

PROJECT AGREEMENT

TO BUILD AND FINANCE

**TORONTO 2015 PAN-PARAPAN AMERICAN
GAMES FACILITIES**

**THE MARKHAM PAN AM CENTRE,
THE ETOBICOKE OLYMPIUM AND
THE PAN AM FIELD HOCKEY CENTRE**

PROPRIETARY AND CONFIDENTIAL

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SCHEDULE 1	DEFINITIONS AND INTERPRETATION
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SCHEDULE 3	COMPLETION DOCUMENTS
SCHEDULE 4	PROJECT CO INFORMATION
SCHEDULE 5	FORM OF LENDER'S DIRECT AGREEMENT
SCHEDULE 6	FORM OF CONSTRUCTION CONTRACT
SCHEDULE 7	KEY PERSONNEL
SCHEDULE 8	[REDACTED]
SCHEDULE 9	COMMISSIONING PROGRAM
SCHEDULE 10	HERITAGE GUIDELINES AND PROTOCOLS
SCHEDULE 11	CHANGE PROCEDURE
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SCHEDULE 13	INSURANCE AND PERFORMANCE SECURITY
SCHEDULE 14	DISPUTE RESOLUTION PROCEDURE
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SCHEDULE 18	PAYMENTS AND HOLDBACKS

SCHEDULE 19	LIST OF PROJECT CO PARTIES
SCHEDULE 20	FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT
SCHEDULE 21	COMMUNICATIONS PROTOCOL
SCHEDULE 22	FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR
SCHEDULE 23	FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT FOR CONSTRUCTION CONTRACT
SCHEDULE 24	INTENTIONALLY DELETED
SCHEDULE 25	LEGAL DESCRIPTION OF SITES
SCHEDULE 26	WARRANTY LETTER OF CREDIT
SCHEDULE 27	STANDBY LETTER OF CREDIT

THIS AGREEMENT is made as of the 6th day of September, 2012

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended.

(“**HMQ**”)

AND:

2338301 ONTARIO INC., a corporation incorporated under the laws of the Province of Ontario.

(“**Project Co**”)

WHEREAS:

- A. HMQ wishes to procure the finance and construction of the three Facilities for the Toronto 2015 Pan/Parapan American Games and for the future ownership and use by (i) Markham, in the case of the Markham Pan Am Centre; (ii) UofT, in the case of the Pan Am Field Hockey Centre; and, (iii) the City, in the case of the Etobicoke Olympium.
- 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 Work.
- C. The overriding priorities of HMQ in entering into and implementing this Project Agreement are to achieve complete construction of the Facilities in order to ensure full commercial operation of the Facilities well in advance of the scheduled commencement of the Toronto 2015 Pan/Parapan American Games.
- D. 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**”).
- E. 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 the investment of public money must be demonstrable.
 - 3. Appropriate public control/ownership must be maintained.
 - 4. Accountability must be maintained.
 - 5. All processes must be fair, transparent and efficient.

Signature Page to the Project Agreement

- 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:

<u>Schedule No.</u>	<u>Description</u>
Schedule 1	Definitions and Interpretation
Schedule 2	List of Consultants, Drawings and Specifications
Schedule 3	Completion Documents
Schedule 4	Project Co Information
Schedule 5	Form of Lender's Direct Agreement
Schedule 6	Form of Construction Contract
Schedule 7	Key Personnel
Schedule 8	[REDACTED]
Schedule 9	Commissioning Program
Schedule 10	Heritage Guidelines and Protocols
Schedule 11	Change Procedure
Schedule 12	Compensation on Termination
Schedule 13	Insurance and Performance Security
Schedule 14	Dispute Resolution Procedure
Schedule 15	Intentionally Deleted
Schedule 16	Risk Assessment Guidelines
Schedule 17	Form of Insurance and Bonding Trust Agreement
Schedule 18	Payments and Holdbacks
Schedule 19	List of Project Co Parties
Schedule 20	Form of Assignable Subcontract Agreement
Schedule 21	Communications Protocol
Schedule 22	Form of Performance Guarantee of Construction

<u>Schedule No.</u>	<u>Description</u>
Schedule 23	Guarantor Form of Assignable Subcontract Agreement for Construction Contract
Schedule 24	Intentionally Deleted
Schedule 25	Legal Description of Sites
Schedule 26	Warranty Letter of Credit
Schedule 27	Standby Letter of Credit

- (c) The intent of the Contract Documents is to include the labour, Products and services necessary for the performance of the Work by Project Co in accordance with these documents.
- (d) The documents comprising the Contract Documents 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 conflict, in which case Section 1.2 shall apply.
- (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 Consultant shall be unreasonably withheld or delayed. If it is specifically provided that a consent, approval or satisfaction may be given or withheld in the Sole Discretion of HMQ, it may be given or withheld in the sole, absolute and unfettered discretion of HMQ, which may be arbitrarily exercised without any requirement to provide reasons or explanations, whatsoever (“**Sole Discretion**”).
- (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) Neither the organization of the Specifications into divisions, sections and parts, nor the arrangement of Drawings shall control Project Co in dividing the Work among the Project Co Parties or in establishing the extent of the Work to be performed by a trade.
- (h) The Parties acknowledge and agree that this Project Agreement is in respect of three Facilities, namely the Markham Pan Am Centre, the Etobicoke Olympium and the Pan Am Field Hockey Centre. For clarity:
- (i) where the term “Facility” appears, it means that the applicable provision applies to each of the Markham Pan Am Centre, the Etobicoke Olympium and the Pan Am Field Hockey Centre;
 - (ii) where the term “Site” appears, it means that the applicable provision applies to each of the Sites as an individual Facility; and
 - (iii) where each of the following terms appear,

- (A) cash allowance;
- (B) “Products”;
- (C) “Equipment Subcommittee”;
- (D) “Work Committee”; or
- (E) “Construction Schedule”,

each term is independently applicable to each of the Markham Pan Am Centre, the Etobicoke Olympium and the Pan Am Field Hockey Centre as an individual Facility.

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 and the other Contract Documents, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently, unless otherwise expressly provided therein or herein:
 - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Change Orders shall govern and take precedence only over those specific provisions of this Project Agreement and the other Contract Documents 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) the Schedules to this Project Agreement;
 - (v) the addenda;
 - (vi) Divisions 0 and 1 of the Specifications;
 - (vii) Divisions 2 through 16 of the Specifications;
 - (viii) material and finishing schedules;
 - (ix) Drawings;
 - (x) drawings of larger scale shall govern over those of smaller scale of the same date;

- (xi) dimensions shown on drawings shall govern over dimensions scaled from drawings;
 - (xii) later dated documents shall govern over earlier documents of the same type;
 - (xiii) if an item is shown on one document, it shall be deemed to be part of the Work; and
 - (xiv) written descriptions and words shall govern over graphic depictions.
- (b) 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 Work, the provision that applies to the specific part of the Work shall govern for that specific part of the Work.
 - (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or HMQ, upon discovery of same, shall immediately give notice to the Consultant. The Consultant 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 Consultant pursuant to this Section 1.2 unless HMQ or Project Co disputes the decision of the Consultant, in which event such dispute may be referred for resolution in accordance with Schedule 14 – Dispute Resolution Procedure.

1.3 Conflict with Lender’s Direct Agreement

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Project Agreement and the Lender’s Direct Agreement, the Lender’s Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of HMQ set out in the Lender’s 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. 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 Lender’s 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, 7.1, 7.2, 9.4, 10.1(b), 37, 38, 39, 40, 41, 42, Schedule 1, Schedule 8, Schedule 14, Schedule 21, Schedule 22 and Schedule 27 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 27 – 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) Prior to Financial Close, Project Co shall deliver drafts of all documents referred to in Section 1 of Schedule 3 - Completion Documents to HMQ in order to give HMQ a reasonable opportunity to review such 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 3 - Completion Documents; and
 - (ii) HMQ shall deliver to Project Co the documents referred to in Section 2 of Schedule 3 - Completion Documents.
- (c) If Project Co fails to deliver to HMQ any of the documents referred to in Section 1 of Schedule 3 - 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 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 Work, 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) If HMQ fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 3 - 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 the Project Co Permits, Licences and Approvals; 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 (ii) (A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit. HMQ's obligation to return the Standby Letter of Credit shall be contingent on the receipt of a waiver, in form and substance satisfactory to HMQ, of any obligation or liability of HMQ, City, Markham, UofT, IO, the Government of Ontario, TO2015

and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

3. GUARANTEED PRICE AND ADJUSTMENTS

3.1 Guaranteed Price and Adjustments

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST, is \$80,542,111.00, and is equal to the sum of the Cost of the Work and the Cost of the Financing. The Cost of the Work 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 Submission Date.
- (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);
 - (ii) acknowledge that the Cost of the Work is subject to adjustment, where provided for, under any future post-award Addenda issued to Project Co; and
 - (iii) 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 Work 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 Work, unless such changes in the Work constitute a Change in the Scope of the Work. The Parties further agree that the Guaranteed Price will only be adjusted where the Contract Documents specifically and expressly refer 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 Contract Documents will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Change Order under Schedule 11 – Change Procedure.

3.2 Cash Allowances

- (a) The Guaranteed Price includes cash allowances as set out in the Specifications which shall be expended as HMQ directs through the Consultant by a Cash Allowance Disbursement Authorization.
- (b) Unless otherwise indicated, cash allowances cover the net cost to Project Co of services, Products, construction machinery and equipment, freight, unloading, handling, storage, installation, and other authorized expenses incurred in performing the Work stipulated under the cash allowances but do not include any HST payable by HMQ to Project Co.
- (c) Purchases from cash allowances must be authorized by written instructions issued by the Consultant as directed by HMQ and the form and methods of accounting for costs shall be agreed to by HMQ, the Consultant and Project Co before proceeding with the purchase. Cash allowance review will be part of the regular site meeting.
- (d) The Parties acknowledge that the following provisions apply to cash allowances included in the Guaranteed Price:
 - (i) Project Co Fee and not the cash allowances include Project Co's overhead and profit in connection with all cash allowances. Where costs under all cash allowances exceed, in the aggregate, the total amount of all cash allowances, Project Co shall be compensated for overhead and profit on the excess, as provided for in Schedule 11 – Change Procedure;
 - (ii) subject to Section 3.2(d)(v), the Guaranteed Price shall be adjusted by Change Order to provide for any aggregate excess or deficit in all cash allowances;
 - (iii) progress payments on account of Work authorized under cash allowances shall be included in the Consultant's monthly certificates for payment;
 - (iv) modifications to the Construction Schedule shall be prepared by Project Co and reviewed by the Consultant to show when items called for under cash allowances must be authorized and/or ordered so that the progress and completion of the Work are not delayed;
 - (v) any surpluses in a cash allowance may, at the election of HMQ, be used to fund other cash allowances or to fund Changes in the Scope of the Work elsewhere in this Project Agreement, as may be authorized under a Change Order or a Change Directive in accordance with Schedule 11 – Change Procedure, as the case may be, but without the imposition of overhead and profit; and
 - (vi) any surplus in the aggregate cash allowances remaining after the application of Section 3.2(d)(v) above, shall be credited to HMQ.

4. PAYMENT

4.1 General

- (a) Subject to the provisions of the Contract Documents, Section 3.1(d), the provisions of Schedule 18 – 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 Lender’s Direct Agreement, HMQ is not responsible for the payment of any Base Progress Payments nor any Legislative Holdbacks in respect thereof. In the event HMQ makes any Base Progress Payments, HMQ shall set-off such Base Progress Payments against amounts otherwise payable by HMQ hereunder, including any Interim Payment, the Substantial Completion Payment, payments with respect to Certified Cost to Complete or otherwise.

4.3 Interim Payments and Substantial Completion Payment

- (a) Subject to Sections 4.4 and 4.10, 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; 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.

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.

4.4 Direction of Interim Payments and Substantial Completion Payment

- (a) Project Co hereby irrevocably directs HMQ to make any Interim Payment and the Substantial Completion Payment, together with applicable HST, to Agent or as Agent may direct, as security for the Financing. HMQ shall pay the Interim

Payments or Substantial Completion Payment, as applicable, as directed by Project Co and shall not accept any redirection without the consent of 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 any Interim Payment or Substantial Completion Payment to 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 or Substantial Completion 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 *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

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 and to pay to Project Co the unpaid balance of the Guaranteed Price on the date provided in Section 6.4 of Schedule 18 – 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 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 and the balance of the Guaranteed Price 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 and the balance of the Guaranteed Price 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 *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

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 Consultant, 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 Agent or as the 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 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

Construction Lien Act (Ontario) pursuant to Section 10 of the *Construction Lien Act (Ontario)*.

4.7 Additional HMQ Payments

- (a) Unless otherwise provided in the relevant Change Order or Change Directive 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 18 – 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 *Construction Lien Act (Ontario)* pursuant to Section 10 of the *Construction Lien Act (Ontario)*.

4.8 Certified Cost to Complete

- (a) After HMQ has paid the Substantial Completion Payment, it shall thereafter continue to be responsible for payment to Project Co of the Certified Cost to Complete as at the Substantial Completion Payment Date on a progress payment basis in the manner and at the times contemplated in this Project Agreement. Project Co hereby irrevocably directs HMQ to make any payment of the Certified Cost to Complete to Agent, or as Agent may direct, as security for the Financing. HMQ shall pay the Certified Cost to Complete as directed by Agent and shall not accept any redirection without the consent of Agent. HMQ agrees to pay the Certified Cost to Complete as directed by Project Co. Project Co acknowledges and agrees that payment by HMQ of the Certified Cost to Complete in accordance with this Section 4.8 as Project Co may direct constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to pay the Certified Cost to Complete under the Project Agreement and in satisfaction of any trust obligation of HMQ with respect to such payments under Section 7 of the *Construction Lien Act (Ontario)* pursuant to Section 10 of the *Construction Lien Act (Ontario)*.

4.9 Compensation on Termination

- (a) If this Project Agreement is terminated pursuant to Sections 25.3(a)(i), 26.2(a)(ii), 27.2(a), 27.2(b) or 27.3(a), then:
 - (i) HMQ shall pay the Compensation Payment to Project Co, calculated and payable in accordance with Schedule 12 – 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 Agent, or as Agent may direct, as security for the Financing. HMQ shall pay the Compensation Payment as directed by Agent and shall not accept any redirection without the consent of Agent. HMQ will pay the Compensation Payment in accordance with the provisions of Schedule 12 – Compensation on Termination. Project Co acknowledges and agrees that payment by HMQ of the Compensation Payment to 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 *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

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 and Bonding 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 which are due to HMQ by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to Schedule 22 – Form of Performance Guarantee of Construction 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 which are due to Project Co by HMQ pursuant to the terms of this Project Agreement,

and are further limited with respect to the Debt Amount as described in Section 4.5 of Schedule 12.

4.14 Effect of Payment

- (a) Subject to Section 4.5 of Schedule 12 – Compensation on Termination, 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 Sites or the Facilities.
- (c) No later than three (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 Project 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 Projects 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 Work 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 Legislative Assembly of Ontario 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 Work or otherwise performing the Work 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 Work or otherwise performing the Work 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 Implementing Agreement.

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 Implementing Agreement 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 Implementing Agreement 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 13.13(c), no later than 60 days following receipt of an Equipment Invoice, HMQ shall pay to Project Co the Monthly Equipment Payment specified in the Equipment Invoice.

5. SITE INVESTIGATION AND DOCUMENT REVIEW

5.1 Concealed or Unknown Conditions

- (a) Project Co acknowledges that it has been provided with the Site Background Reports and has reviewed and is familiar with the Site Background Reports. If Project Co encounters conditions at the Sites which are not described in or are not properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information (including the Site Background Reports), or would not have been properly inferable, readily apparent or readily discoverable from inspections of the Sites carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date, Project Co will promptly notify the Consultant who will promptly investigate such conditions and who will then report to HMQ and Project Co with a finding as to whether such conditions were or were not described in or were or were not properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information or would or would not have been properly inferable, readily apparent or readily discoverable from Project Co’s

inspections of the Sites carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date.

- (b) If the conditions were described in or were properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information or would have been properly inferable, readily apparent or readily discoverable from Project Co's inspections of the Sites carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date, then Project Co shall not be entitled to any adjustment in the Guaranteed Price or in the Contract Time.
- (c) If the conditions were not described in or were not properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information, or would not have been properly inferable, readily apparent or readily discoverable from Project Co's inspections of the Sites carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date, and the conditions justify an increase in the Guaranteed Price or an extension of the Contract Time, or both, the Consultant shall issue appropriate instructions for a Change in the Scope of the Work as provided in Schedule 11 - Change Procedure.

5.2 Document Review

- (a) Project Co acknowledges having conducted a thorough review of the Contract Documents and has reported to the Consultant and HMQ any Design Issue found by Project Co in the Contract Documents during its review. If Project Co does discover any Design Issue in the Contract Documents, Project Co shall not proceed with the Work affected until Project Co has first complied with the provisions of Section 11.18. Project Co acknowledges that it is responsible for the risks assumed by Project Co in Sections 11.17 and 11.18 and that any additional costs resulting from such risks will form part of the Project Co Design Contingency. It is intended that the review of the Contract Documents conducted by Project Co pursuant to this Section 5.2(a) be carried out by Project Co and the Project Co Parties using their own experiences and expertise in accordance with the standard of care set out in Section 11.2(a)(viii) and in accordance with the representations and warranties of Project Co set out in Section 7.1.
- (b) Except as may constitute a Design Issue properly characterized as a Project Co Design Issue under Section 11.17, and except in respect of those Contract Documents which, under the terms of this Project Agreement, Project Co is required to prepare or produce, Project Co shall not be responsible for verifying that the Contract Documents are in compliance with Applicable Law.
- (c) If the Contract Documents are at variance with Applicable Law, or if, subsequent to the Submission Date, changes are made to Applicable Law which require modification to the Contract Documents, Project Co shall notify the Consultant in writing requesting direction immediately upon such variance or change becoming

known. The Consultant will make the changes required to the Contract Documents as provided in Article 21 below and Schedule 11 – Change Procedure.

- (d) If Project Co fails to notify the Consultant in writing, fails to obtain direction as required in Section 5.2(c), and performs Work knowing it to be contrary to any Applicable Law, Project Co shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses and damages attributable to its failure to comply with the provisions of such Applicable Law.

6. PROJECT DOCUMENTS

6.1 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.

6.2 Implementing Agreements

- (a) Project Co shall not:
 - (i) terminate or agree to the termination of all or part of any Implementing Agreement, except pursuant to Sections 19.3, 38.3 and 40.3 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 Implementing Agreement 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 Implementing Agreement, 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 Implementing Agreement, except in the circumstances referenced in Section 6.2(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 6.2(a)(i) or 6.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 6.2(a)(i) or 6.2(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 Implementing Agreement as described in Section 6.2(a)(i), or any agreement replacing all or part of any Implementing Agreement as described in Section 6.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 38.3.

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

6.3 Changes to Lending Agreements

- (a) Subject to the terms of the Lender's 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.

6.4 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.

7. REPRESENTATIONS AND WARRANTIES

7.1 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 formed and validly existing under the laws of the jurisdiction of its organization 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 Project Agreement and the Implementing Agreements to which it is a party, and to perform its obligations hereunder and thereunder;

- (ii) Project Co is in good standing with the Ministry of Consumer and Business Services of Ontario with respect to the filing of annual returns;
- (iii) Project Co has the requisite corporate power, authority and capacity to execute and deliver and perform this Project Agreement and the Implementing Agreements 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 Project Agreement to be done, executed, delivered or performed;
- (iv) Project Co has obtained all necessary Project Co Permits, Licences and Approvals required to commence the Work;
- (v) 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 Project Agreement or any of the Implementing Agreements to which it is a party, and such documents and agreements are in full force and effect as of the date hereof;
- (vi) this Project Agreement and the Implementing Agreements (when executed and delivered) to which Project Co is a party have been duly authorized, executed, and delivered by Project Co and constitute legal, valid, and binding obligations of Project Co, enforceable against Project Co 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;
- (vii) the authorization, execution, delivery and performance by Project Co of this Project Agreement and the Implementing Agreements to which it is a party does not violate or conflict with, or constitute a default under:
 - (A) its articles, by-laws or organizational documents, or any agreement relating to voting rights in Project Co or the management or control of the business or affairs of Project Co or any similar rights agreement binding on Project Co;
 - (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;
- (viii) no Project Co Event of Default has occurred and is continuing;
- (ix) all of the information regarding Project Co set out in Schedule 4 – Project Co Information, is true and correct in all material respects;
- (x) there are no actions, suits, proceedings, or investigations pending or, to the knowledge of its senior management, threatened against Project Co or 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 or any Implementing Agreements to which it is a party, 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 would result in any such material adverse effect or impairment;
- (xi) Project Co has carefully reviewed the whole of this Project Agreement, including all of the Contract Documents, 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 Work in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xii) Project Co is able to meet its obligations as they generally become due;
- (xiii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and has been assigned HST Number [REDACTED];
- (xiv) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Work in accordance with this Project Agreement;
- (xv) Project Co and the Project Co Parties, collectively, have extensive experience in the construction of sports facilities and other public buildings and have the necessary high degree of expertise and experience to perform the services required by the Contract Documents, to review and interpret the Contract Documents and to complete the Work in accordance with the standard of care set out in Section 11.2(a)(viii);
- (xvi) the manager or supervisory personnel Project Co has assigned to the Projects 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 Sites during the Request for Proposals process and an investigation and examination of the Contract Documents, 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 Sites, copies of any registered and unregistered agreements affecting the Sites, 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 Work and the Sites, the physical conditions of the Sites, and protocols, rules and regulations if any, possible delays in commencing the Work, 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 Work and to identify any Design Issues. Project Co has delivered to the Consultant requests for information in respect of all questions arising out of the foregoing inspections, investigations and examinations and in respect of each Design Issue identified. Based on this review, Project Co has established a Project Co Design Contingency adequate, in its judgement, to fund any change or delay cost that may arise as a result of any further Design Issue that may be identified and properly characterized as a Project Co Design Issue;
- (xix) Project Co has sufficient expertise available to it with the appropriate skills to review the Contract Documents in accordance with the standard of care set out in Section 11.2(a)(viii);
- (xx) Project Co has solicited bids from and will award Subcontracts for the Approved Subcontractor Work only to the applicable Approved Subcontractors and has not solicited bids from and will not award Subcontracts for the Approved Subcontractor Work except to the applicable Approved Subcontractors;
- (xxi) 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 Projects;
- (xxii) Project Co's only shareholder is Bondfield Construction Company Limited, being a corporation formed and validly existing under the laws of the Province of Ontario and each has all the requisite power and authority to own its properties and assets and to carry on its business as it is currently being conducted;

- (xxiii) 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
- (xxiv) no Restricted Person has directly or indirectly, an Economic Interest in Project Co, Project Co GP or the Project.

