Co, as applicable.

4. ADDITIONAL COVER

4.1 Without prejudice to the other provisions of this Schedule 25, HMQ and Project Co shall, at all relevant times and at their own expense, obtain and maintain those insurances which they are required to obtain and maintain by Applicable Law, or that they consider necessary.

4.2 HMQ reserves the right to require Project Co to purchase such additional insurance coverage as HMQ may reasonably require. HMQ also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Works and Post Games Works, contract value, industry standards and availability of insurance) as HMQ may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by HMQ and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of HMQ.

5. RESPONSIBILITY FOR DEDUCTIBLES

5.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

6. COOPERATION WITH INSURER’S CONSULTANT

6.1 If an insurer or an insurer’s appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then HMQ and Project Co shall, and shall require the HMQ Parties and the Project Co Parties, respectively, to:

- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
- (b) allow the insurer and its consultant to attend meetings between Project Co and HMQ (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

7. UNINSURABLE RISKS

7.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:

- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk from insurers licensed in the Province of Ontario; or

- (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.

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

7.2 Project Co shall notify HMQ as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide HMQ with all relevant details in relation to such risk, including a copy of the relevant insurance policy.

7.3 Project Co and HMQ shall, as soon as possible following the provision of the notice referred to in Section 7.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and HMQ are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.

7.4 In the event that Project Co and HMQ, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 7.2, HMQ may, in its absolute discretion, either:

- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or

- (b) terminate this Project Agreement in accordance with Section 4.9 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 4.9 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

7.5 On the occurrence of an Uninsurable Risk, HMQ may, in its absolute discretion, either:

- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or

- (b) terminate this Project Agreement in accordance with Section 4.9 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 4.9 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

7.6 With respect to any Uninsurable Risk:

- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) Subject to Section 7.6(a), Project Co shall be relieved of its obligation to maintain insurance in respect of the Uninsurable Risk.

7.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 7 shall no longer apply to such risk.

7.8 From and after the Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

8. TOTAL OR SUBSTANTIAL DESTRUCTION

8.1 In the event of damage to, or destruction of, all or substantially all of the Facility for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Works and Post Games Works, all in accordance with the terms of the Insurance Trust Agreement.

9. SUBCONTRACTORS

9.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which HMQ may suffer as a direct result of Project Co's failure to comply with the foregoing.

9.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained by Project Co, Project Co shall:

- (a) ensure that such insurance coverage is put in place;
- (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Works or Post Games Works until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

10. RENEWAL

10.1 Project Co shall provide to HMQ, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to HMQ, acting reasonably.

11. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION

11.1 All insurance provided by Project Co, shall:

- (a) include Project Co, IO, UofT, City and TO2015 as Named Insureds to the extent specified in Appendix A of this Schedule 25;
- (b) include IO, UofT, City and TO2015, the Lenders' and the Lenders' Agent as Additional Insureds, or loss payees to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25;
- (c) except with respect to the Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 25, contain a waiver of subrogation as against HMQ, HMQ Parties, IO, UofT, City and TO2015 and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
- (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
- (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to HMQ, IO, UofT, City or TO2015 without

any right of contribution of any insurance carried by HMQ, IO, UofT, City or TO2015.

12. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

12.1 Prior to the commencement of any part of the Works, Project Co will provide HMQ with certified copies of policies, confirming that the insurances specified in Section 1.1 and Section 1.3 have been obtained and are in full force and effect.

12.2 Prior to the commencement of any part of the Works, Project Co will provide HMQ with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to HMQ no later than 90 days after execution of this Project Agreement.

12.3 Prior to the commencement of any part of the Post Games Works, Project Co will provide HMQ with certified copies of policies, confirming that the insurances specified in Section 2.1(a) and (b) have been obtained and are in full force and effect.

12.4 Prior to the commencement of any part of the Post Games Works, Project Co will provide HMQ with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 2.1 (c), (d), (e), (f) and (g) have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to HMQ no later than 90 days after execution of this Project Agreement.

13. FAILURE TO MEET INSURANCE REQUIREMENTS

13.1 If Project Co fails to obtain or maintain the insurance required by this Schedule 25, fails to furnish to HMQ a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then HMQ shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at HMQ's option, be payable by Project Co to HMQ on demand or be deducted by HMQ from the next payment or payments otherwise due to Project Co.

13.2 If coverage under any insurance policy required to be obtained by Project Co should lapse, be terminated or be cancelled, then, if directed by HMQ, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

14. MODIFICATION OR CANCELLATION OF POLICIES

14.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely

reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to HMQ, IO, UofT, City and TO2015 and the Lenders' Agent. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.

14.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to HMQ, IO, UofT, City, TO2015 and the Lenders' Agent.

14.3 With respect to insurances described in Section 1.1 (a), (b) and (c), Section 1.2 (d) and Section 2.1 (a) and (b), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to HMQ, IO, UofT, City, TO2015, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

15. INSURERS

15.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 25 shall be issued by financially sound Insurers acceptable to HMQ and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.

15.2 To be eligible to provide insurance, an Insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:

- (a) a Financial Strength Rating of not lower than "A-" for three out of the previous five years but not lower than "B" at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (**Best**); or
- (b) a Long-Term Financial strength Rating of not lower than "A-" for three out of the past five years but not less than "BBB" at any time during those five years, a Short-Term Financial Strength Rating of not lower than "A-3" for three out of the previous five years and a Financial Enhancement Rating of not lower than "A-"

for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (S&P); or

- (c) if the Insurer is not rated by Best or S&P, an Insurer that is acceptable to HMQ and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

16. POLICY TERMS AND CONDITIONS

16.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to HMQ, its insurance advisors and Lenders, acting reasonably.

16.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

17. FAILURE TO COMPLY

17.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

18. PERFORMANCE SECURITY REQUIREMENTS

18.1 Project Co shall obtain and deliver to HMQ, original executed and sealed Bonds in the forms attached as Appendices B and C respectively, to this Schedule 25 on the Financial Close Target Date, each in an amount equal [REDACTED]. Each of the Bonds shall be properly executed by a Surety or by an agent or attorney in fact for the Surety, in which latter case, Project Co is required to submit with such Bonds a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to HMQ to evidence the authority of the agent or the attorney in fact.

18.2 Such Bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario and shall be maintained in good standing until the fulfilment of the Project Agreement.

18.3 For greater certainty, the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Financing, Cost of the Financing or, if applicable, the execution of the Post Games Works, and it is agreed that the Parties intend to benefit the Surety by this Section 18.3 and that the Surety may rely upon and enforce the provisions of this Section 18.3.

19. INSURANCE TRUST AGREEMENT

19.1 All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion of the Works or the Post Games Works which, in each case, relate to Equipment purchased by HMQ, UofT, City or TO2015 shall be payable solely to HMQ and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

**APPENDIX A TO SCHEDULE 25
INSURANCE REQUIREMENTS**

Works Phase Insurance – Pan Am Games Aquatics Centre, Field House and Canadian Sports Institute (CSIO) Project

From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
"All Risks" Course of Construction Property Including Boiler and Machinery	Value declared to be equal to the estimated completed project value of the Facility, including Property of Every Description and all other property supplied by HMQ or HMQ Parties for incorporation into the Facility. All Existing Equipment from the start of decommissioning or removal from its original location, by or on behalf of Project Co, until such existing equipment has been relocated to the Facility and has become HMQ's responsibility. Soft Costs [REDACTED] (representing [REDACTED] of Recurring / Continuing Soft Costs) Extra and Expediting Expense (minimum [REDACTED] sub-limit) Principal Extensions: <ul style="list-style-type: none"> Replacement Cost Valuation (Property) Most Recent Technology 	[REDACTED] of loss value / [REDACTED] minimum Earthquake [REDACTED] Flood [REDACTED] Testing and Commissioning [REDACTED] All other losses 30 days waiting period applicable to time element coverages 48 hour waiting period applicable to Off Premises Services Service Interruption	"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler & Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ, IO, UofT, City, TO2015 or the Lenders.	TBD

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Replacement Cost Valuation (Equipment or Machinery) • Flood (to policy limit with annual aggregate) • Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) • Electronic Data Processing equipment and media, including data restoration and re-creation costs • Transit • Unnamed locations • Bylaws (with respect to Existing or Renovated Buildings) (minimum [REDACTED] sub-limit) • Debris Removal (minimum [REDACTED] sub-limit) • Off Premises Services ([REDACTED] sub-limit) • Professional Fees (minimum [REDACTED] sub-limit) • Fire Fighting Expenses (minimum [REDACTED] sub-limit) • Valuable Papers (minimum [REDACTED] sub-limit) • Accounts Receivable (minimum [REDACTED] sub-limit) • Defence Costs (subject to a [REDACTED] sub-limit) • Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> measuring, testing or medical equipment and subject to a [REDACTED] sub-limit) • Contamination Clean-up or Removal (minimum [REDACTED] sub-limit) • Ammonia Contamination (minimum [REDACTED] sub-limit) • Civil Authority Access Interruption (8 weeks) • Prevention of Ingress/Egress (8 weeks) • Permission for Partial Occupancy prior to Substantial Completion • Cost of Carrying Project Financing (18 Months), included in Delayed Start-Up or Soft Costs coverage • Margin of Profit Extension for Contractors • Testing and Commissioning (120 limitation each component) 			
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum DE4 standard • War risk • Terrorism • Nuclear or radioactive contamination, except re 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	radioactive isotopes intended for scientific, medical, industrial or commercial use			
	<ul style="list-style-type: none"> Contractors' equipment 			
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured includes Project Co, Lenders, Lender's Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, HMQ, IO, UofT, City, TO2015 or the Lenders. as their respective interests may appear No provision permitted allowing a coinsurance penalty Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured Additional key extensions of coverage: <ul style="list-style-type: none"> Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the Project Losses payable in accordance with the Insurance Trust Agreement Waiver of subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, HMQ, IO, UofT, City, TO2015, the Construction Contractor, subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded Liberalization Clause Errors and Omissions Breach of Conditions Interims Payments Clause 			
Underwriters	Principal underwriters in compliance with Clause 15 of this Schedule 25.			