7.2 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 and any Implementing Agreement to which it is a party;
 - (ii) subject to Sections 7.2(a)(v)(C), (D) and (E), 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 7.2(a)(v)(C), **Error! Reference source not found.**(D) and (E), HMQ has the requisite power, authority and capacity to perform its obligations under this Project Agreement and the Implementing Agreements, 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 7.2(a)(v)(D), HMQ has obtained all necessary approvals to enter into and perform its obligations under this Project Agreement or any of the Implementing Agreements to which it is a party;
 - (v) this Project Agreement and the Implementing Agreement (when executed and delivered) to which HMQ is a party have been duly authorized, executed, and delivered by HMQ and constitute legal, valid, and binding obligations of HMQ, enforceable against HMQ in accordance with 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) 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
 - (E) 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 authorization, execution, delivery, and performance by HMQ of this Project Agreement and the Implementing Agreements to which HMQ is a party does not and will not violate or conflict with, or constitute a default under:
- (A) the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, or any regulation made in respect thereof;
 - (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 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 Projects; and
- (ix) HMQ has rights of use and access to, on and over the Sites and the Facilities or has the requisite power to obtain such rights that are sufficient

to enable HMQ to grant or to cause to be granted to Project Co the licence rights contemplated in Section 14.1.

8. CONSULTANT AND KEY PERSONNEL

8.1 Authority of the Consultant

- (a) The Consultant will have authority to act on behalf of HMQ only to the extent provided in the Contract Documents, unless otherwise modified by written agreement as provided in Section 8.1(b).
- (b) The duties, responsibilities, and limitations of authority of the Consultant as set forth in the Contract Documents shall be modified or extended only with the written consent of HMQ, Project Co and the Consultant.
- (c) If the Consultant's employment is terminated, HMQ shall immediately appoint or reappoint a Consultant whose status shall, upon notification to Project Co of such appointment or reappointment, be that of the former Consultant.

8.2 Role of the Consultant

- (a) The Consultant will provide administration of this Project Agreement as described in the Contract Documents during construction until issuance of the final certificate for payment, and subject to Section 8.1 and with HMQ's concurrence, from time to time until the completion of any correction of defects as provided in Article 35.
- (b) The Consultant will visit the Sites at intervals appropriate to the progress of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in general conformity with the Contract Documents.
- (c) If HMQ and the Consultant agree, the Consultant will provide at the Sites, one or more project representatives to assist in carrying out the Consultant's responsibilities. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in writing to Project Co.
- (d) The Consultant will provide to Project Co a complete set of the issued for construction Drawings and Specifications under the Contract Documents incorporating all Addenda issued by the Consultant from March 16, 2012 to the date of execution of this Project Agreement as soon as reasonably practical following such date of execution. The Consultant shall review the progress of the Work and the general conformance of the Work to the requirements of the Contract Documents. The Consultant shall review the submission of Project Co with respect to Work completed for the purposes of a progress payment application by Project Co under Schedule 18 - Payments and Holdbacks, to verify the extent of the completion of the Work in accordance with the schedule of

values and shall perform the other responsibilities of the Consultant under Schedule 18 - Payments and Holdbacks.

- (e) The Consultant will not be responsible for and will not have control, charge, or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the Work in accordance with Applicable Law or general construction practice. The Consultant will not be responsible for Project Co's failure to carry out the Work in accordance with the Contract Documents. The Consultant will not have control over, charge of, or be responsible for the acts or omissions of Project Co or any Project Co Party or any other persons performing portions of the Work.
- (f) The Consultant will be, in the first instance, the interpreter of the requirements of the Contract Documents and shall make findings as to the performance thereunder by both Parties to this Project Agreement. When making any interpretations or findings or performing any other functions or exercising any right or performing any obligation under the Contract Documents, the Consultant will act reasonably and in good faith and in accordance with generally accepted professional standards and will not show partiality to either HMQ or Project Co. Any dispute between HMQ and Project Co as to any decision, determination, direction, interpretation or finding of the Consultant or any other action taken by the Consultant pursuant to or in connection with the Contract Documents shall be resolved in accordance with the provisions of Schedule 14 – Dispute Resolution Procedure.
- (g) Claims, disputes, and other matters in question relating to the performance of the Work or the interpretation of the Contract Documents, shall be referred initially to the Consultant by notice in writing given to the Consultant and to the other Party for the Consultant's interpretation and finding which will be given by notice in writing to the Parties within a reasonable time.
- (h) The Consultant will have authority to reject Work which does not conform to the requirements of the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant will have authority to require inspection or testing of Work in accordance with Section 17.2, whether or not such Work is fabricated, installed, or completed. However, neither the authority of the Consultant to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Consultant to Project Co, any Project Co Party, or other persons performing any part of the Work.
- (i) When a request for information is submitted by Project Co in accordance with Section 11.2(a)(i), the Consultant will endeavour to provide a response to Project Co as soon as practical, taking into account the impact of the request for information on the critical path. If the request for information relates to an item on the critical path or is reasonably likely to affect an item on the critical path, the Consultant shall respond within 5 Business Days or such longer period of time mutually agreed to by the Consultant and Project Co. If the request for

information does not relate to an item on the critical path and is not reasonably likely to affect an item on the critical path, the Consultant and Project Co shall establish a mutually agreed response time that is consistent with the Construction Schedule.

- (j) The Consultant will review and take appropriate action upon Project Co's submittals such as shop drawings, Product data and samples, as provided in the Contract Documents.
- (k) The Consultant will prepare Contemplated Change Notices, Change Orders and Change Directives as provided in Schedule 11 - Change Procedure.
- (l) The Consultant will conduct reviews of the Work to determine the Substantial Completion Date, as provided in Section 16.2, and make determinations as required in respect of the Commissioning, as contemplated in Schedule 9.
- (m) All certificates issued by the Consultant shall be to the best of the Consultant's knowledge, information and belief. By issuing any certificate, the Consultant does not guarantee that the Work is correct or complete.
- (n) The Consultant will receive and review written warranties and related documents required by this Project Agreement and provided by Project Co and will forward such warranties and documents to HMQ for HMQ's acceptance.
- (o) Without limiting the generality of the responsibilities of the Consultant in accordance with this Section 8.2, the Consultant shall be responsible for reviewing and making a finding on Design Issues and issuing all final documentation in accordance with Section 11.18.
- (p) The Consultant shall cooperate with Lender's Consultant on a reasonable basis to facilitate the responsibilities of Lender's Consultant. No activities of Lender's Consultant under this Project Agreement shall limit in any manner the role and responsibility of the Consultant, except as expressly provided for in Sections 1.3 and 2.1 of Appendix 1 to Schedule 6 – Form of Construction Contract.
- (q) HMQ has retained HMQ's Project Manager to assist HMQ in the overall implementation of the Projects. HMQ's Project Manager shall provide services and interface with Project Co and the Consultant in relation to coordination of the Work for existing operations, schedule overview, and communicating decisions and directions of HMQ. HMQ may, upon notification to Project Co, appoint a new HMQ Project Manager whose status shall be that of the former HMQ Project Manager.
- (r) When HMQ, the Consultant or Project Co provides any written notice under this Project Agreement, they shall also provide a copy of the notice to each other and to HMQ's Project Manager, the Contractor, Agent and Lender's Consultant.

- (s) Notwithstanding the foregoing or anything to the contrary in this Project Agreement or the Contract Documents, the Consultant will not be responsible for the administration or interpretation of those aspects of this Project Agreement that are not related or do not pertain to the construction, installation, testing, Commissioning and completion of the Facility, and other like activities, and for greater certainty, will not have any responsibility or obligation with respect to the matters set out in Article 2, Article 7, Schedule 3 – Completion Documents, Schedule 4 – Project Co Information, Schedule 5 – Form of Lender’s Direct Agreement, Schedule 22 – Form of Performance Guarantee of Construction Guarantor or Schedule 23 – Form of Assignable Subcontract Agreement for Construction Contract of this Project Agreement, or for any matter related to the Financing.

8.3 Supervisors

- (a) Project Co shall employ competent supervisors and necessary assistants who shall be in attendance at the Sites while work is being performed, and shall specifically include a competent mechanical and electrical coordinator and equipment coordinator. Project Co acknowledges that the supervisors are Key Personnel in accordance with Section 8.4. Project Co’s supervisors shall, subject to Section 8.4, devote their full time during working hours to the Projects and remain at the Sites until the Substantial Completion of the Work is achieved and thereafter, such supervisors shall, subject to the provisions of Section 8.4, devote sufficient time and effort to the Projects as necessary until the final certificate of payment has been issued by the Consultant and all Minor Deficiencies have been rectified. Project Co shall include in its staff separate qualified mechanical and electrical coordinators who shall be responsible for (i) coordinating the general, mechanical and electrical shop drawings submitted by the Subcontractors and Suppliers for various trades or divisions of the Work; (ii) checking for any conflicts or interferences of the Work of one division or trade with another; (iii) checking for completeness of the shop drawings; and (iv) providing direction on any changes that may be required for compliance with the Contract Documents for submission to the Consultant and review of the shop drawings. The mechanical and electrical coordinators shall be active participants in the Commissioning and shall work closely with the Commissioning Agents in accordance with Schedule 9 – Commissioning Program. The mechanical and electrical coordinators shall be Key Personnel in accordance with Section 8.4.
- (b) The supervisor and project manager appointed by Project Co and identified in Schedule 7 – Key Personnel, shall represent Project Co at the Sites and shall have full authority to act on written instructions given by the Consultant, HMQ and/or HMQ’s Project Manager. Instructions given to the supervisor or the project manager shall be deemed to have been given to Project Co and both the supervisor and any project manager shall have full authority to act on behalf of Project Co and bind Project Co in matters related to this Project Agreement.

8.4 Key Personnel

- (a) Project Co and the Project Co Parties shall commit as many people and man-hours to the Projects as are needed, from time to time, to meet its obligations under this Project Agreement, including the supervisors, project manager and other field management personnel identified in the Contract Documents (the “**Key Personnel**”).
- (b) Project Co acknowledges that HMQ has relied on Project Co’s representations that the Key Personnel will be available to perform their part of the Work throughout the duration of this Project Agreement as provided for in Section 8.3(a). Key Personnel will be dedicated to the Projects on a full-time basis unless noted otherwise. Project Co agrees not to undertake other contracts or projects which could adversely affect or be in conflict with its performance of this Project Agreement.
- (c) Project Co represents that the persons identified in Schedule 7 are the Key Personnel.
- (d) Project Co shall not replace any of the Key Personnel identified in Schedule 7 without the prior written approval of HMQ. If any of the Key Personnel become unavailable to perform services in connection with this Project Agreement due to revisions to the Construction Schedule or ill health or death or discharge by Project Co, then Project Co shall promptly designate a replacement(s) who shall be subject to HMQ’s written approval. HMQ shall be entitled to complete information on any such replacement of the Key Personnel, including a current resume. Further, HMQ shall have the right, acting reasonably, to require Project Co to replace any of the Key Personnel.

9. LICENCE AND TITLE

9.1 Licence to Sites

- (a) Effective from the date set out in the Special Provisions for each Site and subject to this Project Agreement, HMQ hereby grants to Project Co and all Project Co Parties such non-exclusive licence rights of use and access to, on and over the Sites and Facilities as are required by Project Co to allow Project Co to perform the Work.
- (b) None of the rights granted pursuant to this Section 9.1 shall extend beyond the boundaries of any Site, or to any lands other than the Sites, other than easements and similar interests of HMQ which benefit the Sites, obtained after the date of this Project Agreement, to the extent the same are necessary for the Work.
- (c) The licence provided in this Section 9.1 with respect to each Site shall, subject to Section 35.2(b) automatically terminate on the Final Completion Date or upon the earlier termination of this Project Agreement in accordance with its terms.

- (d) Project Co agrees to: (i) provide hoarding around the licensed area outside of the Existing Facility in accordance with the Contract Documents; (ii) cordon off areas within the Existing Facility where Project Co is performing the Work required under the Contract Documents and as approved by the Consultant; and (iii) use such access to the Existing Facility, including loading docks, freight elevators and access routes as provided in the Contract Documents and as otherwise directed by the Consultant.

9.2 Non-Exclusive Licence of Sites

- (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 may occupy and possess the Sites and Facilities. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, except as permitted under this Project Agreement, disrupt the ongoing operation of any Facility.
- (b) Without limiting Section 9.2(a), Project Co acknowledges that HMQ may, from time to time, use or develop (including by way of subdivision), or permit the use or development of, portions of the Sites other than those portions of the Site contained within the building footprint of a Facility and those other portions of the Sites necessary for the performance of the Work. 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 Work, such use or development shall, subject to and in accordance with Schedule 11 – Change Procedure, result in a Change Order.

9.3 Naming and Signage

- (a) Project Co acknowledges that HMQ reserves and retains (i) all rights to designate the name for the Facilities and any part of the Facilities; (ii) all rights to signage in relation to the Sites and the Facilities; and (iii) all rights, trade-marks, naming or branding regarding the Facilities or any part of the Facilities (iv) all rights to install any TO2015, Pan American Games and Parapan American Games signage on the sites or on any part of the Facilities 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, not to be unreasonably withheld or delayed and which may take into consideration any applicable governmental guidelines including the guidelines set out in Schedule 21 – Communications Protocol, Project Co, the Project Co Parties and the Agent may, for the period prior to Substantial Completion, erect and maintain signage at or on the Sites (which may include such parties' logos and trade names) identifying their respective roles in connection with the construction of such Projects, 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 Sites and Facilities will be restricted as to content, timing, size and location because of the use of the Sites and Facilities for the Pan American Games and Parapan 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 9.3(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 Sites or Facilities 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, Markham, TO2015 or the Pan American Games or Parapan American Games or create any association with TO2015, the Pan American Games or Parapan 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.

9.4 No Interest in Sites or Facilities

- (a) Project Co acknowledges and agrees that, subject to the provisions of the *Construction Lien Act* (Ontario), in accordance with the principles of the IPFP Framework, neither Project Co nor Agent shall acquire any estate, right, title or ownership interest in any Site or any Facility or any other interest in land pursuant to this Project Agreement, the Implementing Agreements or otherwise. Notwithstanding any provision herein or in any of the Implementing Agreements to the contrary, the applicable Sponsor shall at all times retain the fee simple interest in and freehold title to its Site and its Project, unencumbered by any interest of Project Co or Agent. Project Co and Agent shall have access to the Sites and the Facilities under and subject to the licenses granted under this Article 9 and the Lender's Direct Agreement, respectively.

9.5 Non-Disturbance Agreement

- (a) If a Sponsor mortgages, charges or otherwise encumbers its Site, HMQ shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement executed by the mortgagee of the Site, permitting Project Co, Agent and Lender's Consultant to access and use the Site under the licence granted pursuant to Section 9.1(a) and the Lender's Direct Agreement, respectively, free from interference from the mortgagee or any person claiming by or through the mortgagee. This Section 9.5 shall not apply in respect of any portion of a Site or Facility used or developed pursuant to Section 9.2(b) if neither the licence granted pursuant to Section 9.1(a) nor the Work pertain to such portion of the Site.

10. HMQ RESPONSIBILITIES

10.1 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, pay for (including all fees and deposits) and as applicable, renew all HMQ Permits, Licences and Approvals;
 - (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 Work 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, Markham, 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, Markham's, 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 20.1(a).

11. PROJECT CO RESPONSIBILITIES AND CONSTRUCTION OBLIGATIONS

11.1 General Responsibilities, Standards and Contract Time

- (a) Project Co shall perform and complete the Work:
 - (i) so as to satisfy and in strict accordance with the Contract Documents;
 - (ii) in accordance with the Construction Schedule and in this regard, shall commence the Work no later than the day following Financial Close and, subject to adjustment as provided for in the Project Agreement: (a) achieve Substantial Completion of the Work by the Scheduled Substantial

Completion Date; and (b) achieve Final Completion by the Scheduled Final Completion Date;

- (iii) in compliance with Applicable Law, including giving all required notices;
 - (iv) in compliance with all Permits, Licences and Approvals and so as to preserve the existence and continued effectiveness of any such Permits, Licences and Approvals;
 - (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 athletic and aquatics facilities that are comparable to the Facilities;
 - (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, Markham, TO2015 and the HMQ Parties to comply with Applicable Law;
 - (ix) subject to the other provisions of this Project Agreement and to the extent reasonably practicable, in a manner which will not impair the ongoing operation of the Existing Facility; and
 - (x) in accordance with all other terms of this Project Agreement and the other Contract Documents.
- (b) Project Co shall furnish necessary certificates as evidence that the Work installed conforms with Applicable Law, including all certificates necessary for the Consultant 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 Work for which they are obtained.

11.2 General Construction Obligations

- (a) Without limiting Section 11.1, Project Co shall:
 - (i) have complete control of the Work and shall effectively direct and supervise the Work so as to ensure conformance with the Contract Documents, including the phasing or sequencing requirements for the Work set out in the Contract Documents. During the progress of the Work, subject to Section 8.2(i), Project Co shall endeavour to submit any request for information to the Consultant in a timely manner having regard to the Construction Schedule, and to identify in the request for information the timeframe within which a Supplemental Instruction is needed to ensure

there is no impact on the Construction Schedule, including whether and how the information requested affects the critical path. Project Co shall develop and implement protocols in accordance with the Specifications for the phasing or sequencing of the Work as set out in the Contract Documents, including the coordination of the work of HMQ's own forces or other contractors with the Work. 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 Work 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 Work of one begins and ends in relation to the Work of the other;

- (ii) be solely responsible for all construction means, methods, techniques, sequences and procedures used to undertake the Work and for coordinating the various parts of the Work under this Project Agreement and shall coordinate the Work 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 Sites, 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 Contract Documents. Where dimensions are not included or exact locations are not apparent, Project Co shall immediately notify the Consultant in writing and obtain written instructions from the Consultant before proceeding with any part of the Work affected thereby;
- (iv) ensure that no work other than the Work under this Project Agreement is constructed on the Sites by Project Co, any Project Co Party or any person for whom Project Co is responsible at law;
- (v) protect the Work from all of the elements, casualty and damage in accordance with and subject to the Contract Documents;
- (vi) in respect of plant, equipment, Products and materials incorporated in the Work, use plant, equipment, Products and materials that:
 - (A) are of a kind that are consistent with the Contract Documents;
 - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law, the Contract Documents and Good Industry Practice; and
 - (C) where they differ from the Contract Documents, 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 Work and carry out, perform, observe, fulfil and abide by all the covenants, agreements, stipulations, provisions and conditions mentioned and contained in the Contract Documents 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 athletics and aquatics facilities, 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 11.2(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 Contract Documents;
- (xi) comply with all rules and directives issued by HMQ regarding the continued operations of the Existing Facility so as not to disrupt the operations of HMQ, and except for any requirements of HMQ described in Section 11.2(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 Change Order or Change Directive, as applicable as provided in Schedule 11 – Change 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).

11.3 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 Work, 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, HMQ's Project Manager, the Consultant, or Lender's 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 Work or any part thereof.

11.4 Project Co Delay

- (a) It is agreed that one of the reasons Project Co was selected to perform the Work is Project Co's covenant that it will achieve Substantial Completion of the Work and Final Completion by the dates set out in Section 11.1(a)(ii) of this Project Agreement, and Project Co acknowledges that it is critical to HMQ that Substantial Completion and Final Completion be achieved by the prescribed dates set out in Section 11.1(a)(ii), and that time is of the essence of this Contract.

11.5 Permits, Licences and Approvals

- (a) Project Co shall:
 - (i) obtain, maintain, pay for (including all fees and deposits) and, as applicable, renew all Project Co Permits, Licences and Approvals which may be required for the performance of the Work, which payments, fees and deposits which were in force as at the Submission Date are included in the Guaranteed Price; and
 - (ii) give the required notices and comply with all Permits, Licences and Approvals in accordance with their terms.
- (b) Where Project Co Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on HMQ or any HMQ Party, Project Co shall not obtain such Project Co Permits, Licences and Approvals without the prior written consent of HMQ, not to be unreasonably withheld or delayed, provided that HMQ shall not be responsible for obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval. HMQ shall comply, or shall require compliance, with any conditions, liabilities or obligations that are imposed on HMQ or any HMQ Party by the requirements of any Project Co Permit, Licence or Approval obtained with HMQ's consent.
- (c) HMQ shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Project Co Permits, Licences and Approvals.

11.6 Safety

- (a) From the date set out in the Special Provisions for each Site until the Substantial Completion Date, Project Co shall:
 - (i) keep the Sites, the Work and the Facilities in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on any Site, in any Facility and in the immediate vicinity of any Site;
 - (ii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to each Site and each Facility of any persons or creatures not entitled to be there;
 - (iii) comply with Applicable Law relating to health and safety, including without limitation, the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and
 - (iv) perform or cause a Project Co Party to perform, all of the obligations of the “constructor”, and indemnify each of City, Markham, UofT, TO2150 and HMQ and any other Government Entity against any and all liabilities of the “constructor” under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto.
- (b) **[Intentionally Deleted].**
- (c) **[Intentionally Deleted].**
- (d) Prior to commencement of the Work, Project Co shall submit to HMQ:
 - (i) documentation of a valid WSIB clearance certificate and confirmation of Project Co’s or Contractor’s WSIB CAD-7 performance rating;
 - (ii) documentation of Project Co’s insurance coverage;
 - (iii) documentation of Project Co’s in-house safety-related programs; and
 - (iv) a copy of the Notice of Project filed with the Ministry of Labour.
- (e) Project Co hereby represents and warrants to HMQ that appropriate health and safety instruction and training have been provided to the Project Co Parties (to the extent same have access to the Sites), before the Work of such Project Co Party is commenced and agrees to provide to HMQ, if requested, proof of such instruction and training.
- (f) Project Co shall tour the appropriate area to familiarize itself with the Sites prior to commencement of the Work.

- (g) Project Co shall perform the Work in accordance with its corporate safety-related programs and Applicable Law. Project Co shall have a competent supervisor on site as required under OHSA at all times.
- (h) Prior to receiving payment on each of the Completion of the Interim Work, Substantial Completion, Final Completion and the final certificate for payment, and for each application for payment, Project Co shall provide a clearance certificate, obtained by the applicable Project Co Parties from the WSIB, indicating compliance with workers' compensation legislation, including payments due thereunder. At any time during the term of this Project Agreement, when requested by HMQ, Project Co shall provide such evidence of compliance by Project Co and/or the applicable Project Co Parties.

11.7 Minimize Disturbance and Work in Existing Building

- (a) Project Co acknowledges that in addition to the use of Good Industry Practice, the Contract Documents include instructions as to the manner in which the Work is to be performed in order to minimize disturbance to the Existing Facility, including with respect to noise, dust control, access to the Site and the particular requirements in respect of those portions of the Work which are to be carried out within the Existing Facility and in respect of those portions of the Work where connections are being made to the Existing Facility. Project Co further acknowledges that the Cost of the Work includes all premium time and overtime that may be required to perform the Work in accordance with the Contract Documents and Good Industry Practice. Project Co shall develop and implement protocols in furtherance of the foregoing in accordance with the Specifications.
- (b) Project Co recognizes that part of the Work consists of the renovation of existing buildings and structures and acknowledges that it has reviewed the Contract Documents. Project Co shall use all methods required to comply with the instructions set out in the Contract Documents during the performance of the Work. Project Co shall fully cooperate with HMQ in complying with said instructions during the performance of the Work. Any costs incurred by Project Co in complying with said instructions shall be part of the Guaranteed Price.

11.8 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, Markham and TO2015, under this Project Agreement with respect to Work 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 Contract Documents and without limiting the generality of the foregoing, shall advise the Project Co Parties of the transfer to Project Co of the design coordination, design errors and omissions and design completion risk as set out in Section 11.17;

- (ii) incorporate the relevant terms and conditions of the Contract Documents into all contracts or written agreements with Project Co Parties, including those specified in Article 35; 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 19 – List of Project Co Parties is a list of all Project Co Parties which Project Co has engaged or will engage for the performance of the Work 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 Consultant, provided however, that if the Consultant reasonably objects to any change to a mechanical, electrical, swimming pool, or turf Subcontractor that is a Project Co Party, then Project Co shall select an alternative replacement mechanical, electrical, swimming pool or turf Subcontractor to which the Consultant 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 Contract Documents 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 other HMQ's other contractors or the work of HMQ's own forces related to the Projects and, if such assignment results in an increase in Project Co's cost or a delay in the Construction Schedule, the same shall be addressed or compensated for in accordance with the provisions of Schedule 11 – Change Procedure. Notwithstanding the foregoing provisions of this Section 11.8(c), Project Co shall use the Project Co Parties that have been identified in the Contract Documents for specific portions of the Work 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 Construction Schedule.
- (d) Project Co hereby agrees to contractually obligate the Contractor to enter into the Assignable Subcontract Agreement for Construction Contract and, subject to Section 11.8(e), to cause the Contractor to cause each of the other Project Co Parties, including Suppliers leasing any construction machinery and equipment, to enter into the Assignable Subcontract Agreement, to evidence that (i) Agent or HMQ shall have the right to cure any default by the 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 HMQ's or Agent's option, to HMQ or to Agent or to such other contractor as HMQ or Agent may designate, which rights of assignment shall only be exercised by HMQ, such Agent or such other contractor in the event that this Project Agreement is terminated as a result of Project Co's default.

- (e) In respect of contracts with Project Co Parties having a total estimated cost of \$[REDACTED] or less, neither Project Co nor the Contractor is obliged to enter into an Assignable Subcontract Agreement, provided that Project Co shall cause the 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 Agent or to such other contractor as HMQ or Agent may designate, which rights shall only be exercised by HMQ, Agent or such other 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 Work being specified under the heading of more than one trade section, Project Co shall decide which of these trades is to perform the Work.

11.9 Labour and Products

- (a) Unless otherwise stipulated elsewhere in the Contract Documents 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 Work. Project Co shall arrange for delivery of materials and equipment to the Projects in accordance with the Construction Schedule.
- (b) Products shall be free from faults, improper workmanship and defects and in conformance with the Contract Documents. 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 Consultant.
- (c) Project Co shall (i) maintain good order and discipline among all personnel engaged in respect of the Work and shall promote and maintain a good relationship with all such personnel; (ii) not employ any persons to perform the Work who is/are incompatible with other labour employed by Project Co in connection with the Work; and (iii) act promptly on all problems of labour relations including grievances and jurisdictional disputes. Project Co shall not employ on the Work 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 Sites any employee who represents a threat to the safety or progress of the Projects or persons on the Projects or whose conduct may be considered as harassment in the workplace of any person who is an employee of HMQ or a Sponsor 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 Sites satisfactory to HMQ.

- (f) Title to the Products shall pass to HMQ upon payment thereof or upon incorporation into a Project, whichever occurs first. For greater certainty, title to Products delivered but not installed, shall pass to HMQ when paid for.
- (g) Project Co shall promptly execute and deliver to HMQ from time to time, as HMQ may require, any further documentation required to identify, evidence, perfect or protect HMQ's interest in the Products, including any registrations pursuant to the *Personal Property Security Act* (Ontario). Subject to Section 11.19(d), notwithstanding the foregoing, Project Co shall continue to bear the risk of loss or damage to any Products until the Substantial Completion Date.

11.10 Documents at the Sites

- (a) Project Co shall keep one copy of the current digital files of the Contract Documents, Construction Schedule, submittals, reports, Supplementary Instructions, Change Orders, Contemplated Change Notices, Change Directives, Design Issue resolution documents, partnering documents, records of meetings and all other documents necessary for the administration of the Projects at each Site, all in good order and available to HMQ, Lender's Consultant and the Consultant. Project Co shall keep a daily log available to HMQ, Lender's Consultant and the Consultant at all times.
- (b) Project Co shall, where practical, keep one copy of current standards and manufacturers' literature specified in the Contract Documents at each Site in good order and available to the Consultant and Lender's Consultant and their representatives for the duration of the Work.

11.11 Shop Drawings

- (a) Project Co shall provide shop drawings as described in the Contract Documents or as the Consultant may reasonably request.
- (b) Project Co shall review all shop drawings prior to submission to the Consultant. Project Co represents by this review that:
 - (i) Project Co has determined and verified all field measurements, field construction conditions and Product requirements, or will do so; and
 - (ii) Project Co has checked and coordinated each shop drawing with the requirements of the Work and of the Contract Documents.

Project Co shall confirm this review of each shop drawing by stamp, date and signature of the person responsible. At the time of submission, Project Co shall notify the Consultant in writing of any deviations in the shop drawings from the requirements of the Contract Documents.

- (c) At the commencement of the Work, Project Co shall prepare, for the review and acceptance of the Consultant, a schedule (the “**Shop Drawing Schedule**”) of the dates for submission and return (which, in no event, will be less than 10 Business Days following submission and 5 Business Days following any re-submission or such shorter period as may be mutually agreed between Project Co and the Consultant) of shop drawings to ensure there is no impact on the Construction Schedule, including, on a reasonable basis, in respect of the work of HMQ’s own forces or HMQ’s other contractors, as set out in the Contract Documents or as HMQ has otherwise advised Project Co. The Shop Drawing Schedule shall provide for the submission of shop drawings in an orderly sequence and sufficiently in advance to allow for the Consultant’s proper review and so as to cause no delay to the Work or the work of HMQ’s other contractors or HMQ’s own forces which has been incorporated in the Construction Schedule. Project Co shall submit shop drawings to the Consultant and the Consultant shall review and return shop drawings in accordance with the Shop Drawing Schedule. If, at any time, Project Co submits an unusually large number of shop drawings not contemplated by the Shop Drawing Schedule, such that the Consultant cannot process these drawings within the time permitted in Shop Drawing Schedule, the Consultant will, within 5 Business Days of receipt of such shop drawings, provide Project Co with an estimate of the time necessary for processing such shop drawings. Project Co shall periodically re-submit the Shop Drawing Schedule to correspond to changes in the Construction Schedule for the review and acceptance of the Consultant. Shop drawings which require approval of a Governmental Authority having jurisdiction shall be submitted first to the Consultant for its approval in accordance with the approval process set out in this Section 11.11(c) prior to submission by Project Co to such authority. Should the Consultant’s review of such shop drawings require significant changes to such shop drawings, Project Co shall revise same and resubmit to the Consultant prior to submitting to the Governmental Authority having jurisdiction in accordance with the Shop Drawing Schedule.
- (d) Project Co shall submit shop drawings in the form specified or as the Consultant may direct. The Consultant will review and return shop drawings in accordance with the provisions of Section 11.11(c). The Consultant’s review is for conformity to the design concept and for general arrangement only. The Consultant’s review shall not relieve Project Co of responsibility for errors or omissions in the shop drawings or for meeting all requirements of the Contract Documents.
- (e) Upon the Consultant’s request, Project Co shall revise and resubmit shop drawings which the Consultant rejects as inconsistent with the Contract Documents unless otherwise directed by the Consultant. Project Co shall notify the Consultant in writing of any revisions to the re-submission other than those requested by the Consultant.

- (f) Only shop drawings indicated as 'Reviewed' or 'Reviewed as Noted', or words of similar intent, and bearing the Consultant's review date and initials, shall be used at the Sites or for the manufacture or fabrication of Products.
- (g) The review of shop drawings by the Consultant does not authorize a change in the Guaranteed Price or Contract Time.
- (h) Project Co shall prepare and maintain record drawings which shall consist of the shop drawings and Specifications revised by Project Co during the Work, showing changes to the shop drawings and Specifications, which record drawings shall be kept current by Project Co and made available to the Consultant and Lender's Consultant for review with each application for a progress payment.
- (i) All required actions by Project Co under this Section 11.11 shall be taken promptly so as not to cause any delay in the Construction Schedule.

11.12 Use of the Work

- (a) Project Co shall confine construction machinery and equipment, storage of Products, and operations of employees to limits indicated by Applicable Law or the Contract Documents and shall not unreasonably encumber the Work with Products.
- (b) Project Co shall not load or permit to be loaded any part of the Work with a weight or force that will endanger the safety of the Work.
- (c) HMQ shall have the right to enter and occupy the Work 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 of the Work, as provided for in the Construction Schedule. Project Co shall cooperate with HMQ, HMQ's Project Manager and the Consultant, so as to permit HMQ 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 Work or in any way relieve Project Co from responsibility to complete this Project Agreement.

11.13 Cutting and Remedial Work

- (a) Project Co shall do the cutting and remedial work required to integrate the several parts of the Work in a cohesive manner.
- (b) Project Co shall coordinate the Work 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 Work.

11.14 Cleanup

- (a) Project Co shall maintain the Work 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 Work 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 Work.
- (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 the waste products and debris and withhold an amount equal to such cost, in an amount that the Consultant shall determine to be reasonable.

11.15 Project Co Attending Meetings

- (a) Project Co shall attend meetings with respect to the Work as may be directed by the Consultant. 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 behalfs.

11.16 Defective Work

- (a) Project Co shall promptly remove from the applicable Site and replace or re-execute defective Work that fails to conform to the Contract Documents whether or not the defective Work has been incorporated in the Work 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 Work shall be at Project Co's expense. Project Co shall rectify, in a manner acceptable to the Consultant, all defective Work and deficiencies throughout the Work, whether or not they are specifically identified by the Consultant, and Project Co shall prioritize the correction of any defective Work so as not to interfere with or derogate from the Construction Schedule, provided that Project Co shall prioritize the correction of any defective Work 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 Consultant it is not expedient to correct defective Work or Work not performed as provided in the Contract Documents, 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 Contract Documents. If HMQ and Project Co do not agree on the difference in value, they shall refer the matter to the Consultant for a determination and the determination will be issued as a Change Order.

11.17 Project Co Design Contingency

- (a) The Cost of the Work and the Guaranteed Price include the Project Co Design Contingency.
- (b) Subject to HMQ's responsibilities under Section 11.17(c), the Project Co Design Contingency shall apply to any and all changes, extras or costs attributable to:
 - (i) Design Issues which are properly inferable, readily apparent or readily discoverable from the Contract Documents as forming part of the Work or contrary to Good Industry Practice as it relates to the constructability of the Work which Design Issues shall, for greater certainty, be limited to those Design Issues arising under, or with respect to, or in connection with, matters requiring clarification, information and/or further instruction in the Contract Documents that do not constitute negligent design or engineering;
 - (ii) Design Issues which are related to design coordination and are caused by inconsistencies, conflicts, exclusions, interferences or gaps that are properly inferable, readily apparent or readily discoverable from the Contract Documents, and particularly, the plans, Drawings and Specifications; and
 - (iii) Design Issues which are related to design completion and where the design intent is properly inferable, readily apparent or readily discoverable from the Contract Documents and has not been fully detailed or specified,

(collectively, the "**Project Co Design Issues**"). 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 Contractor's experience and the investigations, inspections and examinations of the Sites carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Date, as represented by Project Co to

HMQ in Sections 7.1 and 5.2(a) and having regard to the standard of care required under Section 11.2(a)(viii).

- (c) HMQ shall, as between itself and Project Co, assume full responsibility and liability for the use of the design by Project Co, in all respects other than Project Co Design Issues, including the core efficacy and functionality of the design, both in terms of ability and capacity to:
 - (i) produce the desired effect in terms of the building systems, including the structural, mechanical, electrical and information technology systems;
 - (ii) meet the requirements of the Building Code in effect at the time the Building Permit was issued, but this shall not relieve Project Co of the obligation to provide for all standard Building Code requirements applicable to the installation of the Work, whether or not set out in the Specifications; and/or
 - (iii) conform to the functional programming needs of HMQ.

In assessing whether a Design Issue is properly characterized as the responsibility of HMQ, the Consultant shall have regard to the Risk Assessment Guidelines, which provide examples of the types of issues that may be encountered and the findings the Consultant would make regarding the categorization of each as a Project Co Design Issue or a Design Issue for which HMQ is responsible. The Contractor and HMQ acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (d) Subject to and without limiting HMQ's responsibilities under Section 11.17(c) and provided that HMQ fulfills its responsibilities under Section 11.17(c), Project Co shall deliver fully functional and operational systems and all components shown in the Drawings shall be provided as fully complete and fully functional systems in accordance with the Contract Documents. Project Co shall verify the dimensions shown in the drawings before the layout of the Work.

11.18 Procedure for Addressing Design Issues

- (a) When Project Co identifies a Design Issue, Project Co shall promptly notify the Consultant in writing, under a request for information, of such Design Issue and may propose a resolution to the Design Issue. Upon receipt of Project Co's notification and proposed resolution, if any, the Consultant shall:
 - (i) if a proposed resolution is provided by Project Co, proceed to review the proposed resolution and either:
 - (A) confirm that such resolution is acceptable (and a resolution will be considered acceptable if such resolution meets the requirements of the first sentence of Section 11.18(c));

- (B) reject the proposed resolution and request that additional information be provided or request that an alternative resolution be proposed by Project Co; or
 - (C) reject the proposed resolution and provide instructions to Project Co setting out an acceptable resolution;
- (ii) if no resolution is proposed by Project Co, provide instructions to Project Co setting out an acceptable resolution.

As soon as the Consultant has confirmed to Project Co an acceptable resolution to the Design Issue, Project Co shall proceed to implement such acceptable resolution. If the Consultant characterizes the Design Issue as a Project Co Design Issue, the Consultant shall issue a Supplemental Instruction and the cost, if any, of implementing the acceptable resolution to the Design Issue shall form part of the Project Co Design Contingency. If the Consultant characterizes the Design Issue as a matter that is not a Project Co Design Issue, the Consultant shall request that HMQ issue a Contemplated Change Notice or a Change Directive, as applicable in the circumstances, and the cost, if any, of implementing the acceptable resolution to the Design Issue and the additional time, if any, required to implement the acceptable resolution to the Design Issue shall be documented in a Change Order. If either HMQ or Project Co is of the view that the Design Issue is not properly characterized by the Consultant, or if either HMQ or Project Co does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, then either HMQ or Project Co may dispute the characterization of the Design Issue or the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, pursuant to Section 11.18(d). The Consultant's response to any Design Issue will be provided in accordance with Section 8.2(i). Any professional design services of the Consultant, whether to issue the Supplemental Instruction, Contemplated Change Notice, Change Directive or otherwise, will be an HMQ cost. In assessing whether a Design Issue is properly characterized as a Project Co Design Issue, HMQ and Project Co shall have regard to the Risk Assessment Guidelines. Project Co and HMQ acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (b) When the Consultant identifies a Design Issue, the Consultant shall promptly notify Project Co of such Design Issue in writing as a Supplemental Instruction or by providing a Contemplated Change Notice or a Change Directive, as applicable in the circumstances. If issued as a Supplemental Instruction, Project Co may review the Design Issue and propose an alternative resolution to the Consultant. Upon receipt of Project Co's proposed alternative resolution, the Consultant shall proceed to review the proposed alternative resolution and either:
- (i) confirm that such resolution is acceptable (and a resolution will be considered acceptable if such resolution meets the requirements of the first sentence of Section 11.18(c));

- (ii) reject the proposed resolution, request that additional information be provided or request a further alternative resolution be proposed by Project Co; or
- (iii) reject the proposed resolution and provide instructions to Project Co setting out an acceptable resolution.

As soon as the Consultant has confirmed to Project Co an acceptable resolution to the Design Issue, Project Co shall proceed to implement such acceptable resolution. If the Consultant characterizes the Design Issue as a Project Co Design Issue, the Consultant shall issue a Supplemental Instruction and the cost, if any, of implementing the acceptable resolution to the Design Issue shall form part of the Project Co Design Contingency. If the Consultant characterizes the Design Issue as a matter that is not a Project Co Design Issue, the Consultant shall request that HMQ issue a Contemplated Change Notice or a Change Directive, as applicable in the circumstances, and the cost, if any, of implementing the acceptable resolution to the Design Issue and the additional time, if any, required to implement the acceptable resolution to the Design Issue shall be documented in a Change Order. If either HMQ or Project Co is of the view that the Design Issue is not properly characterized by the Consultant or if either HMQ or Project Co does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, either HMQ or Project Co may dispute the characterization of the Design Issue or the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, pursuant to Section 11.18(d). The Consultant's response shall be provided in accordance with the provisions of Section 8.2(i). Any professional design services of the Consultant, whether to issue the Supplemental Instruction, Contemplated Change Notice or Change Directive or otherwise, will be an HMQ cost. In assessing whether a Design Issue is properly characterized as a Project Co Design Issue, HMQ and Project Co shall have regard to the Risk Assessment Guidelines. Project Co and HMQ acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (c) An acceptable resolution to a Design Issue shall be a resolution that (i) in all respects is consistent with the design intent and quality standards of the Contract Documents; (ii) will not interfere with the efficient operations of HMQ; and (iii) will not increase the life cycle costs of the Facility. If the resolution to a Design Issue proposed by the Consultant is of a higher quality, not consistent with the design intent and quality standards of the Contract Documents, Project Co will, subject to and in accordance with Schedule 11 – Change Procedure, be entitled to a Change in the Scope of the Work.
- (d) If either HMQ or Project Co is of the view that a Design Issue is not properly characterized by the Consultant or does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, either HMQ or Project Co may dispute the characterization of the Design Issue or the Consultant's decision regarding what constitutes an acceptable resolution to the

Design Issue, and such issues will be determined in accordance with Schedule 14 – Dispute Resolution Procedure. Project Co acknowledges that notwithstanding any such dispute, the Consultant may issue a Supplemental Instruction to Project Co for a resolution to the Design Issue and Project Co shall proceed to implement such resolution to the Design Issue in accordance with the Supplemental Instruction issued by the Consultant, pending resolution of the dispute and subject to Section 1.3 of Schedule 14 – Dispute Resolution Procedure.

- (e) The Project Co Design Contingency is included in the Cost of the Work and the Guaranteed Price and Project Co is solely responsible for all costs to remedy all Design Issues that are properly characterized as Project Co Design Issues, and Project Co will not be entitled to any additional compensation or change in the Contract Time with respect to any and all Design Issues that are properly characterized as Project Co Design Issues, subject, in each case, to Section 11.18(c), and to the responsibility of HMQ, at HMQ's cost, for the provision of professional design services as specifically provided in Sections 11.18(a) and 11.18(b). Subject to the preceding sentence, and notwithstanding anything to the contrary in this Project Agreement, Project Co acknowledges and agrees that it shall have no recourse against HMQ in respect of any Project Co Design Contingency or any costs directly or indirectly arising out of a Design Issue that is properly characterized as a Project Co Design Issue. Project Co is not accountable to HMQ for the expenditure of the amount Project Co has carried as the Project Co Design Contingency and HMQ has no entitlement to claim the unused portion, if any, of the Project Co Design Contingency. Payment of the Guaranteed Price to Project Co (which, for greater certainty, shall include any unused portion of the Project Co Design Contingency) shall fully satisfy Project Co in respect of its costs to carry the Project Co Design Contingency and all costs of Project Co to remedy all Design Issues that are properly characterized as Project Co Design Issues. Further to and without limiting the foregoing, but, subject to the limitations set out in Section 34.2(b), Project Co acknowledges and agrees that it shall have no recourse against the Consultant in respect of any Design Issue, except for claims arising in relation to the professional negligence or errors and omissions of the Consultant.
- (f) Project Co shall provide the Consultant, HMQ and HMQ's Project Manager with a detailed weekly update report in form and substance satisfactory to the Consultant and HMQ, on the status of all outstanding Design Issues.

11.19 Construction by HMQ or Other Contractors

- (a) HMQ reserves the right to award separate contracts in connection with work related to the Projects to other contractors and to perform work related to the Projects with its own forces. HMQ may assign the coordination and scheduling of the Work and the safety training in respect of the Work of HMQ's other contractors or HMQ's own forces to Project Co.