Works Phase Insurance – Pan Am Games Aquatics Centre, Field House and Canadian Sports Institute (CSIO) Project

From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

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

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
<p>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability</p>	<p>[REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> [REDACTED] Non-Owned Automobile Liability [REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution Liability [REDACTED] “All Risks” Tenants' Legal Liability [REDACTED] Prairie or Forest Fire Fighting Expenses [REDACTED] Employee Benefits Administrative Errors and Omissions [REDACTED] Contractors Rework [REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94) [REDACTED] Medical Payments <p>Principal Extensions:</p> <ul style="list-style-type: none"> HMQ’s and Contractor's Protective Blanket Contractual (written and oral) Direct and Contingent Employers Liability Employee Benefits Administrative Errors and Omissions Personal Injury (nil participation) 	<p>[REDACTED] per occurrence</p> <p>[REDACTED] per claim with respect to Contractors Rework</p> <p>[REDACTED] per claim with respect to each SEF 94, Tenants’ Legal Liability, Employee Benefits Administrative Errors and Omissions and Prairie or Forest Fire Fighting Expenses</p>	<p>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the date of Substantial Completion of the Works.</p> <p>Coverage shall be maintained continuously from the date of the first activities at the Site, until the Substantial Completion of the Works, at which time the Products and Completed Operations extension will take effect.</p> <p>Sudden and Accidental Pollution and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ, IO, UofT, City, TO2015 or the Lenders.</p>	

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works, as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co • Non-Owned Automobile Liability • Tenants' Legal Liability (All Risks) – subject to sub-limit • Medical Expenses – subject to sub-limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit • Permission for Unlicensed Vehicles (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Accident Benefits • Worldwide Territory, subject to suits being brought in Canada or the US 			
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage 			

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, at the Project Site • Physical damage to the Project, except during Broad Form Products and Completed Operations extension period • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use 			
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured includes Project Co and its Affiliates, HMQ, IO, UofT, City, TO2015, the Lenders, Project Co parties involved in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants, (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site • Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds • Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured • Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted • Professional service activities integral to the project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers • Waiver of subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, HMQ, IO, UofT, City, TO2015, the Construction Contractor, subcontractors, sub-subcontractors, professional consultants, engineers, architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing 			
Underwriters	Principal underwriters in compliance with Clause 15 of this Schedule 25.			

Works Phase Insurance – Pan Am Games Aquatics Centre, Field House and Canadian Sports Institute (CSIO) Project
From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p>Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability):</p> <p>Combined Limit subject to Contractors’ Pollution Legal Liability with a minimum [REDACTED] sub-limit</p>	<p>[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period Microbial Matter (including Fungus/Mould) Underground / above ground storage tanks First Party Restoration and Clean-up Costs Disposal Site Extension, including Transportation (reporting required) Duty to Defend Canada and US Territory Contractual Liability Emergency Response Costs <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> Terrorism War Intentional Non-compliance Prior Knowledge WSIB Employers’ Liability 	<p>[REDACTED] per claim inclusive of defense and all costs and expenses</p>	<p>Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and off-Site, as required.</p> <p>Extended Reporting Period: Minimum of 36 months after Substantial Completion of the Works.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ, IO, UofT, City, TO2015 or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Professional Liability • Nuclear Liability • Property Damage to Motor Vehicles during Transportation 			
<hr/>				
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured will include Project Co, its Affiliates, Project Co parties and all other parties engaged in the Works, including the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants • HMQ, IO, UofT, City, TO2015 and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates • The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds 			
Underwriters	Principal underwriters in compliance with Clause 15 of this Schedule 25.			

Pan Am Aquatics/Field House/CSIO Project

Works Phase Insurance – Pan Am Games Aquatics Centre, Field House and Canadian Sports Institute (CSIO) Project

From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Automobile Liability	<p>[REDACTED] (Minimum) for Project Co and Project Co's Construction Contractor vehicles</p> <p>[REDACTED] (Minimum) for vehicles of any other subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form for all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to HMQ, IO, UofT, City, TO2015 and the Lenders.</p>	
<p>Commercial General Liability and Non-Owned Automobile Liability</p> <p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent Employers Liability, Products and Completed Operations</p>	<p>[REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co's Construction Contractor</p> <p>[REDACTED] each occurrence and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants and sub-consultants, workmen, tradesmen, or other persons involved in the Works</p> <p>In both instances, limits of liability may be structured as any combination of primary plus supplementary layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Project Co's Construction Contractor):</p>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability insurance will cover off-site activities connected to the Project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy's Products and Completed Operations extension period.</p> <p>This insurance shall be maintained in effect during the Works phase until twelve (12) months following the earlier of the termination of the insured's person's involvement in the Works and Substantial Completion Date.</p>	

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Liability, and Owner's and Contractor's Protective extensions	<ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability • [REDACTED] Prairie or Forest Fire Fighting Expenses <p>Principal Extensions (required to be provided by the Project Co. and its Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other persons involved in the Works):</p> <ul style="list-style-type: none"> • Owner's and Contractor's Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works as applicable • Elevator and Hoist Collision Liability • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Permission for Unlicensed Vehicles' (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Worldwide Territory, subject to suits being 		Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ, IO, UofT, City, TO2015 and the Lenders.	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
brought in Canada or the US				
Permitted Exclusions:				
<ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use 				
<i>Comments</i>	<ul style="list-style-type: none"> • HMQ, IO, UofT, City, TO2015 and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates 			
Aircraft and Watercraft Liability (If any exposure)	Minimum [REDACTED] inclusive, including [REDACTED] passenger hazard – Owned Aircraft Minimum [REDACTED] inclusive – Non-Owned Aircraft Minimum [REDACTED] Owned or Non-Owned Watercraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ, IO, UofT, City, TO2015 and the Lenders.	
<i>Comments</i>	<ul style="list-style-type: none"> • HMQ, IO, UofT, City, TO2015 and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p>“All Risks” Ocean Marine Cargo</p> <p>(If any exposure)</p>	[REDACTED] Replacement Cost Valuation basis	[REDACTED]	<p>Property of Every description destined for incorporation into the Facility during marine transit, on a full replacement value basis, with no co-insurance provision.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ, IO, UofT, City, TO2015 or the Lenders.</p>	
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured includes Project Co, Lenders, Lender’s Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants and HMQ, IO, UofT, City, TO2015, as their respective interests may appear. 			
<p>“All Risks” Contractors’ Equipment</p> <p>To cover Project Co, the Construction Contractor, subcontractors, sub-subcontractors consultants and sub-consultants</p>	<p>If Site equipment is three years old or less the sum insured shall be equal to [REDACTED] of the replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.</p>		<p>“All Risks” coverage on all owned, rented, leased or borrowed contractors’ equipment used at the Project Site.</p>	
<i>Comments</i>	<ul style="list-style-type: none"> Waiver of subrogation rights against Project Co, HMQ, IO, UofT, City, TO2015, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders’ Agent as well as officers, directors, shareholders and employees of the foregoing 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Comprehensive Crime	[REDACTED] per loss with respect to Employee Dishonesty		Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Project Co Parties including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery. Custodial endorsement extending protection to third parties. Insurance primary without right of contribution of any other insurance carried by HMQ, IO, UofT, City, TO2015 or the Lenders.	
Underwriters (All non-IOCIP Works Phase insurances that are to be provided or caused to be provided by Project Co)	Principal underwriters in compliance with Clause 15 of this Schedule 25.			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p>WSIB</p>	<p>In accordance with Ontario Act’s established benefits and schedules</p>	<p>Not Applicable</p>	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co’s expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion of the Facility, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to HMQ evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person’s exemption from WSIB coverage.</p>	

Works Phase Insurance – Pan Am Games Aquatics Centre, Field House and Canadian Sports Institute (CSIO) Project

From First Access to Site until PGW Substantial Completion Date

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

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
Project Specific Professional Liability	[REDACTED] minimum per claim / [REDACTED] in the aggregate (inclusive of defense and related costs and supplementary payments). Principal Extensions: <ul style="list-style-type: none"> • Primary insurance extension • Automatic addition of firms • Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the Named Insured under a personal services contract • Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act • Lawyer fees and associated expenses incurred in the 	[REDACTED] per claim	Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period, to PGW Substantial Completion plus coverage for an extended reporting period of not less than 36 months. This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ, IO, UofT, City, TO2015 or the Lenders.	

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> investigation, defence, settlement, arbitration or litigation of claims • Duty to defend, even if the allegations are groundless, false or fraudulent • Worldwide Territory, subject to suits brought in Canada <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Express warranties or guarantees • Estimates on profit, return • Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents • Design or manufacture of any good or products sold or supplied by the Named Insured • Terrorism • Nuclear Liability • Judgments and awards deemed uninsurable by law • Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement • Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees • Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices 			

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
<i>Comments</i>	or policies <ul style="list-style-type: none"> • Named Insured: Project Co (as applicable), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project • Professional Services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services, and procurement services, including their replacements and/or sub-consultants of any tier • Retroactive Date: Full retroactive coverage from date of first design activity • Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy 			
Underwriters	<ul style="list-style-type: none"> • Principal underwriters in compliance with Clause 15 of this Schedule 25. 			

Pan Am Aquatics/Field House/CSIO Project

**Works Phase Insurance – Pan Am Games Aquatics Centre, Field House and Canadian Sports Institute (CSIO) Project
From Notice of Commencement of Post Games Works until PGW Substantial Completion (Insurance for Post Games Works Phase)**

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
"All Risks" Course of Construction Property Including Boiler and Machinery	<p>Value declared to be equal to the estimated completed project value of the Post Games Works, including Property of Every Description and all other property supplied by HMQ or HMQ Parties for incorporation into the Post Games Works.</p> <p>All Existing Equipment from the start of decommissioning or removal from its original location, by or on behalf of Project Co, until such existing equipment has been relocated to the Facility and has become HMQ's responsibility.</p> <p>Extra and Expediting Expense (minimum [REDACTED] sub-limit)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Replacement Cost Valuation (Property) • Most Recent Technology Replacement Cost Valuation (Equipment or Machinery) • Flood (to policy limit with annual aggregate) • Natural or man-made earth movement, including earthquake, 	<p>[REDACTED] of loss value / [REDACTED] minimum Earthquake</p> <p>[REDACTED] Flood</p> <p>[REDACTED] Testing and Commissioning</p> <p>[REDACTED] All other losses</p> <p>30 days waiting period applicable to time element coverages</p> <p>48 hour waiting period applicable to Off Premises Services Service Interruption</p>	<p>"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler & Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction.</p> <p>This coverage shall be primary with respect to the Post Games Works without right of contribution of any insurance carried by HMQ, IO, UofT, City, TO2015 or the Lenders.</p>	TBD

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> landslide or subsidence (to policy limit with annual aggregate) • Electronic Data Processing equipment and media, including data restoration and re-creation costs • Transit • Unnamed locations • Bylaws (with respect to Existing or Renovated Buildings) (minimum [REDACTED] sub-limit) • Debris Removal (minimum [REDACTED] sub-limit) • Off Premises Services ([REDACTED] sub-limit) • Professional Fees (minimum [REDACTED] sub-limit) • Fire Fighting Expenses (minimum [REDACTED] sub-limit) • Valuable Papers (minimum [REDACTED] sub-limit) • Accounts Receivable (minimum [REDACTED] sub-limit) • Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to measuring, testing or medical equipment and subject to a [REDACTED] sub-limit) • Contamination Clean-up or Removal (minimum [REDACTED] sub-limit) • Ammonia Contamination (minimum [REDACTED] sub- 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> limit) • Civil Authority Access Interruption (4 weeks) • Prevention of Ingress/Egress (4 weeks) • Permission for Partial Occupancy prior to Substantial Completion • Margin of Profit Extension for Contractors • Testing and Commissioning (60 day limitation) <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum DE4 standard • War risk • Terrorism • Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use • Contractors' equipment 			
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured includes Project Co, Lenders, Lender's Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, and HMQ, IO, UofT, City, TO2015, as their respective interests may appear • No provision permitted allowing a coinsurance penalty • Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured • Additional key extensions of coverage: 			

- Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the Project
- Losses payable in accordance with the Insurance Trust Agreement
- Waiver of subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, HMQ, IO, UofT, City, TO2015, the Construction Contractor, subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing
- Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded
- Liberalization Clause
- Errors and Omissions
- Breach of Conditions
- Interims Payments Clause

Underwriters Principal underwriters in compliance with Clause 15 of this Schedule 25.

Pan Am Aquatics/Field House/CSIO Project

Works Phase Insurance – Pan Am Games Aquatics Centre, Field House and Canadian Sports Institute (CSIO) Project

From Notice of Commencement of Post Games Works until PGW Substantial Completion (Insurance for Post Games Works Phase)

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Automobile Liability	<p>[REDACTED] (Minimum) for Project Co and Project Co's Construction Contractor vehicles</p> <p>[REDACTED] (Minimum) for vehicles of any other subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form for all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to HMQ, IO, UofT, City, TO2015 and the Lenders.</p>	
<p>Commercial General Liability and Non-Owned Automobile Liability</p> <p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct</p>	<p>[REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co's Construction Contractor</p> <p>[REDACTED] each occurrence and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants and sub-consultants, workmen, tradesmen, or other persons involved in the Post Games Works</p> <p>In both instances, limits of liability may be structured as any combination of primary plus supplementary</p>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability insurance will cover on and off-site activities connected to the Post Games Works.</p> <p>This insurance shall be maintained in effect during the Post Games Works phase until twelve (12) months following the earlier of the termination of</p>	

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
and Contingent Employers Liability, Products and Completed Operations Liability, and Owner's and Contractor's Protective extensions	layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess Sub-limits (Project Co and Project Co's Construction Contractor): <ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability • [REDACTED] Prairie or Forest Fire Fighting Expenses <p>Principal Extensions (required to be provided by the Project Co. and its Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other persons involved in the Post Games Works):</p> <ul style="list-style-type: none"> • Owner's and Contractor's Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Post Games Works as applicable • Elevator and Hoist Collision Liability • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Permission for Unlicensed Vehicles' (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage 		the insured's person's involvement in the Post Games Works and PGW Substantial Completion Date. Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ, IO, UofT, City, TO2015 and the Lenders.	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Worldwide Territory, subject to suits being brought in Canada or the US <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use 			
<i>Comments</i>	<ul style="list-style-type: none"> • HMQ, IO, UofT, City, TO2015 and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Aircraft and Watercraft Liability (If any exposure)	Minimum [REDACTED] inclusive, including [REDACTED] passenger hazard – Owned Aircraft Minimum [REDACTED] inclusive – Non-Owned Aircraft Minimum [REDACTED] inclusive Owned or Non-Owned Watercraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ, IO, UofT, City, TO2015 and the Lenders.	
<i>Comments</i>	<ul style="list-style-type: none"> HMQ, IO, UofT, City, TO2015 and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates 			
“All Risks” Ocean Marine Cargo (If any exposure)	[REDACTED] Replacement Cost Valuation basis	[REDACTED]	Property of Every description destined for incorporation into the Post Games Works during marine transit, on a full replacement value basis, with no co-insurance provision. This coverage shall be primary with respect to the Post Games Works without right of contribution of any insurance carried by HMQ, IO, UofT, City, TO2015 or the Lenders.	
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured includes Project Co, Lenders, Lender’s Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants and HMQ, IO, UofT, City, TO2015, as their respective interests may appear. 			
“All Risks” Contractors’ Equipment To cover Project Co, the Construction	If Site equipment is three years old or less the sum insured shall be equal to [REDACTED] of the replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.		“All Risks” coverage on all owned, rented, leased or borrowed contractors’ equipment used at the Post Games Works Site.	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Contractor, subcontractors, sub-subcontractors consultants and sub-consultants				
<i>Comments</i>	<ul style="list-style-type: none"> Waiver of subrogation rights against Project Co, HMQ, IO, UofT, City, TO2015, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders' Agent as well as officers, directors, shareholders and employees of the foregoing 			
Comprehensive Crime	[REDACTED] per loss with respect to Employee Dishonesty		<p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Project Co Parties including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Insurance primary without right of contribution of any other insurance carried by HMQ, IO, UofT, City, TO2015 or the Lenders.</p>	
Underwriters (Post Games Works Phase insurances that are to be provided or caused to be provided by Project Co)	Principal underwriters in compliance with Clause 15 of this Schedule 25.			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
WSIB	In accordance with Ontario Act’s established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co’s expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the Post Games Works, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion of the Post Games Works, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to HMQ evidence of the WSIB coverage maintained by any person involved in the Post Games Works, or confirmation of that person’s exemption from WSIB coverage.</p>	

**APPENDIX B TO SCHEDULE 25
PERFORMANCE BOND**

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

No. _____

Bond Amount **[Insert Amount]**

[Insert Contractor], as Principal, hereinafter called the Principal, and **[Insert Surety]**, as Surety, duly authorized to transact the business of suretyship in Canada, hereinafter called the Surety, are held and firmly bound unto **[Insert Project Co]** as Obligee, hereinafter called the Obligee, in the amount of **[Insert Amount]**, of lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract entitled Design and Construction Contract with **[Insert Project Co]** dated **[Insert Date]** for the Pan Am Aquatics Centre, Field House and Canadian Sports Institute (CSIO) Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Design and Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Design and Construction Contract.

The condition of this obligation is such that if the Principal shall promptly and faithfully perform its obligations to the Obligee under the Design and Construction Contract **[except with respect to the execution of Post Games Works, if applicable]**, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Obligee to be in default in respect of its obligations to the Obligee under the Design and Construction Contract (a “**Contractor Event of Default**”), the Obligee having performed the Obligee’s obligations under the Design and Construction Contract, the Surety shall promptly select and carry out one of the four following options:

1. remedy any default, or;
2. complete the Design and Construction Contract in accordance with its terms and conditions, or;
3. obtain a bid or bids for submission to the Obligee for completing the Design and Construction Contract in accordance with its terms and conditions and upon determination by the Obligee and the Surety of the lowest responsible bidder, acceptable to HMQ acting reasonably, arrange for a contract between such bidder and the Obligee or between such bidder and such other party as an Additional Named Obligee shall be

entitled to direct, and the Surety shall make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Design and Construction Contract, less the Balance of the Design and Construction Contract Price and to pay all expenses incurred by the Obligee as a result of the Principal's default relating directly to the performance of the Design and Construction Work under the Design and Construction Contract, but not exceeding the Bond Amount. The Balance of the Design and Construction Contract Price is the total amount of the Guaranteed Price payable to the Principal under the Design and Construction Contract, less the amount properly paid by the Obligee to the Principal under the Design and Construction Contract; or

4. pay the Obligee the lesser of (1) the Bond Amount or (2) the Obligee's proposed cost to complete the Design and Construction Contract in accordance with its terms and conditions less the Balance of the Design and Construction Contract Price.

The Surety shall not be discharged or released from liability hereunder and such liability shall not be in any way affected by any changes, alterations, additions or variations, taking or receiving of security between the Principal and the Obligee, or extension of time, or other modification of the Design and Construction Contract, by the exercise by the Obligee of any of the rights or powers reserved to it under the Design and Construction Contract or by its forbearance to exercise any such rights or powers, including (but without restricting the generality of the foregoing) any changes in the extent or nature of the Work under the Design and Construction Contract or by any dealing, transaction, forbearance or forgiveness which may take place between the Principal and the Obligee.

The Surety agrees that for the purposes of determining its liability under this Bond, findings or decisions against the Principal under the terms of the Design and Construction Contract, that are binding on the Principal and the Obligee shall also bind the Surety.

It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the Substantial Completion Date, or (2) the date on which the Principal is declared in default by the Obligee and such notice of default is provided to HMQ and *[Insert Lender]*.

The Surety shall, in no event, be liable for a greater sum than the Bond Amount. Further, and notwithstanding anything else in this Bond, the Surety's liability hereunder for any default under Section 34.1(a)(xi) of the Project Agreement shall be limited to any default by the Principal resulting in the non-performance or non-observance by the Principal of any of its other obligations under the Design and Construction Contract.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Obligee named herein, or the heirs, executors, administrators, successors or assigns of the Obligee.

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond dated the _____ day of _____, 201__.

SIGNED, SEALED AND DELIVERED

in the presence of:

[Insert Principal]

By

Signature

Name of person signing

[Insert Surety]

By:

Signature

Name of person signing

EXHIBIT 1 TO APPENDIX B

FORM OF MULTIPLE OBLIGEE RIDER TO PERFORMANCE BOND

No. _____

TO BE ATTACHED TO AND FORM PART OF THE PERFORMANCE BOND NO. [Insert Bond No.] dated [Insert Date] (the “Bond”) concurrently with the execution of this Multiple Obligee Rider, issued by [Insert Surety], as Surety (hereinafter called the “**Surety**”), on behalf of [Insert Contractor], as Principal (hereinafter called the “**Principal**”), and in favour of [Insert Project Co], as Obligee (hereinafter called the “**Obligee**”).

NOW THEREFORE, in consideration of [REDACTED]

and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The Bond shall be and is hereby amended to add HMQ and [Insert Lender], in their respective capacities as assignees of the Design and Construction Contract, as Additional Named Obligees, which Additional Named Obligees (which hereinafter may from time to time be referred to simply as “**Obligee(s)**”) shall, subject to the terms of the Bond and this Multiple Obligee Rider, be entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligee Rider.
2. Capitalized terms used in this Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the Bond and the Design and Construction Contract.
3. If there is an event of default by Contractor under the Design and Construction Contract (a “**Construction Event of Default**”) and the [Insert Lender] or HMQ makes a claim under the Bond, the [Insert Lender] or HMQ, as the case may be, shall make available to the Surety in accordance with the terms of the Design and Construction Contract the Balance of the Design and Construction Contract Price.
4. All of the terms, conditions and provisions of the Bond are hereby incorporated herein by reference as if fully set forth herein.
5. No alteration or material change in the Design and Construction Contract or any conduct of the Principal, Obligee or [Insert Lender], prior to the Principal being declared in default, shall prejudice the rights or interest of HMQ under the Bond or this Multiple Obligee Rider provided that HMQ has not caused such alteration or material change without the prior written consent of the Surety.