- (b) When separate contracts are awarded for work related to the Projects, or when such work is performed by HMQ's own forces, HMQ shall:
- (i) cause HMQ's other contractors or HMQ's own forces to comply with: (A) the instructions of Project Co relating to coordination and scheduling of the activities and work of such contractors or HMQ's own forces with the Work to be performed under this Project Agreement; and (B) all directions of Project Co in respect of any matter regarding site safety or health and safety;
 - (ii) **[intentionally deleted]**
 - (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 Work 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 Projects arising from the work of HMQ's other contractors or HMQ's own forces.
- (c) When separate contracts are awarded for work related to the Projects, or when work is performed by HMQ's own forces, Project Co shall:
- (i) provide for the coordination and scheduling of the activities and work of HMQ's other contractors and HMQ's own forces with the Work to be performed under this Project Agreement;
 - (ii) afford HMQ and HMQ's other contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute their work;
 - (iii) participate with HMQ's other contractors and HMQ in reviewing their construction schedules when directed to do so by HMQ, HMQ's Project Manager and/or the Consultant;
 - (iv) where part of the Work is affected by or depends upon, for its proper execution, the work of HMQ's other contractors or HMQ's own forces, promptly report to the Consultant in writing and prior to proceeding with that part of the Work, any readily apparent deficiencies in such work. Failure by Project Co to so report shall invalidate any claims against HMQ by reason of such readily apparent deficiencies;
 - (v) subject to Section 11.6, for HMQ's own forces and for HMQ's other contractors, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety, including all the responsibilities of the 'constructor' under OHSAA; and

- (vi) respond to and support HMQ and HMQ's own forces or contractors in a timely manner so as not to delay their work relating to planning, scheduling or implementation of their work relating to the Projects.
- (d) Project Co shall not be responsible for any failure in the performance of the work of HMQ's other contractors or HMQ's own forces. If:
 - (i) any of HMQ's other contractors or HMQ's own forces cause any damage to the Work;
 - (ii) Project Co incurs any additional costs or there is any delay in the Construction Schedule as a result of any of HMQ's other contractors or HMQ's own forces not complying with the coordination, scheduling and safety instructions of Project Co; or
 - (iii) Project Co incurs any additional costs or there is any delay in the Construction Schedule as a result of any work done by HMQ's other contractors or HMQ's own forces (other than work that is described in the Contract Documents and performed by such other contractors or HMQ's own forces in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with HMQ),

Project Co shall be entitled to compensation in respect of such damage or for such increased costs and to an extension of time for such delay, in each case, authorized and valued as a Change Order in the manner set forth in Schedule 11 – Change Procedure.

- (e) Claims, disputes, and other matters in question between Project Co and HMQ's other contractors shall be dealt with in substantially the same manner as contemplated in Schedule 14 – Dispute Resolution Procedure, provided HMQ's other contractors have reciprocal obligations and HMQ has made commercially reasonable efforts to ensure that such provisions are included in the contracts with HMQ's other 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.
- (f) Placing, installing, application and connection of the work performed by HMQ's own forces or by HMQ's other contractors, on and to the Work performed by Project Co will not relieve Project Co from the responsibility to provide and maintain the specified warranties with respect to the Work, except to the extent that the placing, installing, application or connection of such work by HMQ's own forces or by HMQ's other contractors on and to the Work performed by Project Co gives rise to a claim under warranties provided by Project Co, in which case such warranties shall not apply to such claim.

11.20 Temporary Supports, Structures and Facilities

- (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 Consultant 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 11.20(a) where required by law or by the Contract Documents 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 11.2, 11.20(a) and 11.20(b) or provisions to the contrary elsewhere in the Contract Documents, where such Contract Documents 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 Work 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 Work.

11.21 Protection of Work and Property

- (a) Project Co shall protect the Work and HMQ's and the Sponsors' property at the Sites, including the Existing Facility and property adjacent to the Sites, 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:
 - (i) Design Issues (other than Design Issues which are properly characterized as a Project Co Design Issues under Section 11.17); or
 - (ii) acts or omissions by HMQ, the Consultant 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 Work, HMQ's and the Sponsors' property at the Sites, including the Existing Facility or property adjacent to the Sites, Project Co shall be responsible to Make Good such damage at Project Co's expense.
- (c) Should damage occur to the Work or HMQ's or the Sponsors' property at the Sites, including the Existing Facility for which Project Co is not responsible, as

provided in Section 11.21(a), Project Co shall Make Good such damage to the Work and, if HMQ so directs, to HMQ's or the Sponsors' property and the Guaranteed Price and Contract Time shall be adjusted (including on account of the Overhead and Profit Fee) as provided in Schedule 11 – Change 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 11.21(d), where there is danger to life or property which arises out of or in connection with the performance of the Work, 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 Projects, Project Co agrees upon due notice to settle with the other contractor by negotiation or arbitration in accordance with Section 11.19(e) and Schedule 14 – 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 11.19(e) and Schedule 14 – Dispute Resolution Procedure.

11.22 No Site Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered against any 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 a 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, all of which shall be payable on demand.
- (c) Notwithstanding the provisions of this Section 11.22, the Parties acknowledge that the provisions of Section 2.5 of Schedule 18 – Payments and Holdbacks shall apply to claims for lien made against each Site pursuant to the *Construction Lien Act* (Ontario) and shall also apply to claims made against the Legislative Holdback.

11.23 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, 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 11.23(c).
- (c) Without limiting the generality of Section 11.23(b), Project Co acknowledges and agrees that it is a requirement of certain of the collective agreements referenced in Section 11.23(a) and 11.23(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:
 - (i) where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Electrical Trade Bargaining Agency of the Electrical Contractors' Association of Ontario and the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario;
 - (ii) where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Mechanical Contractors' Association of Ontario and the Ontario Pipe Trades Council;
 - (iii) where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Canadian Automatic Sprinkler Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the united states and Canada, Local 853;
 - (iv) where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between a council of employers' associations consisting of the Ontario Painting Contractors Association, the Acoustical Association of Ontario and the Interior Systems Contractors Association of Ontario and the International Union of Painters and Allied Trades and the Ontario Council of the International Union of Painters and Allied Trades;

- (v) where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Carpenters' Employer Bargaining Agency and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America;
- (vi) where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Masonry Industry Employers Council of Ontario and International Union of Bricklayers and Allied Craftsmen and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen;
- (vii) where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Master Insulators' Association of Ontario Inc. and the International Association of Heat and Frost Insulators and Asbestos Workers and the International Association of Heat and Frost Insulators and Asbestos Workers, Local 95;
- (viii) where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Architectural Glass and Metal Contractors Association and the International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades;
- (ix) where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Ontario Sheet Metal Contractors Association and the Sheet Metal Workers' International Association and the Ontario Sheet Metal Workers' Conference; and
- (x) where applicable, the current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Ontario Erectors Association, Incorporated and the International Association of Bridge, Structural and Ornamental Iron Workers and the Ironworkers District Council of Ontario.

12. CONSTRUCTION SCHEDULE

12.1 The Construction Schedule

- (a) Project Co shall:
 - (i) review the proposed schedules and deadlines of HMQ for the Projects and where HMQ has not specified particular dates for occupancy, Project Co

shall set those dates so as to achieve occupancy of each Facility on an as early as achievable basis and include them in its proposed Construction Schedule under Section 12.1(a)(ii);

- (ii) prepare and submit to HMQ and the Consultant as soon as practical and in any event within 45 days of Financial Close, a detailed computerized Construction Schedule (in both hard paper copy and computer readable soft copy) using a critical path method (“CPM”) network and a Construction Schedule dependent cash flow forecast, each in a form approved by HMQ. The planning and schedule software shall be “Primavera” with the most current release available to be used. The Construction Schedule and any other schedule related reporting requirements of Project Co shall conform to the phasing and sequencing requirements for the Work as set out in the Contract Documents, 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 Specifications included in Division 1 of the Contract Documents, including, the sequencing requirements, and shall include the requirements, if any, of Section 3.2(d)(iv), the schedule for Commissioning of the Work and for achieving the Scheduled Substantial Completion Date and the Scheduled Final Completion Date. HMQ and the Consultant will respond to Project Co, in writing, within 10 Business Days of receipt of each Construction Schedule, with either its detailed comments or acceptance of such Construction Schedule as complete;
- (iii) in the event that HMQ and the Consultant do not accept Project Co’s initial Construction Schedule submission as complete, Project Co shall re-submit such Construction Schedule as many times as necessary, revised in accordance with HMQ’s and the Consultant’s detailed comments and each re-submission shall be provided within 5 Business Days of receipt of the Consultant’s and HMQ’s detailed comments, who in turn shall also respond within 5 Business Days. When the Construction Schedule has been accepted as complete by HMQ and the Consultant, it shall be the baseline Construction Schedule against which Project Co shall monitor progress of the Work for the applicable Project;
- (iv) advise the Consultant promptly of any error or omission in the Construction Schedule and correct such error or omission;
- (v) continuously monitor the progress of the Work in relation to the Construction Schedule and the cash flow and update the Construction Schedules and the cash flow forecast with the monthly construction status report under Section 18.2(a), maintain the continuity of the Construction Schedule’s CPM network for all updates and revisions and immediately notify HMQ of any variance or potential variance in the scheduled completion dates;

- (vi) advise the Consultant of any revisions required to the Construction Schedule as a result of extension of the Contract Time in accordance with Schedule 11 – Change Procedure;
- (vii) identify potential variances between scheduling and scheduled completion dates, review the schedule of Work not started or incomplete and implement necessary adjustments in the Construction Schedule in order to meet the Scheduled Substantial Completion Date and the Scheduled Final Completion Date set out in such Construction Schedule, including the movement of manpower and equipment in response to availability of work areas;
- (viii) comply with the Construction Schedule so as not to interfere with the operation of the Existing Facility;
- (ix) monitor the Subcontractors' personnel staffing and equipment and the availability of materials and supplies in order to meet the Construction Schedules and take appropriate courses of action when the requirements of a Subcontract with any Project Co Party are not met;
- (x) 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 Work;
- (xi) pre-order equipment, materials and supplies where necessitated by cost and/or time factors and expedite delivery of critical items;
- (xii) in consultation with HMQ's Project Manager and the Consultant, include in each Construction Schedule the integration of the equipment 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 the Construction Schedules; and
- (xiii) 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 Parapan American Games, which certification(s) (as more particularly described in the Specifications) are required to host the following events:
 - (A) field hockey;
 - (B) badminton; and
 - (C) water polo.

12.2 Changes to Critical Path

- (a) Any changes to the critical path of the Construction Schedule initiated by Project Co which affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date must be approved in writing by HMQ. Subject to the terms of Schedule 11 – Change Procedure, any HMQ approval of such changes to the critical path does not entitle Project Co to a Change Order, an extension of the Contract Time or an addition to the Guaranteed Price.

12.3 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Section 22, if, at any time:
 - (i) the actual progress of the Work has significantly fallen behind any Construction Schedule, including, for clarity, any failure of Project Co to achieve Work Milestones; or
 - (ii) HMQ is of the opinion that:
 - (A) the actual progress of the Work has significantly fallen behind any Construction 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 HMQ's Project Manager and the Consultant:
 - (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 Work 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 Work back on schedule in accordance with the plan delivered under Section 12.3(a)(iii) and approved by HMQ's Project Manager.

- (b) Project Co shall notify HMQ's Project Manager if, at any time, the actual progress of the Work is significantly ahead of the Construction Schedule.

13. WORK COMMITTEE AND EQUIPMENT SUBCOMMITTEE

13.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish the three committees (each, a "**Work Committee**") consisting of:
 - (i) one representative of each Sponsor, as applicable;
 - (ii) the following 3 representatives appointed by HMQ:
 - (A) HMQ's representative; and
 - (B) 1 TO2015 representative; and
 - (C) 1 other representative appointed by HMQ from time to time;
 - (iii) the following 3 representatives appointed by Project Co:
 - (A) Project Co's representative;
 - (B) 1 representative of the Construction Contractor; and
 - (C) such other representative appointed by Project Co from time to time; and
 - (iv) the Consultant.
- (b) Members of the Work 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 Work Committee members.
- (c) HMQ's Representative shall be the chairperson of the Work Committee.

13.2 Function and Role

- (a) The Work Committee shall assist the Parties by:
 - (i) promoting cooperative and effective communication;
 - (ii) performing a consultative and advisory role to facilitate decisions; and
 - (iii) making recommendations as to the optimum or preferred course of action, in each case, with respect to matters related to the Work.

- (b) The Work Committee shall be responsible for receiving and reviewing all matters related to the Work, including:
 - (i) any construction and Commissioning issues;
 - (ii) the identification and resolution of Project Co Design Issues pursuant to Section 11.18;
 - (iii) the Construction Schedule;
 - (iv) any issues arising from reports or documents provided by Project Co or the Consultant, including, but not limited to, the monthly construction status reports referred to in Section 18.2(a) and the weekly reports referred to in Section 18.2(b);
 - (v) any quality assurance and safety issues;
 - (vi) the recommendations of the Equipment Subcommittee;
 - (vii) any special matters referred to the Work Committee by HMQ or Project Co;
 - (viii) any community and media relations issues in accordance with Schedule 21 – Communications Protocol; and
 - (ix) any other issues pertaining to the Work.

13.3 Term of Work Committee

- (a) Unless otherwise agreed, the Work Committee shall operate only until the Final Completion Date.

13.4 Replacement of Committee Members

- (a) HMQ and each Sponsor shall be entitled to replace any of their respective representatives on the Work 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 Work Committee with the prior written consent of HMQ, not to be unreasonably withheld or delayed.

13.5 Procedures and Practices

- (a) The members of the Work Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Work Committee and establish such subcommittees of the Work Committee, as they consider appropriate from time to time;

- (ii) invite to any meeting of the Work Committee such other persons as the members of the Work Committee may agree;
 - (iii) exclude from any meeting of the Work Committee such persons as the members of the Work Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Work Committee.
- (b) Once established, the Work Committee shall meet at least once each month from the date of this Project Agreement until the Final Completion Date, unless otherwise agreed by the members of the Work Committee or the Parties.
 - (c) The Consultant may convene a special meeting of the Work Committee at any time. Special meetings of the Work Committee may be convened on not less than 5 Business Days notice to all members of the Work 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 Work Committee, the Work Committee shall meet at a Site, a Facility or another location in Toronto, Ontario. Meetings of the Work 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 Work Committee must attend in person at least once each calendar quarter.
 - (e) Minutes of all meetings, recommendations and decisions of the Work Committee, including those made by telephone or other form of communication, shall be recorded and maintained by the Consultant. The Consultant shall circulate copies of such minutes within 5 Business Days of the holding of the meeting. Unless Project Co notifies the Consultant within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, HMQ and Infrastructure Ontario shall be deemed to have approved such minutes. The Consultant shall maintain a complete set of all minutes of the meetings of the Work Committee and shall make such minutes available for inspection by Project Co during regular business hours.

13.6 Equipment Subcommittee

- (a) The Parties shall, within 30 days after the date of this Project Agreement, establish an equipment subcommittee of the Work Committee (the “**Equipment Subcommittee**”) consisting of:
 - (i) The following 3 representatives of HMQ appointed by HMQ from time to time:

- (A) HMQ's Project Manager or other representative appointed by HMQ;
 - (B) 1 TO2015 representative; and
 - (C) 1 representative of the applicable Sponsor;
- (ii) 3 representatives of Project Co, appointed by Project Co from time to time.
- (b) The Equipment Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the equipment to be installed in connection with or incorporated into the Work, as contemplated by the Contract Documents.
 - (c) The primary role of the Equipment Subcommittee shall be to oversee and coordinate the procurement and installation of all equipment in a timely and efficient manner and in accordance with the Construction Schedule.
 - (d) The Equipment Subcommittee shall be responsible for receiving and reviewing all matters related to the equipment and shall make recommendations to the Work Committee in connection therewith.
 - (e) The members of the Equipment Subcommittee may adopt such procedures and practices for the conduct of the activities of the Equipment Subcommittee as they consider appropriate from time to time.

13.7 Project Co Equipment Responsibilities

- (a) Project Co is responsible for the procurement, decommissioning, transfer, delivery, installation, commissioning and training for In-Contract Equipment and Not-In-Contract Equipment.
- (b) Project Co is responsible for ensuring that the procurement, decommissioning, transfer, delivery, installation, successful commissioning and training for In-Contract Equipment and Not-In-Contract Equipment is included in the Construction Schedule and that all such activities are scheduled to be completed prior to the Substantial Completion Date.
- (c) For the purposes of achieving Substantial Completion, all In-Contract Equipment and Not-In-Contract Equipment must be successfully commissioned by Project Co as set out in the Specifications.
- (d) 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 In-Contract Equipment and Not-In-Contract Equipment, provided that all such purchase orders, contracts and manufacturer's installation invoices specify that

the applicable Sponsor is the end-user of and the beneficiary of any warranties for the applicable In-Contract Equipment and Not-In-Contract Equipment.

- (e) The Guaranteed Price includes In-Contract Equipment and Project Co shall make all payments related thereto in accordance with the relevant invoice terms.
- (f) Project Co shall be 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 the purchase orders issued to equipment vendors of In-Contract Equipment and Not-In-Contract Equipment.

13.8 HMQ Equipment Responsibility

- (a) HMQ shall provide Project Co with the Not-In-Contract Equipment lists for procurement by Project Co and in accordance with the Construction Schedule.
- (b) HMQ shall be responsible for the determination of the method of procurement, quantity, make, model, vendor for all Not-In-Contract Equipment in accordance with the Construction Schedule.

13.9 Not-In-Contract Equipment Procurement

- (a) In respect of the procurement of the Not-In-Contract Equipment, Project Co shall:
 - (i) in consultation with the Equipment Subcommittee, establish procurement processes that are fair, open and competitive and all in accordance with any applicable HMQ policies and good purchasing and procurement practices;
 - (ii) ensure that each procurement process solicits proposals from at least 3 different suppliers provided that if it is not possible to solicit from 3 different suppliers for specific Not-In-Contract Equipment, the Equipment Subcommittee may approve the issuance of a procurement process for fewer than 3 different suppliers;
 - (iii) comply with such procurement processes;
 - (iv) in consultation with the Equipment Subcommittee, prepare tenders, quotations or requests for proposals (the “Equipment Procurement Documentation”) which, subject to Section 13.8(b), shall be in form and substance satisfactory to HMQ and Project Co;
 - (v) manage the procurement process, including: advising the Equipment Subcommittee with respect to the evaluation of tenders, quotations or proposals; assisting the Equipment Subcommittee in the review and selection of tenders, quotations or proposals; entering into the purchase

orders and other contracts to be entered into; providing HMQ with such documentation as it requires to discharge its obligations in this Section 13;

- (vi) in accordance with the Equipment Procurement Documentation, act as a single point of contact for the equipment vendors;
- (vii) manage the procurement so as to bundle the purchase of Not-In-Contract Equipment, as applicable, to minimize the number of procurement processes issued to the extent reasonably possible; and
- (viii) test and coordinate any Not-In-Contract Equipment not tested and calibrated by the equipment vendors.

13.10 Substitutions of Equipment by Project Co

- (a) Project Co shall not make any substitutions of any In-Contract Equipment and Not-In-Contract Equipment without the prior written consent of HMQ, in its sole discretion. Project Co shall provide HMQ with sufficient information to allow HMQ to determine whether the proposed substitute is at least equivalent to the item it is to replace and the impact of such substitution on the Construction Schedule.

13.11 Standards for Equipment

- (a) Without limiting the generality of Section 13.7, Project Co shall ensure that all purchase orders or other legal documentation for the purchase of In-Contract Equipment and Not-In-Contract Equipment to be procured by Project Co shall require that such equipment be:
 - (i) new and undamaged;
 - (ii) have been manufactured and be able to generate in compliance with all Applicable Law; and
 - (iii) delivered and installed on or before a date to be specified by Project Co in accordance with the Construction Schedule.
- (b) Project Co shall, as soon as practicable after receiving a request from HMQ's Project Manager, supply to HMQ's Project Manager evidence to demonstrate its compliance with this Section 13.10.

13.12 Training

- (a) For and in respect of each item of In-Contract Equipment and Not-In-Contract Equipment supplied by Project Co and operated by Sponsor which requires Sponsor's own forces (including its staff) to be trained in its proper operation and/or maintenance, Project Co shall ensure that the purchase documentation require that the vendors of such In-Contract Equipment and Not-In-Contract

Equipment shall provide or, at vendor's cost, arrange for adequate, appropriate and timely training with respect to such equipment's proper operation and maintenance for all Sponsor's own forces (including its staff).

- (b) HMQ is responsible to ensure the applicable Sponsors' staff are available for the training described in (a) above in accordance with the schedule incorporated into the Construction Schedule. Project Co shall be responsible to coordinate such training and for ensuring the schedule addresses the time periods required for such training, but Project Co shall not be responsible for any delay resulting from the failure of HMQ to have the applicable Sponsor's staff available for training in accordance with such schedule nor for the unavailability of training personnel to be supplied by the respective equipment vendors in accordance with Section 13.11(a).

13.13 Payment for Not-In Contract Equipment

- (a) Project Co shall, 90 days after the formation of the Equipment Subcommittee, 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 Subcommittee (the "**Monthly Equipment Payment Estimate**"). Project Co shall update the Monthly Equipment Payment Estimate bi-monthly, or earlier upon request from the Equipment Subcommittee.
- (b) Beginning 180 days following the formation of the Equipment Subcommittee, 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 Subcommittee. For clarity, the Equipment Invoice shall not include any fees for procurement or 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 Subcommittee 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 Subcommittee 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 14 – 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, together with interest on such amount calculated in accordance with Section 32.1(d) on the basis that the due date was the date of the overpayment by HMQ and any amount which has been withheld by HMQ that is determined to have been payable shall be paid forthwith by HMQ to Project Co, together with interest on such amount calculated in accordance with Section 32.2(d) 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 Not-In Contract Equipment in accordance with this Section 13, 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]% of the value of the Not-In Contract Equipment that has not been installed or commissioned.