6. The Obligees, Principal, Surety and *[Insert Lender]* acknowledge and agree that they will not remedy any default, settle, waive, reduce or otherwise compromise any claims under the Bond without the prior written approval of HMQ, acting reasonably, and the Surety shall provide reasonable notice to HMQ prior to remedying any default, settling, waiving, reducing or otherwise compromising any claim or making any payment under the Bond, provided that the Surety shall not be precluded from tendering upon the Obligees' performance pursuant to one of the four numbered options in the Bond.
7. The Surety acknowledges the process in the Lender's Direct Agreement for making a claim against the Bond, including, but not limited to, the Lender's Step In Period rights; provided that such acknowledgement shall in no way limit or otherwise abrogate from the Surety's rights under the Bond or this Multiple Obligees Rider.
8. In the event of any ambiguity, conflict or inconsistency, the Bond and this Multiple Obligees Rider shall prevail over the Project Agreement and the other Project Documents.
9. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the Bond.

IN WITNESS WHEREOF, the Principal, Surety, Obligee, Owner and Lender have signed and sealed this Multiple Obligee Rider dated the ____ day of _____, 20__.

SIGNED, SEALED and DELIVERED

in the presence of:

[Insert Principal]

By

Signature

Name of person signing

[Insert Surety]

By:

Signature

Name of person signing

[Insert Project Co.]

By

Signature

Name of person signing

[Insert Lender]

By:

Signature

Name of person signing

**ONTARIO INFRASTRUCTURE AND LANDS
CORPORATION, a Crown agent, continued under
the *Ontario Infrastructure and Lands Corporation
Act, 2011***

By

Signature

Name of person signing

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

NOTE: This Bond is issued simultaneously with a Performance Bond and Multiple Obligee Rider and is subject to the terms and conditions of the Labour and Material Payment Bond Multiple Obligee Rider attached hereto

Bond No. _____ **Bond Amount:** _____

[*Insert Contractor*] as Principal (hereinafter called the “**Principal**”), and [*Insert Surety*] a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, (hereinafter called the “**Surety**”) are subject to the conditions hereinafter contained, held and firmly bound unto [*Insert Project Co*], as Trustee (hereinafter called the “**Obligee**”), for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns, in the amount of [•] DOLLARS (\$[•]) of lawful money of Canada for the payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written contract entitled Design and Construction Contract with [*Insert Project Co*] dated [*Insert Date*] for the Pan Am Aquatics Centre, Field House and Canadian Sports Institute (CSIO) Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Design and Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Design and Construction Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Design and Construction Contract[**except with respect to the execution of Post Games Works, if applicable**], then this obligation shall be null and void; and otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Design and Construction Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Design and Construction Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Design and Construction Contract under a contract which

provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Design and Construction Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, in accordance with and in the manner provided for in the latest revised edition of the publication of the Canadian Construction Association titled “Rental Rates on Construction Equipment” published prior to the period during which the equipment was used in the performance of the Design and Construction Contract.

2. The Principal and the Surety hereby jointly and severally agree with the Obligee, as Trustee, that every Claimant who has not been paid as provided for under the terms of his or her contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant’s work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of his or her contract with the Principal and have execution thereon. Provided that the Obligee is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Obligee or by joining the Obligee as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants or any of them, who take such act, action or proceeding shall indemnify and save harmless the Obligee against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligee by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Obligee to sue on and enforce the provisions of this Bond.
3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Obligee, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3(b) and 3(c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
 - (a) unless such Claimant shall have given written notice within the time limits hereinafter set forth to each of the Principal, the Surety and the Obligee, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Obligee, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the Design and Construction Contract is located. Such notice shall be given:
 - (i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of

the Claimant's contract with the Principal, or under the construction lien legislation applicable to the Claimant's contract with the Principal, whichever is greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal;

- (ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
 - (b) after the expiration of one (1) year following the date on which the Principal ceased work on the Design and Construction Contract, including work performed under the guarantees provided in the Design and Construction Contract;
 - (c) other than in a Court of competent jurisdiction in the Province or District of Canada in which the subject matter of the Design and Construction Contract, or any part thereof, is situated and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety agrees not to take advantage of Article 1959 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothecs and privileges of said Claimant.
 5. Any material change in the Design and Construction Contract between the Principal and the Obligee shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
 6. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith and in accordance with the provisions hereof, inclusive of the payment by the Surety of construction liens which may be filed of record against the subject matter of the Design and Construction Contract, whether or not claim for the amount of such lien be presented under and against this Bond.
 7. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED in the presence of:

[Insert Principal]

Signature

Name of person signing

Witness

[Insert Surety]

Signature

Name of person signing

EXHIBIT 1 TO APPENDIX C

LABOUR AND MATERIAL PAYMENT BOND
MULTIPLE OBLIGEE RIDER

No. _____

TO BE ATTACHED TO AND FORM PART OF THE LABOUR AND MATERIAL PAYMENT BOND NO. [Insert Bond No.] dated [Insert Date] (the “L&M Bond”) concurrently with the execution of this Labour and Material Payment Bond Multiple Obligee Rider (“L&M Multiple Obligee Rider”) issued by [Insert Surety], as Surety (hereinafter called the “Surety”), on behalf of [Insert Contractor], as Principal (hereinafter called the “Principal”), and in favour of [Insert Project Co], as Obligee (hereinafter called the “Obligee”).

NOW THEREFORE, in consideration of [REDACTED] and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The L&M Bond shall and is hereby amended to add HMQ (hereinafter called the “**Owner**”) and [Insert Lender] (hereinafter called the “**Lender**”) as additional named Obligees, in their respective capacities as assignees of the Design and Construction Contract.
2. Capitalized terms used in this L&M Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the L&M Bond and the Design and Construction Contract.
3. All of the terms, conditions and provisions of the L&M Bond are hereby incorporated herein by reference as if fully set forth herein.
4. No alteration or material change in the Design and Construction Contract or any conduct of the Principal, Obligee or Lender, shall prejudice the rights or interest of Owner or Claimant under the L&M Bond or this L&M Multiple Obligee Rider provided that Owner or Claimant have not caused such alteration or material change without the prior written consent of the Surety.
5. In the event of any ambiguity, conflict or inconsistency, the L&M Bond and the L&M Multiple Obligee Rider shall prevail over the Project Agreement and the other Project Documents.
6. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the L&M Bond.

IN WITNESS WHEREOF, the Principal, Surety, Obligee, Owner and Lender have signed and sealed this L&M Multiple Obligee Rider dated the ____ day of _____, 20__.

SIGNED, SEALED and DELIVERED *[Insert Principal]*

in the presence of :

By:

Signature

Name of person signing

[Insert Surety]

By:

Signature

Name of person signing

[Insert Project Co.]

By:

Signature

Name of person signing

[Insert Lender]

By:

Signature

Name of person signing

SCHEDULE 26

RECORD PROVISIONS

1. General Requirements

- 1.1 Project Co shall prepare, retain and maintain at its own expense, all the records (including superseded records) referred to in Section 2.1, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with the Output Specifications;
 - (c) in accordance with the requirements of Good Industry Practice;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of Project Co's and the Construction Contractor's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 26 of the Project Agreement; and
 - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records on the Site.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to HMQ, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement HMQ and Project Co have agreed to accept microfilm, microfiche, CD-ROM or other storage media, Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.

- 1.5 Records may, with the consent of HMQ, not to be unreasonably withheld or delayed, be stored in electronic form if HMQ has access thereto and will continue to have access thereto, such that HMQ will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify HMQ if Project Co wishes to destroy any records referred to in this Schedule 26 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, HMQ may elect to require Project Co to deliver such records to HMQ, in which case Project Co shall, at the expense of HMQ, deliver such records (with the exception of Sensitive Information) to HMQ in the manner and to the location as HMQ shall specify; or
 - (b) if HMQ fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of this Project Agreement in accordance with its terms, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to HMQ in the manner and to the location that HMQ shall reasonably specify. HMQ shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
 - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
 - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of this Project Agreement arises:
- (a) as a result of a HMQ Event of Default or pursuant to Section 36.3 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by HMQ; or
 - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the

Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.

- 1.10 Within 30 days after the end of each calendar year falling within the Project Term, Project Co shall deliver to HMQ a report, as reasonably requested by HMQ in connection with HMQ's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against HMQ or that may be owing by HMQ to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.
- 1.11 Project Co shall provide to HMQ not later than 120 days after the end of each fiscal year, part or all of which falls in a year of the Project Term, a copy of Project Co's unaudited financial statements, in respect of that period, prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 40 of the Project Agreement, shall be treated by HMQ as Confidential Information of Project Co.

2. Records To Be Kept

- 2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) this Project Agreement, its Schedules and the Ancillary Documents, including all amendments to such agreements;
 - (b) all records relating to the appointment and replacement of the HMQ Representative and the Project Co Representative;
 - (c) any documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
 - (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
 - (e) all records relating to any statutory inspections of the Facility or the Site, including any roadways;
 - (f) any notices, reports, results and certificates relating to Substantial Completion, Final Completion, Project Co Commissioning, PGW Substantial Completion, PGW Final Completion and Project Co PGW Commissioning;

- (g) all operation and maintenance manuals;
 - (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
 - (i) all documents submitted in accordance with Schedule 22 - Variation Procedure;
 - (j) any documents related to decisions resulting from the Dispute Resolution Procedure;
 - (k) any documents related to a Project Co Change in Ownership or Change in Control;
 - (l) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
 - (i) Project Co's liabilities or payments under the Income Tax Act (Canada), the Income Tax Act (Ontario) or any similar statute in any other jurisdiction;
 - (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
 - (iii) the withholdings of any payments by Project Co; or
 - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
 - (m) the financial accounts of Project Co referred to in Section 1.11;
 - (n) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Works;
 - (o) any documents relating to insurance and insurance claims;
 - (p) all Jointly Developed Materials; and
 - (q) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.

SCHEDULE 27**DISPUTE RESOLUTION PROCEDURE****1. General**

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of this Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Project Agreement, including, without limitation, this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 27.
- 1.2 The Parties agree that at all times, both during and after the Project Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
 - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 9 of this Schedule 27.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b) of this Schedule 27, either Party may deliver to the HMQ Representative or the Project Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Sections 2 to 9 of this Schedule 27, as applicable, as more particularly described in this Schedule 27. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the HMQ Representative, if given by HMQ, or by the Project Co Representative, if given by Project Co.

2. Amicable Resolution by Party Representatives

- 2.1 On receipt of a Notice of Dispute, the HMQ Representative and the Project Co Representative (collectively “**Party Representatives**” and individually “**Party Representative**”) shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

3. Amicable Resolution by Senior Officers of each Party

3.1 If, following the process referred to in Section 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:

- (a) is in a position of authority above that of the HMQ Representative or the Project Co Representative, as the case may be; and
- (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.

3.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

4. Independent Certifier

4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 of this Schedule 27 that cannot be resolved as provided in Sections 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.

4.2 All Disputes related to the Works and that:

- (a) arise prior to, or otherwise in relation to Substantial Completion or PGW Substantial Completion;
- (b) relate to completion of Minor Deficiencies or PGW Minor Deficiencies;
- (c) relate to whether any proposed work constitutes a Variation;
- (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 38 of the Project Agreement;
- (e) are referred to in this Project Agreement for determination by the Independent Certifier; or
- (f) relate to the Certification Services or any Certification Service Variations (as those terms are defined in the Independent Certifier Agreement);

shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be specified in this Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

- 4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 4.2 of this Schedule 27.
- 4.4 The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate or the PGW Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date or the PGW Substantial Completion Payment Date, respectively, and a Dispute in relation to the Substantial Completion Payment Date or PGW Substantial Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27. Save and except as aforesaid, the Independent Certifier's determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier's decisions shall be resolved pursuant to this Schedule 27, provided however that Section 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

5. [Intentionally Deleted.]

6. Adjudication

- 6.1 If the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Section 4.2 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Section 4.4 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), either Party may refer the Dispute to an adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the "**Adjudicator**").
- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) pursuant to the *Arbitration Act* (Ontario) as if the adjudicator was an arbitrator under the *Arbitration Act* (Ontario) and shall:
- (a) be independent of and at arm's length to Project Co, HMQ, the Province, any Government Entity, the Lenders and any other person having an interest in the Facility or any of the Project Documents; and

- (b) if the Dispute arises during the Project Term, be familiar with the Works and the Stakeholder Operations; and
- (c) be a person who has the qualifications and experience with respect to the particular issues in Dispute.

6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council's *Model Adjudication Procedure; Fourth Edition* (the "Model Adjudication Procedure") the terms of which are incorporated herein by reference, subject to the following modifications:

- (a) notwithstanding paragraph 14 of the Model Adjudication Procedure, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that the Facility are permitting the Stakeholder Operations to proceed in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;
- (b) notwithstanding paragraphs 16 and 24 of the Model Adjudication Procedure, in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event, Delay Event and/or Compensation Event. Unless otherwise provided for in this Schedule 27, the Adjudicator's decision shall be binding on the Parties, but not final.
- (c) notwithstanding paragraphs 29 and 30 of the Model Adjudication Procedure, the Adjudicator's costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator (other than as set out in Section 6.2 of this Schedule 27) or his determination or the procedure by which he reached his determination;

- (e) notwithstanding paragraph 26 of the Model Adjudication Procedure, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate or the PGW Substantial Completion Certificate shall be final and binding solely in respect of determining the Substantial Completion Payment Date or the PGW Substantial Completion Payment Date, respectively, and a Dispute in relation to the Substantial Completion Payment Date or PGW Substantial Completion Payment Date, respectively, shall not be subject to resolution pursuant to this Schedule 27;
- (f) the Adjudicator shall execute a non-disclosure agreement (the "**Non-Disclosure Agreement**") in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and
- (g) notwithstanding paragraph 34 of the Model Adjudication Procedure, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by HMQ unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
- (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, HMQ may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that HMQ undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are

so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to HMQ’s right to contest the determination made by the Adjudicator in a subsequent proceeding. HMQ shall provide Project Co such reasonable extensions of time in respect of Project Co’s obligations under this Project Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event, if so determined by the Adjudicator.

6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator's determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator's determination.

7. Referral of Disputes to Arbitration or Litigation

7.1 If:

- (a) the amount awarded by the Adjudicator pursuant to Section 6 of this Schedule 27 is more than [REDACTED] (index linked) in the aggregate or [REDACTED] (index linked) in any one year,
- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party, or
- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier’s decisions for which Section 4.4 of this Schedule 27 provides that Section 6 of this Schedule 27 shall not apply to resolve such Dispute,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 of this Schedule 27 or a consolidation of proceedings pursuant to Section 9.2(b) of this Schedule 27, either Party may, by written notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 8 of this Schedule 27 upon the written consent of the other Party. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Adjudicator's decision or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and decision of the Adjudicator or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

7.2 If a Party is entitled to refer a Dispute to which Section 6 of this Schedule 27 apply to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, the Adjudicator shall not be called as a witness by either party in any arbitration or litigation proceeding.

8. Resolution by Arbitration

8.1 Upon the mutual written consent of the parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4 and 6 (to the extent required) of this Schedule 27, and
- (b) all other requirements set out in this Schedule 27 have been satisfied,

such Dispute may be referred to arbitration in accordance with the Arbitration Act, 1991 (Ontario) and this Section 8.

8.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 7.1 of this Schedule 27 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.

8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27; and
- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
 - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or

- (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
- (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.

8.4 If the arbitration tribunal is comprised of three arbitrators:

- (a) the arbitrators shall be appointed as follows:
 - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27;
 - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27;
 - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
 - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27; and
- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.

8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.

- 8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Works or in the business affairs of HMQ, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 8.7 The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
 - (b) require some or all of the evidence to be provided by affidavit;
 - (c) hold a hearing at which evidence and submissions are presented by the Parties;
 - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
 - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
 - (f) inspect the Works, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
 - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
 - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;

- (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

9. Litigation

- 9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Adjudicator's award or determination pursuant to Section 6 of this Schedule 27, or if applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Section 6 of this Schedule 27 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:

- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than [REDACTED] (index linked) in the aggregate or [REDACTED] (index linked) in any one year; or
- (b) if the Dispute is considered by HMQ to involve material issues of public health or safety.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Adjudicator's determination, or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Adjudicator or Independent Certifier, as applicable, that is to be the subject of the litigation.

9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1 of this Schedule 27, then:

- (a) provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 9.2(b) of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27; and
- (b) [Intentionally Deleted]

10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation

10.1 For all Disputes that arise prior to Substantial Completion, unless:

- (a) the issue in a particular Dispute is such that waiting until after Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties;
- (b) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Substantial Completion; or
- (c) in respect to a particular Dispute, the Dispute is consolidated with Third Party Disputes (as hereinafter defined) pursuant to Section 11 of this Schedule 27,

all adjudication, arbitral and litigation proceedings between the Parties prior to Substantial Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Substantial Completion.

- 10.2 For all Disputes with respect to Post Games Works that arise prior to PGW Substantial Completion, unless:
- (a) the issue in a particular Dispute is such that waiting until after PGW Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties;
 - (b) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving PGW Substantial Completion; or
 - (c) in respect to a particular Dispute, the Dispute is consolidated with Third Party Disputes (as hereinafter defined) pursuant to Section 11 of this Schedule 27,

all adjudication, arbitral and litigation proceedings between the Parties prior to PGW Substantial Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after PGW Substantial Completion.

11. Consolidation with Third Party Disputes

- 11.1 Subject to Section 11.4 of this Schedule 27, if either Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (“**Project Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if HMQ, Project Co and the other Parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.
- 11.2 Subject to Section 11.4 of this Schedule 27, if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:
- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
 - (b) one of the Parties is brought directly into the Third Party Litigation as a Party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration

proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

11.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other Parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.

11.4 Sections 11.1 and 11.2 of this Schedule 27 only apply:

- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party's liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
- (b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

12. [Intentionally Deleted]

13. Miscellaneous

13.1 Project Co and HMQ shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Project Co's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), Project Co shall proceed in accordance with the direction of HMQ, and in the event the matter in dispute is determined in favour of Project Co, proceeding in accordance with HMQ's position shall: (i) subject to and in accordance with Section 30 of this Project Agreement, be treated as a Delay Event;

- (ii) subject to and in accordance with Section 31 of this Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 4.2 of this Schedule 27, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.
- 13.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction, if necessary to prevent irreparable harm to a Party.
- 13.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to HMQ, Project Co shall indemnify HMQ as provided for at Section 44.1(e) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to HMQ until the date of payment; or
 - (b) for amounts payable by HMQ to Project Co, HMQ shall indemnify Project Co as provided for at Section 44.2(c) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to HMQ or, as applicable, any underpayment or non-payment by HMQ from the date of any overpayment to HMQ or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.
- 13.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an expert, an adjudicator, an arbitrator or a court of competent jurisdiction, are made available in a timely manner to HMQ and the HMQ Representative.
- 13.5 HMQ shall ensure that any and all documents and other information in the possession or control of any HMQ Party that are available to HMQ and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.

13.6 The Parties can, by written agreement, on a Dispute by Dispute basis:

- (a) extend any or all timelines set out in this Schedule 27;
- (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4 and 6 of this Schedule 27 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27; and
- (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27.

SCHEDULE 28A

STANDBY LETTER OF CREDIT

[NTD: The Standby Letter of Credit must be issued by a bank acceptable to HMQ, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, ON M5G 2C8

Attn: •

Dear Sir/Madam:

RE: [Pan American Games Aquatics Centre, Field House and Canadian Sports Institute Ontario (CSIO) Project]

At the request of our client, [●] ("**Project Co**"), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the "**Letter of Credit**") in the amount of [REDACTED].

The amount available under this Letter of Credit is payable to Ontario Infrastructure and Lands Corporation ("**HMQ**"), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of HMQ certifying that HMQ is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated [●] (as amended from time to time, the "**Project Agreement**"), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert the date that is 180 days after the **Financial Close Target Date**] (the "**Expiry Date**"), and HMQ may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[●].

It is understood that **[insert name of issuing bank]** is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[Name of Issuing Bank]

By: _____
Name:
Title:

By: _____
Name:

SCHEDULE 28B

WARRANTY LETTER OF CREDIT

[NTD: The Warranty Letter of Credit must be issued by a bank acceptable to HMQ, acting reasonably, and must be callable at the bank’s counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, ON M5G 2C8

Attn: ●

Dear Sir/Madam:

RE: [Pan American Games Aquatics Centre, Field House and Canadian Sports Institute Ontario (CSIO) Project]

At the request of our client, [●] (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED].

The amount available under this Letter of Credit is payable to Ontario Infrastructure and Lands Corporation (“**HMQ**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of HMQ certifying that HMQ is entitled to draw on this Letter of Credit pursuant to Section 11.25(a) of a project agreement dated [●] (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert expiry date] (the “**Expiry Date**”), and HMQ may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days

prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[●].

It is understood that **[insert name of issuing bank]** is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[Name of Issuing Bank]

By: _____
Name:
Title:

By: _____
Name:

SCHEDULE 28C

POST GAMES WORKS LETTER OF CREDIT

[NTD: The Post Games Works Letter of Credit must be issued by a bank acceptable to HMQ, acting reasonably, and must be callable at the bank’s counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, ON M5G 2C8

Attn: •

Dear Sir/Madam:

RE: [Pan American Games Aquatics Centre, Field House and Canadian Sports Institute Ontario (CSIO) Project]

At the request of our client, [●] (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED].