14. CONTAMINATION

14.1 Contamination

- (a) For the purposes of applicable environmental legislation, HMQ shall be deemed to have control and management of the Sites with respect to Pre-Existing Environmental Site Conditions.
- (b) Prior to Project Co commencing the Work, HMQ has taken:
 - (i) all reasonable steps to determine whether any Hazardous Substances are present at the Sites; and

- (ii) provided the Consultant, Lender’s Consultant and Project Co with a report on any such Hazardous Substances, which report Project Co acknowledges is included in the Site Information.
- (c) Project Co shall take all reasonable steps to ensure that:
- (i) no person suffers injury, sickness or death and no property is injured or destroyed as a result of exposure to or the presence of Hazardous Substances which were at any Site prior to Project Co commencing the Work, which are described in or are properly inferable, readily apparent or readily discoverable from the Site Information or would have been properly inferable, readily apparent or readily discoverable from inspections of the Sites carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Date (“**Disclosed Hazardous Substances**”);
 - (ii) all necessary steps are taken under Applicable Law, to dispose of, store or otherwise render harmless Disclosed Hazardous Substances, save and except those not found on or affecting the area of the Work on the Site, unless otherwise expressly required pursuant to the Contract Documents; and
 - (iii) there is no discharge, escape, emission, leak, deposit, dispersion or migration into the environment (“**Release**”) or threatened Release of any Disclosed Hazardous Substances at or from any Site which has or may have an adverse effect upon the environment or human health or safety
- as a result of the performance of the Work by Project Co.
- (d) Project Co shall take reasonable steps to ensure that:
- (i) no person suffers injury, sickness or death and no property is injured or destroyed as a result of exposure to or the presence of Hazardous Substances brought to any Site by Project Co or any Project Co Party (“**Project Co Hazardous Substances**”);
 - (ii) Project Co and each Project Co Party is responsible to comply with all Applicable Law relating to Project Co Hazardous Substances; and
 - (iii) there is no Release or threatened Release of any Project Co Hazardous Substances at or from the Site which has or may have an adverse effect upon the environment or human health or safety.
- (e) If Project Co:
- (i) encounters Hazardous Substances at any Site, or

- (ii) has reasonable grounds to believe that Hazardous Substances are present at any Site,

which were not disclosed by HMQ, as required under Section 14.1(b) or which were not properly inferable, readily apparent or readily discoverable from the Site Information or would have been properly inferable, readily apparent or readily discoverable from inspections of the Sites carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Date (the “**Undisclosed Hazardous Substances**”), Project Co shall:

- (iii) take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the Hazardous Substances; and
 - (iv) immediately report the circumstances to the Consultant, Lender’s Consultant and HMQ in writing.
- (f) If Project Co is delayed in performing the Work or incurs additional costs as a result of taking steps required under Section 14.1(e)(iii) (except where a Release or threatened Release is caused by a default by Project Co in the performance of its obligations under this Article 14), the Consultant shall issue appropriate instructions for a Change in the Scope of the Work as provided in Schedule 11 – Change Procedure, and the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with HMQ and Project Co, and the Guaranteed Price shall be adjusted by a reasonable amount for costs incurred by Project Co as a result of the delay and as a result of taking those steps.
 - (g) Notwithstanding Sections 8.2(f), 8.2(g) and Schedule 14 – Dispute Resolution Procedure, the Consultant may select and rely upon the advice of an independent expert in a dispute under Section 14.1(f) and, in that case, the expert shall be deemed to have been jointly retained by HMQ and Project Co and shall be jointly paid by them.
 - (h) In the event of any Release or threatened Release of any Hazardous Substances at or from the Site, Project Co shall immediately, upon becoming aware of same, notify the Consultant and HMQ of such event.
 - (i) This Section 14.1, together with the corresponding indemnities in Section 32.1(a)(viii) and Section 32.2(a)(iv), shall govern over the provisions of Sections 25.3(a)(v) and 26.2(a)(iii);
 - (j) If Project Co causes or permits:
 - (i) any Project Co Hazardous Substances to be dealt with by Project Co or any Project Co Party in a manner which does not comply with Applicable Law or which threatens human health and safety or the environment or

causes material damage to the Sites or the Facilities or the property of HMQ, the Sponsors or others; or

- (ii) any Disclosed Hazardous Substances which were already at a Site but which were then harmless or stored, contained or otherwise dealt with in accordance with Applicable Law, to be dealt with by Project Co or any Project Co Party in a manner which does not comply with Applicable Law or which threatens human health and safety or the environment or causes material damage to the property of HMQ or others,

Project Co, upon becoming aware of same shall:

- (iii) take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the Hazardous Substances; and
 - (iv) upon becoming aware of same, report the circumstances to the Consultant and HMQ by telephone, confirmed in writing.
- (k) In the circumstances contemplated in Sections 14.1(c), 14.1(d), 14.1(e) or 14.1(j), Project Co shall perform its obligations thereunder, at Project Co's sole cost and expense (except in the circumstances contemplated by Section 14.1(e), which shall be at HMQ's sole cost and expense in accordance with the provisions of Section 14.1(f)). Project Co shall perform its obligations under Sections 14.1(c), 14.1(d), 14.1(e) or 14.1(j), including, as applicable, any clean up, removal, containment, storage or other dealing with relevant Hazardous Substances and any remediation of damage caused thereby, in a manner which the Governmental Authorities determine will:
- (i) meet all Applicable Law, including the applicable Table of the Soil Groundwater and Sedimentary Standards for use under Part XV.I of the *Environmental Protection Act* (Ontario), dated March 9, 2004, and ensure compliance with any applicable Permits, Licences and Approvals; and
 - (ii) rectify all material damage to the property of HMQ, the Sponsors and/or others.

15. ITEMS OF GEOLOGICAL, HISTORICAL OR ARCHAEOLOGICAL INTEREST OR VALUE

15.1 Objects Property of HMQ

- (a) As between the Parties, all fossils, artefacts 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.

15.2 Procedure Upon Discovery of Objects

- (a) Upon the discovery of any item referred to in Section 15.1(a) during the course of the Work, Project Co shall:
 - (i) immediately inform the Consultant of such discovery;
 - (ii) take all steps not to disturb the item and, if necessary, cease any Work in so far as performing such Work 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 10 – Heritage Guidelines and Protocols.
- (b) In the event that HMQ wishes Project Co to perform actions which are in addition to any required pursuant to Section 15.2(a), 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.

15.3 Compensation Event

- (a) If Sections 15.2(a) and 15.2(b) require Project Co to perform any alteration, addition, demolition, extension or variation in the Work or to suspend or delay performance of the Work 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 Work, or suspension or delay in the performance of the Work, shall, subject to and in accordance with Article 22, be treated as a Delay Event and, subject to and in accordance with Article 23, be treated as a Compensation Event, provided however that the foregoing shall not apply to the extent that any item referred to in Section 15.1(a) was disclosed in or properly inferable, readily apparent or readily discoverable from the Site Information or would have been properly inferable, readily apparent or readily discoverable from inspections of the Sites carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Date.

16. COMMISSIONING AND COMPLETION

16.1 [Intentionally Deleted]

16.2 Substantial Completion of the Work

- (a) Project Co shall deliver a notice of the date anticipated to be the Substantial Completion Date to HMQ and the Consultant at least 90 days prior to the date anticipated by Project Co to be the Substantial Completion Date. Project Co acknowledges that HMQ needs a minimum of 90 days notice prior to the anticipated Substantial Completion Date to prepare for Commissioning. Project Co shall advise HMQ and the Consultant of any change in the anticipated date. Project Co shall, by the date which is 20 days prior to the anticipated Substantial Completion Date as set out in Project Co's notice, prepare a list, in electronic format on software that identifies deficiencies by division, trade and location ("**Project Co's Preliminary Minor Deficiencies List**") of Minor Deficiencies, including an estimate of the cost of and the time for rectifying such Minor Deficiencies.
- (b) Project Co shall reconfirm the anticipated Substantial Completion Date in a notice given to HMQ and to the Consultant 20 days prior to the anticipated Substantial Completion Date which notice shall include a copy of Project Co's Preliminary Minor Deficiencies List. Project Co shall plan for start up and verification of all systems to be completed no later than 7 days prior to the anticipated Substantial Completion Date. Project Co shall reconfirm the anticipated Substantial Completion Date and when Project Co is satisfied that it has completed all of the requirements for Substantial Completion of the Work, Project Co shall apply to HMQ and the Consultant for certification of Substantial Completion of the Work in a notice to HMQ and the Consultant by the date which is 10 days prior to the anticipated Substantial Completion Date. The Consultant shall in the next following 10 days, proceed to review and inspect the Work for the purpose of: (i) confirming the achievement of Substantial Completion of the Work and providing its report with respect thereto pursuant to Section 16.2(d); (ii) certifying substantial performance of the Work for such Project in accordance with the *Construction Lien Act* (Ontario) pursuant to Section 16.2(c); and (iii) taking into account Project Co's Preliminary Minor Deficiencies List, preparing its own list of Minor Deficiencies (the "**Minor Deficiencies List**") and its estimate of the cost of and the time for rectifying the Minor Deficiencies set out in the Minor Deficiencies List.
- (c) When the Consultant is satisfied that substantial performance of the Work in accordance with the *Construction Lien Act* (Ontario) has been achieved, the Consultant shall provide Project Co and HMQ with a certificate of substantial performance in accordance with the *Construction Lien Act* (Ontario).
- (d) When the Consultant is satisfied that Substantial Completion of the Work has been achieved, the Consultant shall provide to HMQ and to Project Co a report

confirming the Minor Deficiencies List and the date on which the Consultant determines that Substantial Completion of the Work was achieved. Failure to include an item on the Minor Deficiencies List does not alter the responsibility of Project Co to complete the Work.

- (e) The Consultant shall state the Substantial Completion Date as set out in its report delivered under Section 16.2(d) in a certificate.
- (f) The Consultant shall prepare the Minor Deficiencies List before a certificate of Substantial Completion of the Work is issued, and if the certificate referred to in Section 16.2(c) has been issued, then the Consultant shall not withhold the certificate of Substantial Completion of the Work by reason solely that there are such Minor Deficiencies.
- (g) Project Co shall publish in a construction trade newspaper in the area of the location of the Work, a copy of the certificate of substantial performance in accordance with the *Construction Lien Act* (Ontario) and Project Co shall provide suitable evidence of the publication to the Consultant and HMQ.
- (h) HMQ may withhold from the payment otherwise due on the Substantial Completion Payment Date a holdback amount that is [REDACTED]% of the amount estimated by the Consultant for HMQ to complete and rectify the Minor Deficiencies. The Consultant shall inspect the completion of the Minor Deficiencies and shall provide a monthly progress report to HMQ describing the Minor Deficiencies which have been completed to the satisfaction of the Consultant, and HMQ shall release from such holdback the amount of any holdback allocated to the Minor Deficiencies which have been completed. If, at any time after the 120 day period for completion of the Minor Deficiencies referred to in Section 4.2 of Schedule 18 – Payments And Holdbacks, any of the Minor Deficiencies are not completed in 10 Business Days following Project Co's receipt of a written notice from HMQ to correct the deficient work, or Project Co is not diligently working towards completion of the deficient work to the satisfaction of the Consultant, and unless HMQ otherwise agrees, or the reasons for any delay are acceptable to HMQ, or the delay is caused by HMQ or an HMQ Party, HMQ may engage others to perform the work necessary to complete and rectify the Minor Deficiencies at the risk and cost of Project Co and HMQ may deduct such cost from the holdback amount or any other amount remaining owing by HMQ to Project Co. If the cost of completion and rectification of any Minor Deficiencies exceeds the amount held back by HMQ, then Project Co shall reimburse HMQ for all such excess costs.
- (i) Project Co shall assign to HMQ and submit with the application for Substantial Completion of the Work, all guarantees, warranties (whether from manufacturers, or Project Co Parties), certificates, preliminary testing and balancing reports, distribution system diagrams, maintenance and operation instructions, maintenance manuals and materials and any other materials or documentation required to be submitted under this Project Agreement and otherwise required for

the proper use and operation of the Work for each Project (collectively, the “**Project Deliverables**”). If Project Co requests, Project Co and the Consultant shall, within 60 days following the request of Project Co, settle and agree upon a list specifying in reasonable detail the items to be assigned and submitted under the foregoing sentence. If Project Co is unable to provide any of the Project Deliverables for any reason, Project Co may submit a list of the outstanding Project Deliverables and if a delay in the delivery of such outstanding Project Deliverables will not impair the safety, security or health of the occupants of the Projects, such outstanding Project Deliverables shall be included as Minor Deficiencies. Failure to submit any of the Project Deliverables that are required for the safe occupation and use of the Work and as may be necessary for the security and health of the occupants of the Projects, shall be grounds for the Consultant to reject Project Co’s application for Substantial Completion of the Work. For the purposes of Section 16.2(h), and any holdback to be taken as contemplated thereunder, the value of such outstanding Project Deliverables shall, without regard to the degree or quantum of such outstanding Project Deliverables, be set at \$[REDACTED]. The assignment by Project Co of all guarantees and warranties shall expressly reserve the right of Project Co to make any claims under such guarantees and warranties for the repair or replacement of any Work and such assignment shall in no way prejudice any rights of or benefits accruing to Project Co pursuant to such guarantees and warranties. For greater certainty, nothing herein is intended to constitute a release or waiver of the obligation of Project Co to submit and assign (as applicable) to HMQ all of the Project Deliverables.

- (j) The submission of an application for payment upon Substantial Completion of the Work shall constitute a waiver by Project Co of all claims whatsoever against HMQ under this Project Agreement, whether for a change in the Guaranteed Price, extension of the Contract Time or otherwise, except (i) those made in writing prior to Project Co’s application for payment upon Substantial Completion of the Work and still unsettled; (ii) any third party claim which Project Co was not aware of at such time and with respect to which Project Co is entitled to indemnification from HMQ in accordance with this Project Agreement; and (iii) subject to any subsequent waiver under Section 33.1, claims arising out of any act or omission of HMQ or any HMQ Party after the date of the waiver, and third-party claims arising after the date of the waiver. For greater certainty, for the purposes of clauses (i) and (ii) above, a third party claim does not include any claim by a Project Co Party.

16.2A Operation and Maintenance Manuals and Surveys

- (a) Project Co shall prepare and deliver to HMQ draft copies of all necessary operation and maintenance manuals for each 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 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 the Surveys in a form that complies with the Specifications and Sports Governing Authority Certification as determined by the Consultant.

16.3 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 Consultant 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.

16.4 Certification of Interim Payment

- (a) Project Co shall give the Consultant and HMQ’s Project Manager 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 then deliver a subsequent notice to the Consultant and HMQ’s Project Manager 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 Interim Payment Requirements in respect of the First Interim Payment and Second Interim Payment, as applicable, together with Project Co’s opinion as to whether the Interim Payment Requirements in respect 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, cooperate with the Consultant to permit the Consultant 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 Consultant 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 16.4(b), the Parties shall cause the Consultant 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 Consultant 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 Consultant has issued a report in accordance with Section 16.4(c)(ii), Project Co shall, within 5 Business Days after receipt of such report, provide the Consultant and HMQ's Project Manager 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 16.4(b) to (d), inclusive, shall be repeated until the Consultant issues a notice pursuant to Section 16.4(c)(i).

16.5 Final Completion Countdown Notice

- (a) Project Co shall deliver a notice (the "**Final Completion Countdown Notice**") to HMQ and the Consultant 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.

16.6 Final Completion Certificate

- (a) Project Co shall give the Consultant and HMQ's Project Manager 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 then give the Consultant and HMQ's Project Manager a subsequent 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 Work have been received by it;
 - (ii) Project Co's Statutory Declaration CCDC 9A;
 - (iii) Project Co's WSIB Certificate of Clearance; and
 - (iv) a written statement that the Work has been performed to the requirements of the Contract Documents, itemizing approved changes in the Work, the Consultant'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 Consultant 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 16.6(c), the Parties shall cause the Consultant 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 Consultant considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.

- (e) Where the Consultant has issued a report in accordance with Section 16.6(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 14 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Consultant and HMQ’s Project Manager 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 16.6(c) to (e), inclusive, shall be repeated until the Final Completion Certificate has been issued pursuant to Section 16.6(d)(i).

17. HMQ ACCESS, INSPECTION AND MONITORING

17.1 HMQ Access

- (a) Subject to Section 17.1(b) but without limiting any of HMQ’s rights in respect of the Site, Project Co acknowledges and agrees that HMQ, the HMQ Parties, representatives of TO2015, Markham, City, UofT and Lender’s Consultant shall have unrestricted access to the Sites, the Facilities and any workshop where materials, plant or equipment are being manufactured, prepared or stored, at all reasonable times, during normal working hours. Project Co shall provide sufficient, safe and proper facilities at all times for the review of the Work by the Consultant and the inspection of the Work by authorized agencies. If parts of the Work are in preparation at locations other than the Sites, HMQ and the Consultant, HMQ’s Project Manager and Lender’s Consultant shall be given access to such Work wherever it is in progress upon reasonable notice and during normal business hours.
- (b) In exercising their access rights under Section 17.1(a), HMQ and the HMQ Parties, representatives of TO2015, Markham, City, UofT shall comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of Project Co from time to time.
- (c) If Work is designated for tests, inspections, or approvals in the Contract Documents, or by the Consultant’s instructions, or pursuant to Applicable Law, Project Co shall give the Consultant reasonable notice of when the Work will be ready for review and inspection. Project Co shall arrange for and shall give the Consultant reasonable notice of the date and time of inspections by other authorities.

- (d) Project Co shall furnish promptly to the Consultant 2 copies of certificates and inspection reports relating to the Work.

17.2 Right to Open Up

- (a) HMQ and the Consultant shall have the right, at any time prior to the Final Completion Date, to request Project Co to open up and inspect (or allow HMQ or the Consultant, as applicable, to inspect) any part or parts of the Work, or to require testing of any part or parts of the Work, where HMQ or the Consultant, as applicable, reasonably believes that such part or parts of the Work is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Contract Documents) relevant to such part or parts of the Work, 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 Work is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Contract Documents) relevant to such part or parts of the Work, Project Co shall rectify all such defects and non-compliance diligently (including any re-testing) at no cost to HMQ and Project Co shall not be entitled to any additional compensation (and for clarity, such Work shall not form part of the Cost of the Work) or extension of the Contract Time in relation thereto.
- (c) If the inspection shows that the relevant part or parts of the Work is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Contract Documents and the requirements of Sections 17.1(a) and 17.1(c)) relevant to such part or parts of the Work, the exercise by HMQ or the Consultant, as applicable, of its rights pursuant to this Section 17.2 shall, subject to and in accordance with Article 22, be treated as a Delay Event and, subject to and in accordance with Article 23, be treated as a Compensation Event. For greater certainty, if Project Co has failed to comply with the requirements of Sections 17.1(a) or 17.1(c), the provisions of Section 17.2(b) shall apply as if the relevant part or parts of the Work is or are defective.
- (d) Where inspection and testing services are specified, the firm employed for such services shall be the firm named and paid by HMQ, or named by HMQ and paid through a Cash Allowance Disbursement Authorization by Project Co and others (unless otherwise indicated) or named and paid by Contractor. Such inspection shall be identified in the Construction Schedule and Project Co shall give the Consultant timely notice requesting on-site inspection when required.

17.3 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by HMQ or the Consultant of the rights under this Article 17 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Article 17.

17.4 Admittance of Personnel

- (a) HMQ shall have the right to refuse admittance to, or order the removal from any 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 Work 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 a Site or Facility personnel of Project Co or any Project Co Party requires access to such Site or Facility, such personnel must comply with the security requirements of TO2015 at Project Co's expense.

17.5 Confirmation of Action

- (a) Any action taken under Section 17.4 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.

17.6 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.

17.7 Finality as to Admission

- (a) Any decision of HMQ made pursuant to Section 17.4 shall be final and conclusive.

18. RECORDS, AUDIT AND REPORTING

18.1 Accounting and Audit

- (a) Project Co shall maintain and keep accurate records for each Facility (which means all tangible records, documents, computer printouts, electronic

information, books, plans, drawings, specifications, accounts or other information) relating to the Work for a period of 7 years from the Final Completion Date. Project Co shall maintain the original Projects records in its office in Concord, Ontario until all claims have been settled as required by Applicable Law.

- (b) In addition to other rights of inspection contemplated in the Contract Documents, Project Co shall allow HMQ, the Consultant, Lender's Consultant or other persons authorized by HMQ access to the Projects records as they pertain to Work performed on a reimbursable basis pursuant to Section 2.3.2 of Schedule 11 – Change Procedure, or unit price basis, pursuant to Section 2.3.3 of Schedule 11 – Change Procedure, during the course of the Work and for such period of time that Project Co is required to maintain the records set out in Section 18.1(a). Project Co shall be provided with 48 hours prior notice for such access. Project Co shall promptly provide, at the sole cost of HMQ, a certified copy of any part of such Projects records required by HMQ when requested by HMQ.
- (c) Subject to Section 18.1(d), Project Co shall ensure that equivalent provisions to those provided in Section 18.1(a) and 18.1(b) are made in the Construction Contract (and shall require the Contractor to incorporate same into every level of contract thereunder with a Project Co Party) for any part of the Work in order, among other things, to provide HMQ with access to Projects records as contemplated herein.
- (d) The provisions of Section 18.1(b) shall only apply with respect to Change Orders and items under cash allowances.

18.2 Reporting

- (a) Project Co shall submit 7 copies of a monthly construction status report to HMQ by the 10th day after the last day of the relevant monthly reporting period which shall include an update of the Construction Schedule prepared in accordance with the requirements of Section 12.1. Project Co shall use the project management software system directed by HMQ if HMQ elects, in its Sole Discretion, to utilize such software. The construction status report will appropriately address significant aspects of, and variances in, the progress of the Work, and shall include (i) an executive bar chart summary of the Construction Schedules; (ii) the current schedule performance index (developed in accordance with Good Industry Practice); (iii) Project Co's narrative report addressing any significant problems, decisions and pending claims; (iv) a detailed report showing the costs to complete the balance of the Work; (v) an executive summary of the progress to date of the building systems; (vi) a financial status report together with a report of any pending or other matters or claims that could have a financial impact on the Projects, including a report on any labour disruptions or strikes that may have occurred or are pending; (vii) an updated cash flow report and projections in conjunction with the monthly Construction Schedule update including a cash flow graph that depicts actual cash flow against projected cash flow. The initial cash

flow projection shall be based on the baseline Construction Schedules as referenced in Section 12.1(a)(iii), cost loaded by key trades for each division based on the accepted schedule of values, and properly reflective of the true value of each of the components of the schedule over time and shall provide cost loading of the schedule to demonstrate cost allocation by division for all major subtrades and vendors, including all milestones, at a level of detail acceptable to HMQ. For additional clarity, the cash flow used for the basis of this report is different from a lender's drawdown schedule which is used for financial purposes. Subsequent monthly cash flow projections shall be based on the true value of the Work remaining in accordance with the Construction Schedule updates. This report shall also include an explanation for variances in actual cash flow against projected cash flow each period; (viii) progress photos from different views to indicate the progress of the Work in digital format, indicating the date and location of the photograph; (ix) a safety report addressing any incidents or accidents; (x) approved Change Orders, priced change notices awaiting approval and Contemplated Change Notices; and (xi) the status of Project Co Design Issues. Items of immediate concern are to be highlighted, noting when decisions must be reached in order to keep the Projects on schedule.