The amount available under this Letter of Credit is payable to Ontario Infrastructure and Lands Corporation (“**HMQ**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of HMQ certifying that HMQ is entitled to draw on this Letter of Credit pursuant to Section 5.2 of Schedule 32 – Post Games Works of a project agreement dated [●] (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert expiry date] (the “**Expiry Date**”), and HMQ may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[●].

It is understood that **[insert name of issuing bank]** is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[Name of Issuing Bank]

By: _____
Name:
Title:

By: _____
Name:

**SCHEDULE 30
INSURANCE TRUST AGREEMENT**

THIS AGREEMENT is made as of the [•] day of [•], 201[•]

AMONG:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

(“**HMQ**”)

AND:

THE TORONTO-DOMINION BANK, acting as agent for and on behalf of the Lenders

(the “**Lenders’ Agent**”)

AND:

PCL AQUATICS CENTRE 2012 LTD., a corporation incorporated under the laws of Alberta

(“**Project Co**”)

AND:

BNY TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada

(the “**Account Trustee**”)

WHEREAS:

- A. HMQ and Project Co have entered into the Project Agreement.
- B. HMQ, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. HMQ, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

D. HMQ, the Lenders' Agent and Project Co have agreed that the Bonds are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement and that no releases of the original copy of the Bonds shall be made other than in accordance with the terms of this Insurance Trust Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) **“Account Trustee”** has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (b) **“Appointed Representative”** has the meaning given in the Lenders' Direct Agreement.
- (c) **“Bank”** means [REDACTED].
- (d) **“Bonds”** means: [REDACTED].
- (e) **“Business Day”** has the meaning given in the Project Agreement.
- (f) **“Change of Authorization Event”** has the meaning given in Section 9(a)(ii) of this Insurance Trust Agreement.
- (g) **“Change of Authorization Notice”** has the meaning given in Section 9(b)(ii) of this Insurance Trust Agreement.
- (h) **“Default Notice”** means a written notice given by the Lenders' Agent to the Account Trustee and HMQ that an event of default under the Lending Agreements has occurred and is continuing.
- (i) **“Default Period”** means the period commencing on the date upon which the Account Trustee and HMQ receives a Default Notice and ending on the date upon which the Account Trustee and HMQ receives written notice from the Lenders' Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (j) **“Governmental Authority”** has the meaning given in the Project Agreement.

- (k) “**HMQ**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (l) “**Insurance Policies**” has the meaning given in Section 4 of this Insurance Trust Agreement.
- (m) “**Insurance Proceeds**” has the meaning given in Section 7(a) of this Insurance Trust Agreement.
- (n) “**Insurance Trust Account**” means [REDACTED].
- (o) “**Insurance Trust Agreement**” means this Insurance Trust Agreement.
- (p) “**Lenders**” has the meaning given in the Project Agreement.
- (q) “**Lenders’ Agent**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (r) “**Lenders’ Direct Agreement**” means the Lenders’ Direct Agreement made on or about the date hereof between HMQ, Project Co and the Lenders’ Agent.
- (s) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (t) “**Multiple Obligee**” means a multiple obligee under the applicable Bond.
- (u) “**Multiple Obligee Rider(s)**” means the multiple obligee rider(s) applicable to the Bonds pursuant to which Project Co, HMQ and the Lenders’ Agent are multiple obligees under the Bonds.
- (v) “**Notice Period**” has the meaning given in the Lenders’ Direct Agreement.
- (w) “**Order**” has the meaning given in Section 8(k) of this Insurance Trust Agreement.
- (x) “**Party**” means any of HMQ, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of HMQ, Project Co, the Lenders’ Agent and the Account Trustee.
- (y) “**Project**” has the meaning given in the Project Agreement.
- (z) “**Project Agreement**” means the project agreement made on or about the date hereof between HMQ and Project Co.

- (aa) “**Project Co**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (bb) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (cc) “**Replacement Project Agreement**” has the meaning given in the Lenders’ Direct Agreement.
- (dd) “**Replacement Project Co**” has the meaning given in the Lenders’ Direct Agreement.
- (ee) “**Step-In Notice**” has the meaning given in the Lenders’ Direct Agreement.
- (ff) “**Step-In Period**” has the meaning given in the Lenders’ Direct Agreement.
- (gg) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the original copy of the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

2. INTERPRETATION

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Insurance Trust Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be

5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed and time shall be of the essence hereof.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. BONDS AND INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the original copy of the Bonds and Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the original copy of the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of HMQ.
- (b) The Account Trustee shall not release the original copy of the Bonds or release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, HMQ, and Project Co agree that (x) if Project Co or the Lenders’ Agent receives the original copy of the Bonds, the Bonds will be enforced for the purpose of completion of the Project, and (y) if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Works in respect of which such Insurance Proceeds have been paid;
 - (ii) the completion of the Project; or

- (iii) indemnification for any HMQ loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Works.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if HMQ is entitled to indemnification under the Insurance Policies in respect of any loss incurred by HMQ, such related insurance proceeds are to be paid directly to HMQ by the Insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty it is understood and agreed that HMQ shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. DELIVERY OF ORIGINAL BONDS AND INSURANCE POLICIES

Project Co shall deliver, or cause to be delivered, to the Account Trustee an original copy of all Bonds Project Co is required to obtain under the Project Agreement and all originals of all insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the original copy of the Bonds and Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.

5. BONDS

- (a) If the Account Trustee and HMQ have received a Default Notice, and if Lender’s Agent presents to the Account Trustee (and the other parties to this Insurance Trust Agreement) a declaration that it or any person Lender’s Agent designates requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, and the Account Trustee has received written authorization from HMQ confirming Lender’s Agent’s right to receive the original copy of the Bonds, the Account Trustee shall provide the original copy of the Bonds to Lender’s Agent or such designated party, without the need for further investigation or inquiry by the Account Trustee, provided that, if at any time prior to the release of the original copy of the Bonds to Lender’s Agent or a person designated by it, pursuant to the foregoing, the Account Trustee receives a Change of Authorization Notice and HMQ presents to the Account Trustee a declaration that it or any person designated by it requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee

thereunder, the Account Trustee shall provide the same to HMQ or such designated party, without the need for further investigation or inquiry by the Account Trustee that HMQ or the designated party presenting the declaration is entitled to receive the original copy of the Bonds.

- (b) Project Co agrees to obtain or cause to be obtained from the Sureties any required amendment to the Bonds to provide for the foregoing provisions by way of amendment or replacement of the Multiple Obligee Rider now attached to and forming part of the Bonds.
- (c) HMQ, Lender's Agent and Project Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the Lender's Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of Lender's Direct Agreement and this Insurance Trust Agreement, the provisions of the Lender's Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

6. INSURANCE PROCEEDS

- (a) Subject to Section 3(d), the Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders' Agent or HMQ (the "**Insurance Proceeds**") as follows:
 - (i) in the case of third party legal liability or employer's liability insurance, to the relevant claimant in satisfaction of the claim, demand, proceeding or liability in respect of which such Insurance Proceeds are payable;
 - (ii) in the case of any property builders' risk "All Risk" insurance, boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
 - (A) if the Account Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is less than **[REDACTED]**, to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
 - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets

in respect of which such Insurance Proceeds have been paid in the same calendar month, is equal to or greater than [REDACTED], to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or

- (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as HMQ may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
- (iii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to HMQ, to be distributed to the parties entitled thereto.
- (b) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 5(a) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
 - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
 - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, HMQ, may at any time or from time to time direct in writing.
- (c) Each of Project Co, the Lenders' Agent and HMQ shall forthwith deliver, or cause to be delivered, to the Account Trustee, any and all Insurance Proceeds it received from time to time and is not otherwise entitled to in accordance with the terms of this Insurance Trust Agreement.
- (d) The Account Trustee shall deposit to the Insurance Trust Account all amounts that are paid over to it pursuant to the Insurance Policies or otherwise by Project Co, HMQ or the Lenders' Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance Trust Agreement.

7. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to HMQ all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as HMQ may from time to time request in writing.

8. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, HMQ or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, HMQ or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence

(including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.

- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, HMQ, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 8(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.
- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders or of HMQ or of Project Co, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 8(b).

- (f) Except as otherwise provided in Sections 8(c), 8(d) and 8(e):
- (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or HMQ for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process

which in any way affects the Trust Property held by it hereunder (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an “**Order**”), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders’ Agent, HMQ and Project Co.

- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee’s usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.

- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders’ Agent or, where the Account Trustee has received a Change of Authorization Notice, HMQ, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders’ Agent or, if the Account Trustee has received a Change of Authorization Notice, HMQ, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders’ Agent, or where the Account Trustee has received a Change of Authorization Notice, HMQ, to resolve such ambiguity or uncertainty.

- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by

the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by HMQ shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from HMQ.

- (o) Each of the Lenders' Agent and HMQ shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or HMQ, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or HMQ which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or HMQ, as applicable, pursuant to this Section 8(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or HMQ, as applicable, pursuant to Section 8(o).
- (q) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to Project Co and HMQ, or any shorter period of time as agreed to by Project Co and HMQ, notwithstanding the provisions of Section 8(a) of this Insurance Trust Agreement, provided that (i) the Account Trustee's written notice shall describe the

circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Account Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

9. LENDER'S AGENT AND HMQ RIGHTS TO DIRECT

- (a) Until the first to occur of:
- (i) the expiry of the Notice Period under the Lenders' Direct Agreement where no Step-In Notice has been delivered thereunder;
 - (ii) the expiry of the Step-In Period under the Lenders' Direct Agreement where:
 - (A) there has been no assignment to a Replacement Project Co;
 - (B) no Replacement Project Agreement has been entered into; or
 - (C) the Appointed Representative has not cured the Project Co Event of Default,

(each, a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders' Agent shall cease to be entitled, and HMQ shall thenceforth be entitled, to direct the Account Trustee with the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
 - (ii) the Lenders' Agent and HMQ shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that HMQ shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the original copy of the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

10. TERMINATION

- (a) Subject to the provisions of Section 10(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:

- (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements has been paid and performed in full and the Lenders has no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
 - (ii) the obligations of Project Co to HMQ have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon 60 days prior written notice to the other parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lenders' Agent, HMQ, and Project Co have entered into a replacement Insurance Trust Agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory to the Lenders' Agent, the Lenders and HMQ.

11. ASSIGNMENT

The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, HMQ and Project Co.

12. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Insurance Trust Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Insurance Trust Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to HMQ: Ontario Infrastructure and Lands
Corporation
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8

Fax: [REDACTED]

Attn: [REDACTED]

With a copy to

Ontario Infrastructure and Lands
Corporation
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8

Fax: [REDACTED]

Attn: [REDACTED]

If to the Lenders' Agent: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to Project Co: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to the Account Trustee: [REDACTED]
[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 12(b).

- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 12(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12(e), 12(f) and 12(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

13. AMENDMENTS

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

14. WAIVER

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

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

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

15. RELATIONSHIP BETWEEN THE PARTIES

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

16. ENTIRE AGREEMENT

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

17. SEVERABILITY

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

18. ENUREMENT

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

19. GOVERNING LAW AND JURISDICTION

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Insurance Trust Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all reasonable further documents necessary to give full effect to this Insurance Trust Agreement.

21. LANGUAGE OF AGREEMENT

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

22. COUNTERPARTS

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

23. COPYRIGHT NOTICE

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

[EXECUTION PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Insurance Trust Agreement as of the date first above written.

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation

THE TORONTO-DOMINION BANK

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation

PCL AQUATICS CENTRE 2012 LTD.

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

We have authority to bind the corporation

BNY TRUST COMPANY OF CANADA

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation

[EXECUTION PAGE FOR INSURANCE TRUST AGREEMENT]

SCHEDULE 31

PROJECT CO INFORMATION

Project Co represents and warrants that the following information is true and correct as of the date of this Project Agreement:

1. Name: PCL Aquatics Centre 2012 Ltd.
2. Date of Incorporation: June 18, 2012
3. Corporation Number: [REDACTED]
4. Directors:

Name	Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
5. Officers:

Name	Address	Office
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
6. Subsidiaries: [REDACTED]
7. Authorized and issued share capital:

Name and address of registered holder	Number and class of shares held	Amount paid up
[REDACTED]	[REDACTED]	[REDACTED]
8. Loans: [REDACTED]
9. Other outstanding securities (including description of type of securities, name and address of holder and amount): [REDACTED]

10. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co:

[REDACTED]

SCHEDULE 32

POST GAMES WORKS

1 DEFINITIONS

1.1 Definitions

- (a) In this Schedule 32, unless the context otherwise requires:
- (i) “**Anticipated PGW Final Completion Date**” has the meaning given in Section 3.10(a).
 - (ii) “**Anticipated PGW Substantial Completion Date**” has the meaning given in Section 3.6(a).
 - (iii) “**HMQ PGW Commissioning**” means the commissioning activities to be carried out by HMQ in accordance with the PGW Commissioning Program;
 - (iv) “**HMQ PGW Commissioning Period**” means the period during which HMQ is performing the HMQ PGW Commissioning.
 - (v) “**HMQ PGW Commissioning Tests**” means all commissioning tests required to be performed by HMQ pursuant to the PGW Final Commissioning Program.
 - (vi) “**Notice of Commencement of Post Games Works**” has the meaning given in Section 2.2(a);
 - (vii) “**PGW Commissioning Program**” means the program with respect to the commissioning of the Post Games Works to be jointly developed and agreed by HMQ and Project Co in accordance with Section 24.2 of the Project Agreement;
 - (viii) “**PGW Construction Defect**” has the meaning given in Section 6.1(b).
 - (ix) “**PGW Construction Latent Defect**” has the meaning given in Section 6.1(d);
 - (x) “**PGW Countdown Notice**” has the meaning given in Section 3.6(a).

- (xi) **“PGW Final Completion”** means the completion of the Post Games Works in accordance with the Project Agreement, including completion of all PGW Minor Deficiencies;
- (xii) **“PGW Final Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 3.11;
- (xiii) **“PGW Final Completion Date”** means the date on which PGW Final Completion is achieved as evidenced by the PGW Final Completion Certificate, as such date shall be stated therein.
- (xiv) **“PGW Final Completion Notice”** has the meaning given in Section 3.11(b).
- (xv) **“PGW Final Completion Countdown Notice”** has the meaning given in Section 3.10(a).
- (xvi) **“PGW Holdback”** means any amount which HMQ may withhold from the PGW Substantial Completion Payment under Section 3.7;
- (xvii) **“PGW Letter of Credit”** means a letter of credit delivered by Project Co in the form of Schedule 28C – Post Games Works Letter of Credit in the amount of [REDACTED];
- (xviii) **“PGW Legislative Holdback”** means the holdbacks to be maintained under Part IV of the CLA in respect of the Post Games Works;
- (xix) **“PGW Minor Deficiencies”** means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve PGW Substantial Completion and which would not materially impair HMQ’s use and enjoyment of the Facility (including the HMQ PGW Commissioning) or the performance of the Stakeholder Operations;
- (xx) **“PGW Minor Deficiencies List”** has the meaning given in Section 3.7(a).
- (xxi) **“PGW Substantial Completion”** means the point at which (i) the Post Games Works have been completed in accordance with the Project Agreement; (ii) the PGW Occupancy Permit has been issued; (iii) a certificate of substantial performance of the Post Games Works is published pursuant to Section 32(1) of the CLA; and (iv) all requirements for PGW Substantial Completion described in the PGW Commissioning Program, other than in respect of PGW Minor Deficiencies, have been satisfied;

- (xxii) “**PGW Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 3.4(d);
- (xxiii) “**PGW Substantial Completion Date**” means the date on which PGW Substantial Completion is achieved as evidenced by the PGW Substantial Completion Certificate, as such date shall be stated therein.
- (xxiv) “**PGW Substantial Completion Notice**” has the meaning given in Section 3.4(b);
- (xxv) “**PGW Substantial Completion Payment**” means [REDACTED];
- (xxvi) “**PGW Substantial Completion Payment Date**” means the 10th Business Day after the PGW Substantial Completion Date;
- (xxvii) “**PGW Warranty Period**” has the meaning given in Section 6.1(c);
- (xxviii) “**Post Games Works**” means that portion of the Works set out in Part 2, Section 2.1.3 of Schedule 15 – Output Specifications;
- (xxix) “**Post Games Works Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of the Facility following PGW Substantial Completion in compliance with Applicable Law;
- (xxx) “**Project Co PGW Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of the PGW Substantial Completion Certificate in accordance with the PGW Final Commissioning Program;
- (xxxi) “**Project Co PGW Commissioning Tests**” means all commissioning tests required to be performed by Project Co pursuant to the PGW Final Commissioning Program.
- (xxxii) “**Scheduled PGW Final Completion Date**” means 45 days following PGW Substantial Completion; and
- (xxxiii) “**Scheduled PGW Substantial Completion Date**” means December 23, 2015, as such date may be extended pursuant to Section 4.1(b) of this Schedule 32 and Section 30 of the Project Agreement.

2 POST GAMES WORKS

2.1 Post Games Works

- (a) Project Co shall complete and perform the Post Games Works in accordance with the Project Agreement.

2.2 Notice of Commencement of Post Games Works

- (a) HMQ shall issue a notice to Project Co indicating that the Facility is ready for the commencement of the Post Games Works (the “**Notice of Commencement of Post Games Works**”). HMQ shall issue the Notice of Commencement of Post Games Works following the Pan/Para Pan American Games and no later than September 1, 2015.
- (b) Project Co shall not be required to perform any Post Games Works prior to issuance of the Notice of Commencement of Post Games Works by HMQ. Project Co shall commence the Post Games Works no later than 30 days following the date of the Notice of Commencement of Post Games Works.

3 COMMISSIONING AND COMPLETION OF THE POST GAMES WORKS

3.1 Commissioning Activities

- (a) Project Co shall perform all Project Co PGW Commissioning, and shall facilitate the performance of all HMQ PGW Commissioning, pursuant to the PGW Commissioning Program.

3.2 PGW Commissioning Program

- (a) Project Co shall prepare a draft of the PGW Commissioning Program in respect of the Project Co PGW Commissioning and the HMQ PGW Commissioning and shall provide a copy thereof to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative not less than 30 days prior to the Scheduled PGW Substantial Completion Date.
- (b) The PGW Commissioning Program shall:
 - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co PGW Commissioning shall be completed to achieve:
 - (A) PGW Substantial Completion on or before the Scheduled PGW Substantial Completion Date; and
 - (B) PGW Final Completion on or before the Scheduled PGW Final Completion Date;

- (ii) describe the requirements, and the timing and sequence of such requirements, of the HMQ PGW Commissioning activities;
 - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
 - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on HMQ than those set out in the Outline Commissioning Program, unless otherwise agreed to by HMQ;
 - (v) include the names of the individuals or companies proposed to perform all Project Co PGW Commissioning;
 - (vi) include a schedule of each of the Project Co PGW Commissioning Tests and the HMQ PGW Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
 - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co PGW Commissioning and the HMQ PGW Commissioning;
 - (viii) provide for the re verification of systems following the HMQ PGW Commissioning;
 - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the PGW Commissioning Program or Applicable Law; and
 - (x) be consistent with the Final Commissioning Program implemented by Project Co prior to Substantial Completion.
- (c) HMQ shall provide Project Co with comments on the draft PGW Commissioning Program in accordance with Schedule 10 – Review Procedure, and Project Co shall revise the draft PGW Commissioning Program to the extent required by Schedule 10 – Review Procedure within 10 days of receipt of any comments from HMQ.
- (d) When agreed by the Parties, the PGW Commissioning Program shall replace the Outline Commissioning Program.

3.3 Commencement of Project Co PGW Commissioning

- (a) Project Co shall give 10 days' written notice to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative of the proposed commencement of the Project Co PGW Commissioning.
- (b) Project Co shall give at least 5 Business Days' notice to, and shall invite, the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative to witness, and to comment on, each aspect of the Project Co PGW Commissioning. Project Co shall, together with such notice, provide all information that the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative may reasonably require in relation thereto, including:
 - (i) tests proposed;
 - (ii) test methodology; and
 - (iii) expected test results.

3.4 PGW Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 5 Business Days' notice prior to the date upon which Project Co anticipates all requirements for PGW Substantial Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the "**PGW Substantial Completion Notice**") upon the satisfaction of all requirements for PGW Substantial Completion, which PGW Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for PGW Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the PGW Substantial Completion Certificate have been satisfied.
- (c) HMQ shall, within 5 Business Days after receipt of the PGW Substantial Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the PGW Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the PGW Substantial Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 3.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the PGW Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, to determine whether any PGW Minor Deficiencies exist, and to issue to HMQ and to Project Co either:

- (i) the PGW Substantial Completion Certificate, setting out in such certificate the PGW Substantial Completion Date and the PGW Minor Deficiencies List (if applicable) in accordance with Section 3.7; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the PGW Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 3.4(e)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co PGW Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co PGW Commissioning in a timely manner. Upon completion thereof, Project Co may give a further PGW Substantial Completion Notice and Sections 3.4(c) to (e), inclusive, shall be repeated until the PGW Substantial Completion Certificate has been issued.

- (f) The Independent Certifier’s decision to issue or not to issue the PGW Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the PGW Substantial Completion Payment Date, and a Dispute in relation to the PGW Substantial Completion Payment Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier’s decision to issue or not to issue the PGW Substantial Completion Certificate may be referred for resolution pursuant to the Schedule 27 – Dispute Resolution Procedure.

3.5 HMQ PGW Commissioning

- (a) The Parties acknowledge that the HMQ PGW Commissioning shall be performed both before and after the PGW Substantial Completion Date. Prior to PGW Substantial Completion, Project Co shall give HMQ full access to the Site, the Facility and all relevant parts thereof at such times as may be set out in the PGW Commissioning Program to enable HMQ to undertake the HMQ PGW

Commissioning in accordance with the PGW Commissioning Program. HMQ shall comply, and shall ensure that all HMQ Parties comply, with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Post Games Works in performing the HMQ PGW Commissioning.

- (b) HMQ acknowledges that, during the HMQ PGW Commissioning Period, Project Co and each Subcontractor will be active in the Facility in both the rectification of PGW Minor Deficiencies and the completion of Project Co PGW Commissioning, and HMQ shall take commercially reasonable steps to allow such activities to proceed in accordance with the PGW Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the HMQ PGW Commissioning Period, Project Co and each Subcontractor shall cooperate with HMQ and all HMQ Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the HMQ PGW Commissioning activities are able to be completed in the timeframe for completion set out in the PGW Commissioning Program.

3.6 PGW Countdown Notice

- (a) Project Co shall deliver a notice (the “**PGW Countdown Notice**”) to HMQ and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled PGW Substantial Completion Date) on which Project Co anticipates that PGW Substantial Completion will be achieved (the “**Anticipated PGW Substantial Completion Date**”).
- (b) The PGW Countdown Notice shall be delivered not less than 45 days prior to the Anticipated PGW Substantial Completion Date. If Project Co fails to deliver the PGW Countdown Notice not less than 45 days prior to the Scheduled PGW Substantial Completion Date, the Anticipated PGW Substantial Completion Date shall be deemed to be the same date as the Scheduled PGW Substantial Completion Date.
- (c) Project Co acknowledges and agrees that HMQ requires a minimum of 45 days’ notice prior to the Anticipated PGW Substantial Completion Date to prepare for the HMQ PGW Commissioning.
- (d) The Anticipated PGW Substantial Completion Date shall not be earlier than the Scheduled PGW Substantial Completion Date without the prior written consent of HMQ, in its sole discretion.

3.7 PGW Minor Deficiencies

- (a) In the event that PGW Minor Deficiencies exist when Project Co gives the PGW Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and HMQ, shall prepare a list of all PGW Minor Deficiencies (the “**PGW Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such PGW Minor Deficiencies. HMQ may withhold from the PGW Substantial Completion Payment a holdback amount that is [REDACTED] (the “**PGW Holdback**”), which holdback shall be held in an interest bearing account.
- (b) The PGW Minor Deficiencies List will contain the schedule for the completion and rectification of the PGW Minor Deficiencies. In determining the relevant time for rectifying PGW Minor Deficiencies, Project Co shall schedule the completion and rectification of PGW Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of HMQ’s use and enjoyment of the Facility or disruption of the Post Games Works.
- (c) The Independent Certifier must prepare the PGW Minor Deficiencies List in relation to the PGW Substantial Completion Notice before the PGW Substantial Completion Certificate is issued, but shall not withhold the PGW Substantial Completion Certificate by reason solely that there are such PGW Minor Deficiencies.
- (d) HMQ may, in its sole discretion, waive any requirement for PGW Substantial Completion, including with respect to Equipment, and the failure to meet any such requirement shall constitute a PGW Minor Deficiency.

3.8 Rectification of PGW Minor Deficiencies

- (a) Project Co shall, in consultation with the HMQ Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Post Games Works complete and rectify all PGW Minor Deficiencies within 30 days of the issuance of the PGW Minor Deficiencies List or such other period as the Independent Certifier may specify in the PGW Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of PGW Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

3.9 Failure to Rectify PGW Minor Deficiencies

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

- (i) within 30 days of the issuance of the PGW Minor Deficiencies List for all PGW Minor Deficiencies where no time or rectification or completion has been specified by the Independent Certifier, or
- (ii) within 10 days after the time for completion and rectification of any PGW Minor Deficiency where such a time has been specified in the PGW Minor Deficiencies List by the Independent Certifier,

HMQ may engage others to perform the work necessary to complete and rectify any such PGW Minor Deficiencies, at the risk and cost of Project Co, and HMQ may deduct such cost from the holdback amount and interest earned thereon.

- (b) Upon completion and rectification of each PGW Minor Deficiency, HMQ shall release to Project Co the amount of the PGW Holdback related to such PGW Minor Deficiency. Upon completion and rectification of all PGW Minor Deficiencies, HMQ shall release to Project Co the then remaining amount of the PGW Holdback, together with all interest accrued thereon. Where HMQ exercises its rights pursuant to Section 3.9(a), if the cost of such completion and rectification exceeds the amount of the PGW Holdback and interest, then Project Co shall reimburse HMQ for all such excess cost.

3.10 PGW Final Completion Countdown Notice

- (a) Project Co shall deliver a notice (the “**PGW Final Completion Countdown Notice**”) to HMQ and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled PGW Final Completion Date) on which Project Co anticipates that PGW Final Completion will be achieved (the “**Anticipated PGW Final Completion Date**”).
- (b) The PGW Final Completion Countdown Notice shall be delivered not less than 30 days prior to the Anticipated PGW Final Completion Date. If Project Co fails to deliver the PGW Final Completion Countdown Notice not less than 30 days prior to the Scheduled PGW Final Completion Date, the Anticipated PGW Final Completion Date shall be deemed to be the same date as the Scheduled PGW Final Completion Date.

3.11 PGW Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days’ notice prior to the date upon which Project Co anticipates all requirements for PGW Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the “**PGW Final Completion Notice**”) upon the satisfaction of all

requirements for PGW Final Completion, which PGW Final Completion Notice shall set out Project Co's opinion as to whether the conditions for issuance of the PGW Final Completion Certificate have been satisfied.

- (c) HMQ shall, within 5 Business Days after receipt of the PGW Final Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the PGW Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the PGW Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 3.11(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the PGW Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, and to issue to HMQ and to Project Co either:
 - (i) the PGW Final Completion Certificate, setting out in such certificate the PGW Final Completion Date; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the PGW Final Completion Certificate.
- (e) where the Independent Certifier has issued a report in accordance with Section 3.11(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co PGW Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co PGW Commissioning in a timely manner. Upon completion thereof, Project Co may give a further PGW Final Completion Notice and Sections 3.11(c) to (e), inclusive, shall be repeated until the PGW Final Completion Certificate has been issued.

- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the PGW Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

3.12 Effect of Certificates/Use

- (a) The issue of the PGW Substantial Completion Certificate and the PGW Final Completion Certificate, any taking over or use by HMQ of any part of the Facility under the terms of this Project Agreement, shall, in no way:
 - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the PGW Minor Deficiencies List; or
 - (ii) be construed as an approval by HMQ of the Post Games Works or the way in which they have been carried out.

4 SUPERVENING EVENTS

4.1 Delay Events

- (a) Project Co shall be eligible to make a claim for a Delay Event in accordance with Section 30 of the Project Agreement if a Delay Event causes a delay in achieving PGW Substantial Completion by the PGW Scheduled Completion Date.
- (b) Notwithstanding Section 4.1(a) of this Schedule 32, and notwithstanding that Project Co is successful in receiving an extension of time in accordance with Section 30.2(d) of the Project Agreement with respect to the Post Games Works, Project Co shall only be entitled to relief pursuant to Section 4.1(a) with respect to the achievement of PGW Substantial Completion by the PGW Scheduled Substantial Completion Date to the extent that Project Co is able to separately establish in accordance with Section 30 of the Project Agreement that Project Co has met the requirements of Section 30 with respect to an extension of the PGW Scheduled Substantial Completion Date. For clarity, to fulfill the requirements of this Section 4.1(b), it shall not be sufficient for Project Co establish that the events or circumstances cause a delay in the achievement of Substantial Completion.
- (c) Project Co shall be eligible to make a claim for a Compensation Event with respect to the Post Games Works in accordance with Section 31 of the Project Agreement if a Delay Event occurs in accordance with Section 4.1 of this Schedule 32.

5 PAYMENT

5.1 Payment

- (a) HMQ shall pay to Project Co the PGW Substantial Completion Payment, less the amount of the PGW Legislative Holdback and the PGW Holdback, on the PGW Substantial Completion Date.

5.2 Post Games Works Letter of Credit

- (a) HMQ shall be entitled to draw on the PGW Letter of Credit, from time to time, an amount equal to,
 - (i) damages suffered by HMQ as a result of Project Co's failure to complete the Post Games Work by the Scheduled PGW Substantial Completion Date;
 - (ii) damages suffered by HMQ as a result of a breach of Project Co's obligations with respect to the execution of the Post Games Work; or
 - (iii) damages suffered by HMQ as a result of Project Co's failure to correct and Make Good PGW Construction Defects in accordance with Section 6.1 of this Schedule 32, including any costs incurred by HMQ to correct such PGW Construction Defect.
- (b) HMQ shall release and deliver the full amount of the PGW Letter of Credit, less,
 - (i) the amount of any outstanding claims in relation to damages suffered by HMQ in relation to Section 5.2(a)(i), (ii) or (iii); and
 - (ii) the amount of any claims previously satisfied by a draw by HMQ on the PGW Letter of Credit, if any,

no later than 5 days after the PGW Substantial Completion Payment Date.

6 WARRANTY

6.1 Post Games Works Warranty

- (a) Project Co represents, warrants and covenants that:
 - (i) the Post Games Works shall conform to the requirements of the Project Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Ontario;

- (ii) the Post Games Works shall be free of defects, including design defects, errors and omissions; and
 - (iii) materials and equipment shall be of good quality and in compliance with this Project Agreement.
- (b) Any deficiency, defect or error in the Post Games Works or non-compliance with the requirements of this Project Agreement shall collectively be referred to as a “**PGW Construction Defect**”.
- (c) For a period of one year from the PGW Substantial Completion Date (the “**PGW Warranty Period**”), Project Co shall at its expense correct and make good all PGW Construction Defects arising in respect of the Post Games Works. For all work to correct deficient, defective and non-compliant Post Games Works completed within two years after the Substantial Completion Date, the Warranty Period shall be extended for a further one year from the date of the last work completed in respect of such correction.
- (d) In addition to the obligation to correct and Make Good PGW Construction Defects during the PGW Warranty Period, Project Co shall at its expense correct and Make Good any PGW Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Post Games Works (“**PGW Construction Latent Defect**”), provided HMQ gives Project Co written notice of the PGW Construction Latent Defect within the time frame applicable to such PGW Construction Latent Defect pursuant to the *Limitations Act, 2002* (Ontario).
- (e) The warranties described in this Section 6.1 shall cover labour and material, including, the costs of removal and replacement of covering materials. The warranties shall not limit extended warranties on any items of equipment or material called for elsewhere in the Output Specifications or otherwise provided by any manufacturer of such equipment or material.
- (f) The warranties described in this Section 6.1 are for the benefit of the City and UofT and will be administered by HMQ on behalf of City and UofT.