- (b) Project Co shall prepare and deliver a weekly report to HMQ by end of business on Friday of every week between the date of this Project Agreement and the Final Completion Date. The weekly report shall summarize the Work completed by Project Co during the week to which it relates and set out the Work planned to be completed over the two weeks that follow the date of the report. The weekly report shall include the following information:
 - (i) Construction activities by major trade that occurred during the week and those planned over the two (2) weeks that follow;
 - (ii) Major equipment deliveries that occurred during the week and planned major deliveries over the two weeks that follow; and
 - (iii) The workforce average for the week.
- (c) Project Co shall cause Agent to cause, in accordance with Section 5.2 of Schedule 5 – Form of Lender's Direct Agreement, the Lender's Consultant to provide HMQ a copy of any written assessment or report prepared by the Lender's Consultant in relation to the status or progress of the Work under the Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to Agent and/or Project Co.

19. HMQ'S REMEDIAL RIGHTS

19.1 Exercise of Remedial Rights

- (a) HMQ may exercise all rights set out in this Article 19 at any time and from time to time if:

- (i) HMQ, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
 - (A) does or can reasonably be expected to create a serious threat to the health or safety of any user of any part of or the whole of the Facilities, including employees of and visitors to a Facility and members of the public; or
 - (B) may potentially compromise the reputation or integrity of HMQ or any Sponsor.

provided that:

- (C) in respect of a breach by Project Co of any obligation under this Project Agreement or any act or omission on the part of Project Co or any Project Co Party which can reasonably be expected to cause any of the consequences set out in Section 19.1(a)(i)(A), HMQ shall not exercise its rights under this Article 19 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from HMQ or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Section 19.1(a)(i)(A) actually occur; and
- (D) in respect of Section 19.1(a)(i)(B), HMQ shall not exercise its rights under this Article 19 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from HMQ or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter.

19.2 Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, HMQ may exercise all of the rights set out in this Article 19 at any time and from time to time if HMQ, acting reasonably, considers the circumstances to constitute an Emergency.

19.3 Rectification

- (a) Without prejudice to HMQ's rights under Article 25 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 19.1 or 19.2, HMQ may, by written notice, require Project Co to take such steps as HMQ,

acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of any Project Co Party, and Project Co shall use commercially reasonable efforts to comply with HMQ's requirements as soon as reasonably practicable.

- (b) If HMQ gives notice to Project Co pursuant to Section 19.3(a) and either:
 - (i) Project Co does not either confirm, within 5 Business Days of such notice or such shorter period as is appropriate in the case of an Emergency that it is willing to take the steps required in such notice or present an alternative plan to HMQ to mitigate, rectify and protect against such circumstances that HMQ may accept or reject acting reasonably; or
 - (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as HMQ, acting reasonably, shall think fit,

then HMQ may take such steps as it considers to be appropriate, acting reasonably, requiring the termination and replacement of Project Co Parties, either itself or by engaging others (including a third party) to take any such steps.

- (c) Notwithstanding the foregoing provisions of this Section 19.3, in the event of an Emergency, the notice under Section 19.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and HMQ may, prior to Project Co's confirmation under Section 19.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

19.4 Costs and Expenses

- (a) Subject to HMQ's obligations pursuant to Sections 19.5 and 19.6:
 - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of HMQ's rights pursuant to this Article 19; and
 - (ii) Project Co shall reimburse HMQ for all reasonable costs and expenses incurred by HMQ in relation to the exercise of HMQ's rights pursuant to this Article 19, including in relation to HMQ taking such steps, either itself or by engaging others (including a third party) to take any such steps as HMQ considers appropriate and as are in accordance with this Article 19.

19.5 Reimbursement Events

- (a) In this Section 19.5, a "**Reimbursement Event**" means:

- (i) an act or omission of Project Co or any Project Co Party or a breach of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by HMQ or an HMQ Party; or
 - (ii) an Emergency that is not caused by an act or omission of Project Co or any Project Co Party.
- (b) If HMQ either takes steps itself or requires Project Co to take steps in accordance with this Article 19 as a result of a Reimbursement Event:
- (i) HMQ shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of HMQ's rights pursuant to this Article 19 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) HMQ shall bear all costs and expenses incurred by HMQ in relation to the exercise of HMQ's rights pursuant to this Article 19.

19.6 Reimbursement if Improper Exercise of Rights

- (a) If HMQ exercises its rights pursuant to this Article 19, but HMQ was not entitled to do so, HMQ shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of HMQ issued as a result of HMQ having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not HMQ is entitled to exercise its rights pursuant to this Article 19 before taking any such action that HMQ may require and Project Co shall comply with all of HMQ's requirements. Only concurrently with or after complying with HMQ's requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 14 – Dispute Resolution Procedure.

20. CHANGES

20.1 Change Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 11 – Change Procedure shall apply with respect to Changes in the Scope of the Work.

21. CHANGES IN LAW

21.1 Performance after Change in Law

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

21.2 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 Work 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 21.2.
- (b) On the occurrence of a Relevant Change in Law:
 - (i) either Party may give notice to the other and to the Consultant of the need for a Change Order as a result of such Relevant Change in Law;
 - (ii) the Parties and the Consultant 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 Change Order is required as a result of such Relevant Change in Law, and if within 10 Business Days of this meeting an agreement has not been reached, 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 14 – Dispute Resolution Procedure; and
 - (iii) within 10 Business Days of agreement or determination that a Change Order is required, the Consultant shall issue a Change Order and the relevant provisions of Schedule 11 – Change Procedure shall apply except that:
 - (A) 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 in Law and take commercially reasonable steps to maximize

any reduction in costs arising from such Relevant Change in Law; and

- (B) any entitlement to compensation payable shall be in accordance with this Section 21.2, and any calculation of compensation shall take into consideration, *inter alia*:
 - (I) any failure by a Party to comply with Section 21.2(b)(iii)(A);
 - (II) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (III) 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 Article 22 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 21.2, and Article 23 shall be construed accordingly.

22. DELAY EVENTS

22.1 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 Schedule Substantial Completion Date:
 - (i) if Project Co is delayed in the performance of the Work by:
 - (A) acts or omissions of HMQ or any HMQ Party contrary to the provisions of this Project Agreement, except to the extent that any such act or omission is caused or contributed to by Project Co or a Project Co Party; or
 - (B) a stop work order issued by a Governmental Authority, provided that such order was not issued as a result of an event of Force Majeure or an act, omission or fault of Project Co or a Project Co Party;

- (ii) if Project Co is delayed in the performance of the Work by a lack of access to a Site as a result of an order or direction issued by HMQ or by a Governmental Authority to HMQ, but not issued as a result of Project Co not performing its obligations under this Project Agreement, including where such non-performance is caused by a Project Co Party or by an event of Force Majeure, Project Co acknowledges that in performing the Work paramountcy of access must be given at all times to emergency vehicles and no claim may be made by Project Co for any delay in the performance of the Work as a result of any temporary lack of access to a Site resulting from this paramountcy of access by emergency vehicles, provided that HMQ will use reasonable efforts to avoid and to limit the duration of any temporary lack of access for this reason;
- (iii) an opening up of the Work pursuant to Section 17.2 where such Work is not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Contract Documents), unless such opening up of the Work was reasonable in light of other defects or non-compliance previously discovered by HMQ or the Consultant, as applicable, in respect of the same or a similar component of the Work or subset of the Work;
- (iv) a requirement pursuant to Section 14.1(e) for Project Co to take any steps upon the discovery of Contamination, which steps would not otherwise be required under this Project Agreement;
- (v) a requirement pursuant to Sections 15.2(a) or 15.2(b) for Project Co to perform any alteration, addition, demolition, extension or variation in the Work, or to suspend or delay performance of the Work, upon the discovery of any fossils, artefacts 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 Work, or suspension or delay in the performance of the Work, would not otherwise be required under this Project Agreement, provided however that the foregoing shall not apply to the extent that any item referred to in Section 15.1(a) was disclosed in or properly inferable, readily apparent or readily discoverable from the Site Information or would have been properly inferable, readily apparent or readily discoverable from inspections of the Sites carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Date;
- (vi) subject to Section 11.19, the execution of works on a Site not forming part of this Project Agreement by HMQ, any HMQ Party or any other person permitted to execute such works by HMQ or any HMQ Party;
- (vii) a requirement pursuant to Schedule 14 – 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, for such period of time, if any, as has been determined as an appropriate time period for delay in the final determination of the dispute;

- (viii) an event of Force Majeure; or
- (ix) a Relevant Change in Law.

22.2 Consequences of a Delay Event

- (a) Upon the occurrence of a Delay Event, the Contract Time will be extended for such reasonable time as the Consultant recommends in consultation with HMQ in accordance with the procedure set out in Schedule 11 – Change Procedure (which, for greater certainty, may include a separate Scheduled Substantial Completion Date for one or more of the Facilities).
- (b) Should Project Co contend that it is entitled to an extension of the Contract Time for completion of any portion of the Work, Project Co shall, subject to Section 24.3(c):
 - (i) as soon as reasonably possible but in any event within 15 days of the occurrence of the Delay Event, provide HMQ with written notice setting forth the cause of the Delay Event, a description of the impact the Delay Event will have on the Scheduled Substantial Completion Date (including an order of magnitude estimate of the cost of the Delay Event), and a description of the portions of the Work affected thereby, together with all pertinent details;
 - (ii) as soon as reasonably possible but in any event within 15 days after the cause of the Delay Event has ceased to exist, submit a written application to HMQ for the specific Contract Time extension requested, and if the Delay Event has arisen as a result of an event described in Sections 22.1(a)(i), 22.1(a)(ii), 22.1(a)(iii), 22.1(a)(iv), 22.1(a)(v), 22.1(a)(vi), 22.1(a)(vii) and 22.1(a)(ix), submit a breakdown of the actual costs, without mark-up, incurred by Project Co as a result of the Delay Event; and
 - (iii) use all reasonable efforts to anticipate the occurrence of any Delay Event and take appropriate measures to avoid its potential occurrence or minimize the potential effects of its occurrence.
- (c) Project Co acknowledges that the provisions of Section 22.2(b)(i) and Section 22.2(b)(ii) are required by HMQ to ensure HMQ is provided with timely and sufficient information respecting any alleged Delay Event and is not prejudiced in dealing with the claim by Project Co for an extension of the Contract Time or increase to the Guaranteed Price as a consequence of the occurrence of the Delay Event. If Project Co fails to comply with the

requirements to provide the information under either Section 22.2(b)(i) or Section 22.2(b)(ii) within the time periods therein provided, it shall be disentitled to claim an extension to the Contract Time or increase to the Guaranteed Price, but only to the extent that HMQ has been prejudiced by the failure. The onus shall be on Project Co to establish substantial compliance with the said requirements, and to establish that HMQ has not been prejudiced by the failure to provide the required information within the required time period.

- (d) If the Work 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 Work necessary to complete the Work on schedule, Project Co shall use all reasonable measures to bring the Work back on schedule. Project Co shall exercise all means within its discretion, such as directing any Project Co Party creating delays to increase their labour forces and equipment, to improve the organization and expediting of the Work, 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 Contract Time.
- (e) Costs (as defined in Section 2.3.2 of Schedule 11 – Change Procedure) due to delays caused by non-availability of specified items, when such delays could have been avoided or substantially mitigated by Project Co, shall be the responsibility of Project Co.
- (f) 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 Contract Time 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.
- (g) Project Co acknowledges that subject to any extension of the Contract Time that may arise in connection with the Consultant's failure to respond to any Design Issue in accordance with Section 8.2(i), as it applies to the circumstances of either Section 11.18(a) or 11.18(b), or if there is any extension of the Contract Time allowed in the circumstances of a Change in the Scope of the Work under Section 11.18(c), no extension of the Contract Time shall be made for delays caused by a Design Issue properly characterized as a Project Co Design Issue under Sections 11.17 and 11.18 of this Project Agreement.
- (h) HMQ shall provide Project Co with access to and use of the Site as required pursuant to Article 9 of this Project Agreement in a manner consistent with the

Construction Schedule and in accordance with the notification requirements and restrictions set out in the Contract Documents, 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) Project Co acknowledges and agrees that the Contract Time includes a Schedule Cushion in each Construction Schedule at no additional cost to HMQ. Project Co shall separately identify the extent of the Schedule Cushion in each Construction Schedule.
- (j) Project Co acknowledges and agrees that in the event that an extension of the Contract Time is allowed under any provision of this Project Agreement, HMQ may, in its Sole Discretion, elect to apply any portion of the Schedule Cushion with the result that such extension of the Contract Time shall be reduced or eliminated, as the case may be, by the number of days of the Schedule Cushion HMQ has elected to apply.
- (k) For greater certainty, no extension of the Contract Time resulting from a Delay Event shall be allowed, unless the Delay Event on which the claim is based extends the Scheduled Substantial Completion Date or the Scheduled Final Completion Date, and in no case shall the extension of the Contract Time be more than the necessary extension of the Delay Event.
- (l) For clarity, Project Co shall not be entitled to any extension of time resulting from a Delay Event referred to in Section 22.1(a)(i) or (ii) solely as a result of a delay in achieving the Interim Payment Requirements for the applicable Interim Payment.

22.3 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 in accordance with Good Industry Practice to:
 - (i) eliminate, mitigate, overcome or minimize the consequences of such event;
 - (ii) continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event;
 - (iii) resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable; and
 - (iv) remedy any failure to perform.

- (b) To the extent that Project Co does not comply with its obligations under this Section 22.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of the Contract Time pursuant to this Article 22.

23. COMPENSATION EVENTS

23.1 Definition

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 22.1(a)(i), 22.1(a)(ii), 22.1(a)(iii), 22.1(a)(iv), 22.1(a)(v), 22.1(a)(vi) and 22.1(a)(vii), as a direct result of which Project Co has incurred loss or expense.

23.2 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 Article 23. 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 11 – Change Procedure;
 - (ii) Article 24, in the case of a Delay Event referred to in Section 22.1(a)(viii); and
 - (iii) Article 21, in the case of a Delay Event referred to in Section 22.1(a)(ix).
- (b) Subject to Sections 23.3 and 23.4, if it is agreed or determined in accordance with Schedule 14 – 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 HMQ's Project Manager with any information HMQ's Project Manager may require in order to determine the amount of such compensation.
- (c) Notwithstanding any other provision in this Project Agreement, including Section 23.2(b), where HMQ elects to apply all or any portion of the number of days of Schedule Cushion, Project Co shall not be entitled to any Direct Losses or any other additional compensation related to the time that is reduced or eliminated by the Schedule Cushion except as otherwise provided in Section 2.11 of Schedule 11.
- (d) If HMQ is required to compensate Project Co pursuant to this Section 23.2, 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.

- (e) Where an event listed in Sections 22.1(a)(i) to (ix) 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;
 - (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 23.3;
 - (iii) in respect of Direct Losses, other than those in 23.2(e)(i) and (ii), all Direct Losses of Project Co arising from such event listed in Sections 22.1(a)(i) to (ix) shall be calculated as of Substantial Completion in accordance with this Article 23 and, for clarity, Project Co is required to continue to mitigate its damages until Substantial Completion in accordance with Section 23.3.
- (f) Any amount payable by HMQ pursuant to Section 23.2(e) shall be payable on the Substantial Completion Payment Date.

23.3 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 Article 23 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 23.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Article 23.

23.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Article 23 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.

24. FORCE MAJEURE

24.1 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) civil commotion, warlike operation, invasion, rebellion, hostilities, military or usurped power;
 - (ii) acts of God;
 - (iii) labour disputes, strikes or lockouts (including lockouts decreed or recommended for its members by a recognized contractor’s association of which Project Co or the Contractor is a member or to which Project Co or the Contractor is otherwise bound);
 - (iv) fire;
 - (v) unusual delay by common carriers;
 - (vi) unavoidable casualties; or
 - (vii) without limiting any of the foregoing, any cause beyond Project Co’s control,

but excluding any delay due to:

- (A) labour disputes involving only the forces of Project Co or any Project Co Party;
- (B) lack of funds;
- (C) default or negligence of Project Co or any Project Co Party;
- (D) any shortage of labour, equipment or materials, unless such shortage is due to an event which gives rise to relief under this Section 24.1;
- (E) the default, delay or failure of any Project Co Party, unless such default, delay or failure is due to an event which would give rise to relief under this Section 24.1 if such Project Co Party was a party to this Project Agreement; or
- (F) any weather (extreme or unusual) encountered in the course of completing the Work (but not including weather conditions designated by any Governmental Authority as having caused a natural disaster.)

24.2 Consequences of Force Majeure

- (a) Subject to Section 24.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the event of 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 22.1(a)(viii):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Article 22; and
 - (ii) where such Delay Event causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, HMQ shall pay to Project Co an amount equal to the Debt Service Amount accrued and paid or 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 Debt Amount, which, but for the Delay Event, would have been paid by HMQ and accrued to Project Co.
- (c) If an event of Force Majeure occurs, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 24.2(b)(ii) and Article 29.
- (d) Subject to Article 29, 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 Article 24.

24.3 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, and to continue 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, and to continue 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 Contract Time and/or the Construction Schedule.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 24.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Article 24.
- (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 the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 24.3(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 24.3(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.

24.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Article 24 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.

24.5 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 14 – Dispute Resolution Procedure shall not apply to a failure of HMQ and Project Co to reach agreement pursuant to this Section 24.5.

25. PROJECT CO DEFAULT

25.1 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 any proceedings are instituted against Project Co for the 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 Work (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 25.1(a)(i)(A);
- (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 in this Section 25.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Sections 25.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;

- (ii) subject to the occurrence of a Delay Event, Project Co failing to achieve Substantial Completion within 90 days after the Scheduled Substantial Completion Date (the “**Longstop Date**”);
- (iii) 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 the Work, or that may compromise the reputation or integrity of HMQ or the Sponsors, 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;
- (iv) Project Co committing a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in this Section 25.1 and other than as a consequence of a breach by HMQ of its obligations under this Project Agreement), and upon receiving notice of such breach from HMQ, 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;
 - (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;
- (v) Project Co wholly abandoning the Work for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return

to any Site, other than as a consequence of a Delay Event or a breach by HMQ of its obligations under this Project Agreement;

- (vi) Project Co failing to comply with Sections 38.1 or 38.3;
- (vii) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 38.4;
- (viii) subject to the provisions of Section 2.5 of Schedule 18 – Payments and Holdbacks, 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 any Encumbrances derived through HMQ) within 30 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;
- (ix) 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 14 – Dispute Resolution Procedure, and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED], and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from HMQ;
- (x) Project Co failing to comply with Article 40;
- (xi) 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;
- (xii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 14 – Dispute Resolution Procedure; and/or

- (xiii) a default by Project Co or any Project Co Party under any of the Implementing Agreements following the expiry of any applicable notice and cure periods thereunder.

25.2 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.

25.3 Remedies

- (a) Upon the occurrence of a Project Co Event of Default under this Project Agreement and subject to the Lender's Direct Agreement, and provided HMQ has given notice to Project Co of the occurrence of a Project Co Event of Default, HMQ may do any or all of the following as it in its Sole Discretion shall determine:
 - (i) 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 Lender's Direct Agreement to receive such notice;
 - (ii) if Project Co is in default under this Project Agreement by reason of its failure to pay any monies, HMQ may (without obligation to do so) make payment on behalf of Project Co of such monies and any amount so paid by HMQ plus the Payment Compensation Amount;
 - (iii) without termination of this Project Agreement, cure or attempt to cure the Project Co Event of Default (but this shall not obligate HMQ to cure or attempt to cure the Project Co Event of Default, or after having commenced to cure or attempt to cure such Project Co Event of Default, to continue to do so or to cure or attempt to cure any subsequent Project Co Event of Default) and all costs and expenses incurred by HMQ in curing or attempting to cure the Project Co Event of Default, together with the Payment Compensation Amount, shall be payable by Project Co to HMQ on demand. No such action by HMQ shall be deemed to be a termination of this Project Agreement and HMQ shall not incur any liability to Project Co for any act or omission of HMQ in the course of curing or attempting to cure any such Project Co Event of Default. Without limiting the foregoing, HMQ may deduct the cost and expense of curing or attempting to cure the Project Co Event of Default, plus the Payment Compensation Amount thereon, from any payment then or thereafter due to Project Co, provided the Consultant has certified such cost to HMQ and Project Co;

- (iv) bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged that damages at law may be an inadequate remedy for a Project Co Event of Default;
- (v) bring any action at law as may be necessary or advisable in order to recover damages and costs, subject to Section 34.2;
- (vi) make demand on the Surety in accordance with the terms of the Bonds;
- (vii) take possession of the Work and Products, utilize the construction machinery and equipment (subject to the rights of third parties and to the payment of reasonable rental fees in respect of construction machinery and equipment owned by Project Co), and finish the Work by whatever method HMQ may consider expedient; and
- (viii) exercise any of its other rights and remedies provided for under this Project Agreement or otherwise available to it.

25.4 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 substantial indemnity basis) properly incurred by HMQ in exercising its rights under this Article 25, including any relevant increased administrative expenses. HMQ shall take commercially reasonable steps to mitigate such costs.

25.5 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 expressly set forth in this Project Agreement.

26. HMQ DEFAULT

26.1 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 have been certified by Consultant or awarded by arbitration or court, 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; and/or
 - (ii) HMQ committing a material breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in this

Section 26.1 and other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), and upon becoming aware of such breach, HMQ failing to remedy such breach in accordance with all of the following:

- (A) HMQ shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Project Co;
 - (II) put forward, within 5 Business Days of receipt of notice of such breach from Project Co, 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 day 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,

provided that any withholding of holdback and final payments by HMQ or otherwise effecting any set off permitted or contemplated hereunder shall not constitute an HMQ Event of Default permitting Project Co to claim that HMQ is in default of HMQ's contractual obligations.

26.2 Remedies

- (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, Project Co may:
 - (i) suspend performance of its obligations under this Project Agreement until such time as HMQ has remedied such HMQ Event of Default;
 - (ii) terminate this Project Agreement in its entirety by notice in writing having immediate effect; or
 - (iii) bring any action at law as may be necessary or advisable in order to recover damages and costs, subject to Section 34.2.

- (b) Where HMQ has disputed the alleged HMQ Event of Default set out in the Notice under Section 26.2(a), the remedies available to Project Co as set out in Section 26.2(a) shall be suspended and not available to Project Co until such time as the dispute has been resolved pursuant to Schedule 14 – Dispute Resolution Procedure and if the dispute is resolved in favour of Project Co and HMQ has not remedied the HMQ Event of Default within the applicable time period to remedy set out in Section 26.1 which time period shall commence on the issue of the decision under the Dispute Resolution Procedure.

26.3 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 substantial indemnity basis) properly incurred by Project Co in exercising its rights under this Article 26, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

26.4 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.

27. NON-DEFAULT SUSPENSION AND TERMINATION

27.1 Suspension

- (a) HMQ may order Project Co in writing to suspend or interrupt all or any part of the Work for such period of time as HMQ may determine to be appropriate for the convenience of HMQ. This right of HMQ to suspend or interrupt the Work shall not give rise to any duty on the part of HMQ to exercise this right for the benefit of Project Co or any other person or entity. In the event of an HMQ-ordered suspension of Work not resulting from Project Co or a Project Co Party not performing its obligations under this Project Agreement, the Contract Time will be extended for such reasonable time as the Consultant shall recommend in consultation with HMQ and Project Co, and Project Co shall be reimbursed by HMQ for the Cost (as defined in Section 2.3.2 of Schedule 11 – Change Procedure) incurred by Project Co as a result of the suspension of the Work, and such extension of the Contract Time and reimbursement of the Cost shall be valued and processed as a Change Order in accordance with the Change Order procedure set out in Schedule 11. The Consultant is not authorized to order a suspension of the Work. The Work shall only be suspended by written notice from HMQ to Project Co.
- (b) If the Work is stopped for any reason, Project Co shall provide protection for any part of the Work likely to become damaged during the Work stoppage. HMQ

shall pay the costs of such protection only if stoppage occurs due to the occurrence of a Delay Event.

27.2 Termination for Delay or Force Majeure

- (a) If all or substantially all of the Work should be stopped or otherwise delayed for a continuous period of 180 days or more (or if HMQ reasonably believes that such a delay is reasonably likely to occur) as a result of the occurrence of any one or more events of Force Majeure or events described in Section 22.1(a)(i)(B), which may result in an extension of the Contract Time, HMQ may, by giving Project Co written notice, terminate this Project Agreement.
- (b) If all or substantially all of the Work should be stopped or otherwise delayed for a continuous period of 180 days or more as a result of the occurrence of any one or more events of Force Majeure or events described in Sections 22.1(a)(i) to 22.1(a)(vii) or 27.1(a), Project Co may, by giving HMQ written notice, terminate this Project Agreement provided that Project Co shall:
 - (i) at all times following the occurrence of any one or more of the events described in Sections 22.1(a)(i) and 22.1(a)(ii), take all reasonable steps to prevent and mitigate the effects of any delay;
 - (ii) at all times during which any one or more of the events described in Section 22.1(a)(i) and 22.1(a)(ii) is subsisting, take all steps in accordance with Good Industry Practice to overcome or minimize the consequences of the event; and
 - (iii) take all reasonable steps to mitigate its losses and costs resulting from the occurrence of any one or more of the events described in Sections 22.1(a)(i) and 22.1(a)(ii).

27.3 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 27.3, 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 Work, or any part or parts of the Work, where such Work has not yet been commenced.

28. EFFECT OF TERMINATION

28.1 Termination

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination, this Article 28 shall apply in respect of such termination.

28.2 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.

28.3 Continuing Performance

- (a) Subject to any exercise by HMQ of its right 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 12 – 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 Article 28.

28.4 Effect of Notice of Termination

- (a) On the service of a notice of termination:
 - (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 11.9(f), Project Co shall transfer to, and there shall vest in HMQ, free from all Encumbrances other than any Encumbrances derived through HMQ, such part of the Work and Facility as shall have been constructed and such items of the plant and 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 28.4(a)(i)(B)) on or near to any Site shall remain available to HMQ for the purposes of completing the Work; and
 - (B) all construction plant and equipment shall remain available to HMQ for the purposes of completing the Work, subject to payment by HMQ of Project Co's reasonable charges;

- (ii) in the event of a termination as provided for pursuant to this Project Agreement, Project Co shall cooperate with HMQ and turn over to HMQ copies of Project Co's records, documentation and drawings necessary for HMQ to proceed with the Work, including the legal assignment to HMQ of any of Project Co's rights in any agreement relating to the Work as HMQ may require, and Project Co shall not do anything to impede HMQ's ability to proceed with the Work. Further, Project Co agrees to turn over to HMQ, on a timely basis, enabling Project Co to make and retain copies as it may reasonably deem necessary, all of Project Co's records, files, documents, materials, drawings, and any other items relating to the Projects, whether located on any Site, at Project Co's office or elsewhere (including all records as described in Section 18.1(a) and notwithstanding the fact that such provision only permits access by HMQ to such records) and to vacate each Site in accordance with HMQ's reasonable instructions. HMQ may retain such records, files, documents, materials, drawings and any other items for such time as it may need them and may reproduce any and all such items for its own use;
- (iii) Project Co shall use commercially reasonable efforts to assign or otherwise transfer to HMQ, free of Encumbrances (other than 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 Facilities; and
- (iv) Project Co's obligation under this Project Agreement as to quality, correction and warranty of the Work performed by Project Co up to the time of termination shall continue in force after such termination.

28.5 Ownership of Information

- (a) Subject to Article 36, all information obtained by Project Co, including the Drawings and Specifications, the As Built Drawings and other technical drawings and data, environmental and technical reports, and all other information directly related to the Work accumulated over the course of the performance of the Work shall be the property of HMQ or the Consultant and Project Co shall have no right, title or interest therein whatsoever, and hereby waives any moral rights it may have under Applicable Law. Upon termination of this Project Agreement, all such information shall be provided or returned by Project Co to HMQ, in electronic format where it exists in electronic format, and in its original format, when not in electronic format.
- (b) HMQ shall provide Project Co, without charge, 10 hard copies of the Contract Documents (including all Addenda), 2 of which shall be used for record drawings, and 1 electronic copy in PDF format of the Contract Documents (including all Addenda) contained on a CD. HMQ shall also provide Project Co, without

charge, 1 hard copy of all administrative documents such as Change Orders, Contemplated Change Notices, Change Directives, Supplemental Instructions and Design Issue resolution forms. Any additional copies of the Contract Document or part thereof including additional copies of administrative documents, shall be provided to Project Co at its expense. Project Co shall ensure that all copies of the Contract Documents received from HMQ are kept in a secure location.

28.6 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) 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 Article 28.

28.7 Survival

- (a) The provisions of this Project Agreement which by their nature are continuing shall survive termination of this Project Agreement.

29. COMPENSATION ON TERMINATION

29.1 Compensation on Termination

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 12 – Compensation on Termination shall apply and HMQ shall pay Project Co any applicable compensation on termination.

30. TAXES

30.1 Project Co to Pay Taxes

- (a) Project Co shall pay all Taxes in effect during the performance of the Work. The amount incurred (excluding HST) shall be included in the Cost of the Work. The Guaranteed Price shall exclude HST.

30.2 Changes in Rates

- (a) Any increase or decrease in costs to Project Co due to changes in such included Taxes after the Submission Date shall increase or decrease the Guaranteed Price accordingly, except for changes announced before the Submission Date and to take effect at some time thereafter, which shall, except as expressly set forth in Section 30.1, be deemed to have been taken into account in the Guaranteed Price.

30.3 Mark Up

- (a) Project Co is not entitled to any mark-up for profit, overhead or otherwise, due to an increase in any Taxes included in the Cost of the Work. Project Co shall be entitled to claim for the increase in cost equal to the amount of such included Tax

on the uncompleted Cost of the Work. HMQ will be entitled to withhold payment to Project Co of a sum equal to the amount of any reduction in such included Tax on the uncompleted portion of the Work, only if HMQ has not already benefited from said reduction in such included Tax by a decrease in the Guaranteed Price in accordance with Section 30.2.

30.4 Exemptions

- (a) When an exemption or recovery of Taxes included in the Cost of the Work is applicable to this Project Agreement, Project Co shall, at the request of HMQ, assist, join in, or make application for an exemption, recovery or refund of all such included Taxes and all amounts recovered or exemptions obtained shall be for the sole benefit of HMQ. Project Co agrees to endorse over to HMQ any cheques received from the federal or provincial governments as may be required to implement the foregoing, failing which, HMQ is hereby authorized to deduct the amount from any payment that is then or may thereafter become due to Project Co hereunder.

30.5 Records

- (a) Project Co shall maintain and make available to the Consultant accurate records, tabulating equipment and component costs showing Taxes.

31. INSURANCE AND PERFORMANCE SECURITY

31.1 General Requirements

- (a) Project Co and HMQ shall comply with the provisions of Schedule 13 – Insurance and Performance Security.

31.2 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.

31.3 Performance Guarantee of Construction Guarantor

- (a) Project Co shall ensure that at all times until the end of the Warranty Period, 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 22 – Performance Guarantee of Construction Guarantor, is in place and enforceable by HMQ.

32. INDEMNITIES

32.1 Project Co Indemnities to HMQ and Sponsors

- (a) In addition to any other indemnification provided in this Project Agreement or in law or in equity, Project Co shall indemnify and save harmless HMQ, each of the Sponsors, the Consultant, HMQ's Project Manager, and each of their respective directors, officers, consultants, employees, agents, representatives, successors and assigns, Her Majesty the Queen in right of Ontario, Her ministers, agents and employees, and any person for whom they are in law responsible (collectively, the "**HMQ Indemnified Parties**") from and against any and all Direct Losses (including, with respect to the indemnity set out in Section 32.1(a)(viii), all clean up costs), which may be brought against them, suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:
- (i) the death, sickness, disease or personal or bodily injury of any person;
 - (ii) any loss, damage or destruction of tangible or intangible property;
 - (iii) any safety infractions committed by Project Co or any Project Co Party under OHSA, or resulting from any failure by Project Co to fulfill its obligations under Section 11.6, including the failure to exercise any of the rights or powers given to Project Co under Section 11.6(c) at the Sites in respect of any person for whom Project Co is responsible under OHSA in connection with the Projects;
 - (iv) any infringement or alleged infringement of a patent of invention by Project Co or any Project Co Party, other than infringements or alleged infringements described in Section 32.2(a)(iii);
 - (v) any fines levied against Project Co or any HMQ Indemnified Party due to Project Co's (or any Project Co Party's) violations of any Applicable Law;
 - (vi) without prejudice to HMQ's rights under Article 25 and any other rights under this Project Agreement, any obligations of Project Co assumed by HMQ under the Construction Contract and any reasonable costs and expenses incurred by HMQ in relation to the exercise by HMQ of its step-in rights under the Assignable Subcontract Agreement for Construction Contract;
 - (vii) any obligations of Project Co to satisfy judgements and pay costs resulting from construction liens arising from the performance of the Work or 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 Sites which constituted part of the Work in accordance with Section 2.5.5 of Schedule 18 – Payments and Holdbacks; and

- (viii) (A) Project Co's obligations under Article 14; and
- (B) Project Co Hazardous Substances,

(collectively, the "**Project Co Indemnified Hazardous Substances Claims**"), which indemnification shall apply and extend to:

- (I) Project Co Indemnified Hazardous Substances Claims made by federal, provincial or local government entities or agencies, and
- (II) all Project Co Indemnified Hazardous Substances Claims arising out of such actual Release of Hazardous Substances even if such Project Co Indemnified Hazardous Substances Claims are not discovered or made until after the performance of the Work or after conclusion of this Project Agreement, provided this indemnity shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in this Section 32.1, or which otherwise exist respecting a person or party described in this Section 32.1,

in each case, arising directly or indirectly out of, or in consequence of, any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party.

- (b) Project Co shall indemnify and save harmless the HMQ Indemnified Parties from and against any and all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of:
 - (i) any breach of any representation or warranty by Project Co herein;
 - (ii) any claims with respect to the Projects, by any Project Co Party that Project Co has replaced pursuant to Section 11.8(b); or
 - (iii) any breach of this Project Agreement or any Implementing Agreement by Project Co.
- (c) HMQ hereby holds in trust for and on behalf of the HMQ Indemnified Parties other than HMQ the benefit of the indemnities provided by Project Co set out in this Section 32.1.
- (d) Project Co shall indemnify HMQ 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 under payment by Project Co; or (iii) an amount determined as payable by Project Co to HMQ under Schedule 14 – Dispute Resolution Procedure, by payment of the amount equal to the Payment Compensation Amount calculated from day to day at any 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 14 – Dispute Resolution Procedure, up to and including the date of payment.

- (e) Project Co shall indemnify and save harmless HMQ, City, UofT, Markham 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, Markham 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, except to the extent caused, or contributed to, by:

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

any deliberate or negligent act or omission of HMQ, City, UofT, Markham or TO2015.

- (f) For greater certainty:
- (i) the liability of Project Co under this Section 32.1 shall not be greater than the total cumulative liability of Project Co under Section 34.2; and

- (ii) the indemnities set out in this Section 32.1 shall not apply to the extent the breach of the Project Agreement or the act or omission of Project Co or any Project Co Party was caused or contributed to by:
 - (A) the breach of this Project Agreement by HMQ; or
 - (B) any act or omission by HMQ, any HMQ Indemnified Party or any of HMQ's own forces.

32.2 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, consultants, employees, agents, representatives, successors and assigns (the "**Project Co Indemnified Parties**") from and against any and all Direct Losses (including, with respect to the indemnity set out in Section 32.2(a)(iv), all clean up costs) which may be suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:
 - (i) the death, sickness, disease or personal or bodily injury of any person;
 - (ii) any damage or destruction of tangible or intangible property;
 - (iii) any infringement or alleged infringement of a patent of invention in executing anything for the purpose of this Project Agreement, the model, plan, Specification or design of which was supplied to Project Co as part of the Contract Documents;
 - (iv)
 - (A) exposure to, or the presence of, Hazardous Substances at the Sites other than Project Co Hazardous Substances;
 - (B) the breach of any Applicable Law relating to such Hazardous Substances; and
 - (C) any Release or threatened Release at or from the Sites of any such Hazardous Substances which has or may have an adverse effect upon the environment or human health or safety,

other than Project Co Indemnified Hazardous Substances Claims as set out in Section 32.1(a)(viii) (collectively, the "**HMQ Indemnified Hazardous Substances Claims**"), and in this regard, it is expressly agreed and understood that such indemnification shall apply and extend to HMQ Indemnified Hazardous Substances Claims even if such HMQ Indemnified Hazardous Substances Claims are not discovered or made until after the performance of the Work or after conclusion of this Project Agreement, provided this indemnity shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in this Section 32.2 or

which otherwise exist respecting a person or party described in Section 32.1,

in each case, arising directly or indirectly out of or in consequence of any breach of this Project Agreement by HMQ or any act or omission of HMQ or any HMQ 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 bound 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 properly insure in accordance with the terms hereof.

- (b) HMQ shall indemnify and save harmless the Project Co Indemnified Parties from and against any and all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of:
 - (i) any breach of a representation or warranty by HMQ herein; or
 - (ii) any breach of this Project Agreement or any Implementing Agreement by HMQ.
- (c) Project Co hereby holds in trust for and on behalf of Project Co Indemnified Parties other than Project Co the benefit of the indemnities provided by HMQ set out in this Section 32.2.
- (d) 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 under payment by HMQ; or (iii) an amount determined as payable by HMQ to Project Co under Schedule 14 – Dispute Resolution Procedure, by payment of the amount equal to the Payment Compensation Amount calculated from day to day at any 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 14 – Dispute Resolution Procedure, up to and including the date of payment.
- (e) For greater certainty:
 - (i) the liability of HMQ under this Section 32.2 shall not be greater than the total cumulative liability of HMQ under Section 34.2; and
 - (ii) the indemnities set out in this Section 32.2 shall not apply to the extent the breach of the Project Agreement or the act or omission of HMQ or any HMQ Party was caused or contributed to by:
 - (A) the breach of this Project Agreement by Project Co; or

- (B) any act or omission of Project Co, any Project Co Indemnified Party.

32.3 Conduct of Claims

- (a) This Section 32.3 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 32.3, 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 32.3(d), 32.3(e) and 32.3(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 32.3 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 32.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 32.3(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 32.3(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 32.3(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 patient, clinical or 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 32.3(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 32.3 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.

32.4 Mitigation – Indemnity Claims

- (a) For greater certainty, Section 43.4 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.

33. WAIVER OF CLAIMS

33.1 Waiver of Claims by Project Co

- (a) As of the date of the final certificate for payment, Project Co expressly waives and releases HMQ from all claims against HMQ, including those that might arise from the wilful misconduct, negligence or breach of contract by HMQ except:
 - (i) those made in writing prior to Project Co's application for final payment and still unsettled;
 - (ii) those arising from the provisions of any indemnity given by HMQ under this Project Agreement; or
 - (iii) without limiting the provisions of Section 33.1(a)(ii), those arising from HMQ's obligations under Article 14 and Section 32.2(a)(iv).

34. LIMITS ON LIABILITY

34.1 Indirect Losses

- (a) Without prejudice to the Parties' rights in respect of payments provided for herein which may, in accordance with their terms or by necessary implication, include the payment of Indirect Losses, subject to the provisions hereof, 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 income, loss of use, loss of production, loss of business or loss of business opportunity; or
- (iii) for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party or by City, UofT, Markham or TO2015,

provided that the exceptions in (ii) and (iii) shall not apply as a result of, or in relation to, HMQ's, City's, UofT's, Markham's or TO2015's loss of use of a Facility and/or the Existing Facility or a portion thereof, which shall be Direct Losses for all purposes of this Project Agreement.

(collectively, "**Indirect Losses**").

34.2 Maximum Liability

- (a) Subject to and save and except in respect of:
 - (i) any claims of HMQ against Project Co:
 - (A) for the cost to perform and complete the Work in accordance with the Contract Documents, including the reasonable and proper costs of HMQ incurred in carrying out any re-tendering of the Work or any applicable portion thereof;
 - (B) for the costs that may arise under Sections 35.2 and 35.3 to correct defects, deficiencies or non-compliant items in the Work;
 - (C) for the costs that may arise in the circumstances of Section 25.1(a)(i); or
 - (D) to recover from Project Co payment of any amount that would have been payable to HMQ under policies of insurance described under Schedule 13 but for the breach by Project Co under any such policies, which breach relieved the insurer of its obligation to pay HMQ under such policies;
 - (ii) any claims of Project Co against HMQ for the payment of the Guaranteed Price (including Additional HMQ Payments), Interim Payments, the Substantial Completion Payment or any Compensation Payment;
 - (iii) any claims by either Party against the other for:

- (A) damages for fraud, material misrepresentation, wilful misconduct or deliberate acts of wrongdoing;
- (B) costs arising from each Party's obligations under Article 14 and corresponding indemnities in Sections 32.1(a)(viii) and 32.2(a)(iv), respectively; or
- (C) any insurance proceeds where such funds have been misapplied by such Party or which, under the terms of this Project Agreement should have been paid to the other Party,

but notwithstanding any other provision of this Project Agreement, the total cumulative liability of either Party to the other for all costs, damages or losses of any kind, in law or in equity, whether based on tort, negligence, contract, warranty, strict liability or otherwise arising from or relating to this Project Agreement (including, for clarity, in respect of a Project Co Delay or any indemnity provided by either Party under this Project Agreement), shall not be greater than a total cumulative liability of \$[REDACTED]. Each of these limits shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained by or on behalf of Project Co in accordance with Schedule 13 – Insurance and Performance Security. For greater certainty, nothing herein is intended to limit the rights of HMQ in respect of any Security required to be provided by Project Co under Schedule 13 – Insurance and Performance Security and nothing herein shall limit either HMQ's or Project Co's ability to pursue claims against the Consultant for indemnity with respect to negligent design or engineering, subject to the limitations set out in Section 34.2(b).

- (b) Project Co acknowledges that the aggregate liability of the Consultant in all claims arising under or in respect of this Project Agreement shall be limited to the amount of the errors and omissions insurance coverage available to the Consultant in respect of such claim. HMQ covenants with Project Co to cause errors and omissions insurance to be in place covering the Consultant with indemnity limits of not less than \$[REDACTED] (in the aggregate). For greater certainty, Project Co shall not seek to recover from the Consultant or from any other person that might seek indemnity or contribution from the Consultant any amount in excess of the amount of the available indemnity under any errors and omissions insurance coverage available to the Consultant and responsive to such claim. Project Co acknowledges that the Consultant is a third party beneficiary under this Section 34.2(b) and that the Consultant shall be entitled to plead this Section 34.2(b) in its defence to any action brought by Project Co and Project Co waives any defence to such pleading by the Consultant. Project Co further acknowledges that HMQ is contracting in this respect as agent for the Consultant.

35. WARRANTY

35.1 Project Co Warranty

- (a) Project Co represents, warrants and covenants that:
 - (i) the Work 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 Work 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 Work or non-compliance with the requirements of this Project Agreement shall collectively be referred to as a “**Construction Defect**”.
- (c) For a period from the Substantial Completion Date to August 31, 2015 (the “**Warranty Period**”), Project Co shall, at its expense, correct and Make Good all Construction Defects arising in respect of the Work. For all work to correct deficient, defective and non-compliant Work, the Warranty Period shall be extended in respect of such corrected Works for a further one year period 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 Work and not the Work 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 Work (“**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 35.1 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 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 35.1(c) and (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 35.1 are for the benefit of City, Markham, and UofT and will be administered by HMQ on behalf of City, Markham, and UofT.

35.2 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 Parapan American Games, the performance of warranty work by Project Co shall be as follows:
 - (i) prior to July 1, 2015, and subject to Section 35.2(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 for the Markham Pan Am Centre and the Pan Am Field Hockey Centre on an urgent basis and shall perform warranty work for the Etobicoke Olympium in a timely manner;
 - (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 Facilities for sporting events, provided that HMQ shall provide advance notice of the specified dates and the aggregate number of specified dates will 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 Work, 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 Work affected by such corrective actions of HMQ's own forces. For the purposes of this Section 35.2, performing warranty work on an "urgent basis" means responding to and commencing work within one hour of a request for warranty work by HMQ.

- (b) After the Final Completion Date, HMQ shall cause Project Co to be granted access to the Sites for the purpose of performing such warranty work that is required pursuant to Sections 35.1 and 35.2. Project Co acknowledges that such access to the Sites may be subject to such limitations as may be imposed by HMQ.

35.3 Warranty Letter of Credit

- (a) As security for Project Co's warranty obligations during the Warranty Period, Project Co shall deliver, or cause to be delivered to HMQ no later than 10 days prior to the Scheduled Substantial Completion Date, an irrevocable letter of credit (the "**Warranty Letter of Credit**") substantially in the form of Schedule 26 – Warranty Letter of Credit. The Warranty Letter of Credit shall be in the amount equal to [REDACTED]% of the Cost of the Work (the "**Required Amount**").
- (b) In the event that Project Co does not deliver the Warranty Letter of Credit in accordance with Section 35.3(a), HMQ may withhold from the Substantial Completion Payment a holdback in the amount equal to the Required Amount (the "**Warranty Letter of Credit Holdback**"), which holdback shall be held in an interest bearing account until such time as Project Co delivers the Warranty Letter of Credit.
- (c) HMQ shall release the Warranty Letter of Credit Holdback, less the amount of any claims previously satisfied by a draw in accordance with Section 35.3(d) and together with all interest accrued thereon, no later than 5 days following delivery of the Warranty Letter of Credit to HMQ.
- (d) HMQ shall be entitled to draw on the Warranty Letter of Credit or the Warranty Letter of Credit Holdback, as applicable, in an amount equal to the damages suffered by HMQ, including any costs incurred by HMQ in accordance with Section 35.1(f), as a result of Project Co's breach of its obligations under Sections 35.1 and 35.2.
- (e) In the event that HMQ draws on the Warranty Letter of Credit or the Warranty Letter of Credit Holdback, Project Co shall forthwith, and in any event within 5 Business Days following such draw, provide HMQ with a replacement or additional letter of credit such that the Warranty Letter of Credit(s) are at all times during the Warranty Period in the Required Amount.
- (f) Unless the Warranty Letter of Credit is fully drawn by HMQ in accordance with the provisions of this Project Agreement, HMQ shall release and deliver the Warranty Letter of Credit to Project Co on August 31, 2015.

35.4 Performance of Replacement Work

- (a) The performance of replacement work and Making Good of defects, deficiencies or non-compliant items for which Project Co is responsible, shall be commenced and completed as expeditiously as possible, and shall be executed at times convenient to HMQ and this may require work outside normal working hours at Project Co's expense. Any extraordinary measures required to complete the Work, as directed by HMQ to accommodate the operation of the Facility or other aspects of the Projects as constructed shall be at Project Co's expense.

35.5 Opening, Tests, Inspections

- (a) Project Co shall, at any time or times prior to the expiry of said warranty period and when required to do so by HMQ, make such openings, tests, inspections, excavations, examinations, or other investigations in, through, of or in the vicinity of the Work as directed and shall, if required, Make Good again, to the satisfaction of HMQ, any openings, excavations or disturbances of any property, real or personal, resulting therefrom. If any defect, deficiency or non-compliant item for which Project Co is responsible is found in the Work by such investigations, the cost of such investigations and such Making Good shall be borne by Project Co; but if no such defect, deficiency or non-compliant item for which Project Co is responsible is found by such investigations, the said cost shall be borne by HMQ.

35.6 Remedies Not Exclusive

- (a) The foregoing express warranties shall not deprive HMQ of any action, right or remedy otherwise available to HMQ at law or in equity for breach of any of the provisions of the Contract Documents by Project Co, and the periods referred to in this Article 35, shall not be construed as a limitation on the time in which HMQ may pursue such other action, right or remedy.

35.7 Occupation by HMQ

- (a) For the purposes of this Article 35, completion of a milestone other than Substantial Completion is signified by availability of the relevant space for occupation by HMQ, as more particularly described in the Specifications.

35.8 No Limitation

- (a) Subject to Section 11.19(f), neither the performance of work by HMQ's own forces nor the work of HMQ's other contractors, shall, except with respect to any damage caused by HMQ's own forces or HMQ's other contractors, limit the availability or terms of any warranty.

36. INTELLECTUAL PROPERTY

36.1 Ownership of Specifications and Models

- (a) Specifications, Drawings, models, and copies thereof furnished by the Consultant are and shall remain the Consultant's property, with the exception of the signed Contract Document sets, which shall belong to each Party to this Project Agreement. All Specifications, Drawings and models furnished by the Consultant are to be used only with respect to the Work and are not to be used on other work. These Specifications, Drawings and models are not to be copied or altered in any manner except in accordance with the Contract Documents without the written authorization of the Consultant.

- (b) Models (other than financial models) furnished by Project Co at HMQ's expense are the property of HMQ.

36.2 Patent Fees

- (a) Project Co shall pay the royalties and patent licence fees required for the performance of this Project Agreement. The amount incurred shall be included in the Guaranteed Price.

36.3 Copyright Notice

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

37. COMMUNICATIONS PROTOCOL AND CONFIDENTIALITY

37.1 Communications Protocol

- (a) Project Co shall not, and shall ensure that the Project Co Parties and any person affiliated with Project Co do not, 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 Projects, this Project Agreement or any matters related thereto, without the prior written consent of HMQ, in its Sole Discretion, provided that if Project Co, a Project Co Party or any person affiliated with Project Co is a public company, it shall be entitled to make such disclosure as is required by Applicable Law, subject to notification and reasonable consultation with HMQ prior to such disclosure.
- (b) Project Co shall, and shall ensure that the Project Co Parties and any person affiliated with Project Co, in each case, comply, at all times, with HMQ's and Sponsor's media release and publicity protocols or guidelines, including the Communications Protocol set out in Schedule 21, as such protocols and/or guidelines are updated by HMQ and Sponsors from time to time, provided that if any such person is a public company, it shall be entitled to make such disclosure as is required by Applicable Law, subject to notification and reasonable consultation with HMQ and Sponsors prior to such disclosure.
- (c) HMQ, either on its own or together with any Sponsor, propose to establish a public information repository for the Projects which may be website based as well as a hard copy document repository for purposes of communicating to the public information respecting the Projects and the progress of the Construction Work. It is not intended that this information repository would include any information which falls within one of the exemptions under FIPPA, MFIPPA, or ATI, though the information repository may also contain the redacted versions of the Project Agreement or any of the Implementing Agreements pursuant to Section 37.3 below. Other than in respect of such redacted publications, HMQ on its own or together with the Sponsors, will establish a communications protocol in

consultation with Project Co for the development and management of the information repository.

37.2 Disclosure

- (a) Subject to Sections 37.2(b), 37.2(c) and 37.3, 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 37.2(b), and 37.2(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 37.2(b), but subject to Section 37.3, 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.

37.3 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 37.2(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 37.2(b) and, accordingly, would be exempt from disclosure under FIPPA, MFIPPA and ATI, the dispute may be referred for resolution in accordance with Schedule 14 – 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.

37.4 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. and, subject to compliance with FIPPA, MFIPPA and ATI, each Government Entity 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.

37.5 Freedom of Information

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

37.6 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 any other Party, provided that this Section 37.4 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 or any of the Implementing Agreements.
- (b) Project Co may:
 - (i) disclose in confidence to Agent and prospective lenders and their professional advisors such Confidential Information as is reasonably required by Agent or any such prospective lender in connection with the raising of financing for the Work 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 such Project Co Party of its obligations under this Project Agreement or any of the Implementing Agreements.

- (c) Project Co acknowledges that MOI, each Sponsor and/or the Province may use Confidential Information of Project Co for purposes not specific to the Projects, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework.
- (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 or any Implementing Agreements, as permitted by this Project Agreement or any Implementing 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.

37.7 Exceptions

- (a) Information of a Party (the "**Proprietor**") 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**") in writing 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, where the circumstances reasonably permit, 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 Article 28 or is otherwise reasonably required by HMQ for the purposes of performing (or having performed) the Work, including the construction of the Facility, subject to payment by HMQ of any royalties or patent license fees that were payable by Project Co in respect of such information (if any) and to any related confidentiality obligations disclosed to HMQ to which such information is subject; or
- (ix) the information would not be exempt from disclosure under FIPPA.

37.8 Survival of Confidentiality

- (a) Except for Confidential Information that Project Co has identified in writing to HMQ as being commercially sensitive, in which case the obligations in this Article 37 shall continue, the obligations in Sections 37.1 to 37.7 will cease on the date that is 3 years after the Final Completion Date.

37.9 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 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 Work.
- (d) Any part of the Work 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 37 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 37.
- (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 Work 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 37.

37.10 Survival

- (a) Subject to Section 37.8, the obligations in Sections 37.1 to 37.9 shall survive the termination of this Project Agreement.

38. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

38.1 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 Implementing Agreement without the prior written consent of HMQ, which consent may be withheld in the Sole Discretion of HMQ.
- (b) Section 38.1(a) shall not apply to:
 - (i) the grant of any security or any other interest to Agent under any of the Lending Agreements; or

- (ii) subject to Section 7.1(a)(xix), any Subcontract or sub-subcontract entered into by Project Co, the Project Co Parties or any sub-subcontractor in connection with the Projects.

38.2 HMQ Assignment

- (a) HMQ shall not charge, mortgage or encumber, or except in accordance with Section 38.2(b), sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate, all or any part of its interest in this Project Agreement or any Implementing Agreement.
- (b) HMQ may sell, assign, transfer, dispose of or otherwise alienate all (but not less than all) of its interest in this Project Agreement and the Implementing Agreements:
 - (i) to the Province or any minister of the Province;
 - (ii) in circumstances other than those described in Section 38.2(b)(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 perform the obligations of HMQ under this Project Agreement; provided that such a 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;
 - (iv) in circumstances other than those described in Section 38.2(b)(i) to 38.2(b)(iii) with the prior written consent of Project Co; 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 of 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.
- (c) HMQ shall not be released from 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 Section 38.2(b).

38.3 Subcontractors

- (a) Project Co shall not subcontract any interest in this Project Agreement or the Construction Contract, and shall not permit the Construction Contractor to subcontract any interest in the 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, Markham and TO2015 in the Province of Ontario; (ii) may compromise the reputation of HMQ, City, UofT, Markham and

TO2015, and/or the Province; (iii) may compromise the integrity of the Province or the Projects; 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 Contractor unless Project Co has complied with Sections 6.2(a), 38.3(c) and 38.3(d) or received the prior written consent of HMQ, which may be withheld in the Sole Discretion of HMQ.
- (c) Subject to Section 38.3(d), if the Construction Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of default or otherwise, with the effect that the Contractor shall cease to act in relation to any 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 Contractor, and Project Co shall require, that any replacement enter into a contract upon the same or substantially similar terms as the 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 Construction Contract unless any material variations are approved by HMQ, acting reasonably.

38.4 Changes in Ownership

- (a) No Change in Ownership of Project Co, or any company of which Project Co is a subsidiary, 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 or any Sponsor in the Province of Ontario, or (ii) may compromise the reputation of HMQ, any Sponsor and/or the Province, or (iii) may compromise the integrity of the Province or the Projects; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Work.
- (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 38.4 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 38.4, Project Co shall provide notice to HMQ of any Change in Ownership or Change in Control of Project Co, or any company of which Project Co is a subsidiary, 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 the then current shareholders and their respective holdings in the voting securities of Project Co, or any company of which Project Co is a subsidiary, as the case may be.

- (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.

39. DISPUTE RESOLUTION PROCEDURE

39.1 Dispute Resolution

- (a) All disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 14 – Dispute Resolution Procedure.

40. PROHIBITED ACTS

40.1 Definition

- (a) The term “**Prohibited Act**” means:
 - (i) offering, giving or agreeing to give to HMQ, any Sponsor, Government of Canada 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, any Sponsor, Government of Canada or any public body in connection with the Projects; 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, any Sponsor, Government of Canada or any public body in connection with the Projects;

provided that this Section 40.1(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, any Sponsor, Government of Canada 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, any Sponsor, Government of Canada or any public body in connection with the Projects;

- (ii) entering into this Project Agreement or any other agreement with HMQ, any Sponsor, Government of Canada or any public body in connection with the Projects for which 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, any Sponsor, Government of Canada 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 40.1(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, any Sponsor, Government of Canada 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, any Sponsor, Government of Canada or any public body in connection with the Projects without contravening the intent of this Article 40;
- (iii) breaching or committing any offence under any Applicable Law in respect of corrupt or fraudulent acts, or at common law, in respect of fraudulent acts in relation to this Project Agreement or any other agreement with HMQ, any Sponsor, Government of Canada or any public body in connection with any Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud HMQ, any Sponsor, Government of Canada or any other public body.

40.2 Warranty

- (a) Project Co warrants that, in entering into this Project Agreement, it has not committed any Prohibited Act.

40.3 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, HMQ may give written notice to Project Co and a Project Co Event of Default shall be deemed to have occurred;
 - (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 a Project Co Event of Default shall be deemed to have occurred, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment

and ensures that the relevant part of the Work 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 a Project Co Event of Default shall be deemed to have occurred, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Work shall be performed by another person, where relevant, in accordance with Section 38.3;
 - (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 written notice to Project Co and a Project Co Event of Default shall be deemed to have occurred, 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 Work 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 Section 40.3(a)(i) to 40.3(a)(iv), then HMQ may give notice to Project Co and a Project Co Event of Default shall be deemed to have occurred, 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 Work shall be performed by another person.
- (b) Any notice of termination under this Section 40.3 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 40.3, HMQ shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Article 40.

40.4 Permitted Payments

- (a) Nothing contained in this Article 40 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.

[REDACTED]
Attn: **[REDACTED]**

City of Markham
[REDACTED]
Attn: **[REDACTED]**

City of Toronto
[REDACTED]
Attention: **[REDACTED]**

University of Toronto
[REDACTED]
Attn: **[REDACTED]**

41.2 Notice to Consultant

- (a) In addition to the notice requirements set out in Section 41.1, where any Notice is to be provided or submitted to the Consultant, it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

B+H Architects
[REDACTED]
Fax No.: **[REDACTED]**
Attn.: **[REDACTED]**

41.3 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 provide an original of the Notice in compliance with this Section 41.3.

41.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Section 41.1 or 41.2 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.

41.5 Deemed Receipt of Notices

- (a) Subject to Sections 41.5(b), 41.5(c) and 41.5(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 Article 41.
 - (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.

41.6 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 Article 41.

42. HMQ DESIGNATE

42.1 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 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, Change Orders 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 42.1.

43. GENERAL

43.1 Amendments

- (a) This Project 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 Project Agreement.

43.2 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 or the Consultant 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.

43.3 Relationship Between the Parties

- (a) Each of the Parties acknowledges that it is contracting on its own behalf and not as an agent for any other person and subject to Schedule 20 – Form of Assignable Subcontract Agreement, this Project Agreement is not intended to and does not create or establish between the Parties, or between any of HMQ, any Project Co Party, and the Province, or any Sponsor, 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, the Province or any Sponsor, 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 that it 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.

43.4 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.

43.5 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 Projects as is actually held (or ought reasonably to be held) by their respective directors and officers.

43.6 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, including the Request for Proposals and the Proposal Submission, but excepting any of the Contract Documents and the Implementing Agreements, which agreements shall continue in full force and effect in accordance with their terms.

43.7 No Reliance

- (a) Each of the Parties acknowledges 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 other Implementing Agreements 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 or the other Implementing Agreements; and
 - (ii) this Section 43.7 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 Applicable Law.

43.8 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.

43.9 Enurement

- (a) This Project Agreement and any other agreement entered into in connection with the Projects 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 permitted successors and permitted transferees and assigns.

43.10 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 14 – 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.

43.11 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 at law or in equity.

43.12 Further Assurance

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

43.13 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.

43.14 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 déclare 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 Project Agreement shall be in English.

43.15 Proof of Authority

- (a) Each Party shall provide proof to each other Party in a form acceptable to such other Party, that any person executing this Project Agreement or any of the Implementing Agreements on its behalf, has the requisite authority to execute this Project Agreement or such Implementing Agreements on its behalf.

43.16 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 each other Party an original signed copy of this Project Agreement which was so faxed.

43.17 Government Entities as Third Party Beneficiaries

- (a) Each provision of the Project Agreement which is to the benefit of Markham, 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 each provision of the Project Agreement which is to the benefit of Markham, 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.
- (c) Nothing in this Project Agreement affects the rights protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

43.18 Time is of the Essence

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

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*, S.O. 2011, c.9, Schedule 32, as amended.

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

I have authority to bind the Corporation.

2338301 ONTARIO INC.

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the Corporation.

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

PART A

SECTION/ PROVISION	FACILITY	SPECIAL PROVISION
PROJECT AGREEMENT		
Section 9.1(a) and 11.6(a)	Markham Pan Am Centre	One day after Financial Close
	Etobicoke Olympium	July 1, 2013
	Pan Am Field Hockey Centre	July 1, 2013
SCHEDULE 1—DEFINITION AND INTERPRETATIONS		
“Environmental Reports”	Markham Pan Am Centre	means: (a) [REDACTED]
	Etobicoke Olympium	means: (a) [REDACTED]
	Pan Am Field Hockey Centre	means: (a) [REDACTED]
“Geotechnical Reports”	Markham Pan Am Centre	means: (a) [REDACTED]

SECTION/ PROVISION	FACILITY	SPECIAL PROVISION
	Pan Am Field Hockey Centre	means: (a) [REDACTED]

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

PART B

- 1. Definitions.** In the Project Agreement, unless the context otherwise requires:
- 1.1** “**Addenda**” means Addenda G1 to G12 and T1(E), T2(M), T3(M), T4(E), T5(F), T5(M), T5(M)Revised, T6(E), T7(F), T8(M), T9(M), T10(E), T11(E), T12(M), T13(F), T14(E), T15(F) and T16(F) issued by HMQ, together with Post Tender Addendum T1(M).
- 1.2** “**Additional HMQ Payments**” means amounts payable to Project Co pursuant to any Change Order or Change Directive under which HMQ is expressly responsible for an increase to the Guaranteed Price, which includes any cost arising out of a Change in the Scope of the Work initiated by HMQ pursuant to Schedule 11 – Change Procedure, or any payments to be made by HMQ pursuant to Articles 4, 21, 22, 23 or 24 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 progress payments made in respect of Base Progress Payments.
- 1.3** “**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 the Shareholders.
- 1.4** “**Agent**” means the Bank of Montreal, acting in its capacity as agent for and on behalf of Lenders.
- 1.5** “**Anticipated Final Completion Date**” has the meaning given in Section 16.5(a) of the Project Agreement.
- 1.6** “**Anticipated Interim Payment Date**” has the meaning given in Section 16.3(a) of the Project Agreement.
- 1.7** “**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 or any HMQ Party.

- 1.8** “**Approved Subcontractor Work**” means the work to be performed by each of the Approved Subcontractors set out in Schedule 19 – List of Project Co Parties.
- 1.9** “**Approved Subcontractors**” means a subcontractor which is on the list of Subcontractors approved by HMQ pursuant to the Request for Proposals process and included on the list of Project Co Parties set out in Schedule 19 of the Project Agreement.
- 1.10** “**As-Built Drawings**” or “**As Built**” means a set of Contract Documents marked-up by Project Co or a Project Co Party during construction, to record changes in the Work from the design documents and to illustrate actual locations of hidden utilities or concealed elements. The term may also be interpreted to mean a set of Contract Documents containing Project Co’s annotations.
- 1.11** “**Associated Liabilities**” has the meaning given in Section 4.22(b) of the Project Agreement.
- 1.12** “**Assignable Subcontract Agreement**” means the form of agreement attached as Schedule 20 to the Project Agreement.
- 1.13** “**Assignable Subcontract Agreement for Construction Contract**” means the form of agreement attached as Schedule 23 to the Project Agreement.
- 1.14** “**ATI**” means the *Access to Information Act* (Canada).
- 1.15** “**Base Progress Payments**” means base progress payments made in accordance with the Construction Contract other than the Interim Payments and the Substantial Completion Payment, but not including Additional HMQ Payments.
- 1.16** “**Beneficiary**” has the meaning given in Section 32.3(a) of the Project Agreement.
- 1.17** “**Bonds**” means any one or more of the Performance Bond and 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 13 – Insurance and Performance Security Requirements.
- 1.18** “**Building Code**” means the regulations made under Section 34 of the *Building Code Act*, 1992 (Ontario), as amended or replaced from time to time.
- 1.19** “**Building Permits**” means [REDACTED].
- 1.20** “**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.
- 1.21** “**Cash Allowance Disbursement Authorization**” is an authorization to Project Co by HMQ to expend monies from cash allowances included in the Guaranteed Price, as contemplated under Section 3.2 of the Project Agreement.

- 1.22** “**Certified Cost to Complete**” means the value of the Work remaining to be performed under the Project Agreement following the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date, as certified to HMQ by the Consultant provided that for greater certainty, the Certified Cost to Complete shall not include any amount in respect of Minor Deficiencies (as provided in Sections 16.2(f) and 16.2(h) of the Project Agreement) to the extent that such amount is included in the HMQ Holdback.
- 1.23** “**Change Directive**” means a written instruction prepared by the Consultant and signed by HMQ directing a Change in the Scope of the Work within the general scope of the Contract Documents.
- 1.24** “**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.
- 1.25** “**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.
- 1.26** “**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.
- 1.27** “**Change in the Scope of the Work or Scope Change**” shall mean any change in the scope of the Work from that shown in or which is properly inferable, readily apparent or readily discoverable from the Contract Documents and relating to the quantity or quality of Products or materials, components or equipment to be incorporated into the Work, or any specified method of installation of materials or equipment into the Work, including changes arising from Design Issues falling within categories “B” and “D” in the Risk Assessment Guidelines, but does not include a Project Co Design Contingency expenditure. It is agreed that refinements and detailing will be accomplished from time

to time with respect to the Contract Documents, including the addition of items or materials which may have been omitted from the Contract Documents but which are necessary to complete a detail shown, specified or readily apparent or properly inferable therefrom. Such refinements and detailing shall not constitute a Change in the Scope of the Work and will not result in any adjustment of the Guaranteed Price, but will be treated as a Project Co Design Contingency expenditure in accordance with Section 11.17. For greater certainty, it is understood and agreed that where Project Co is entitled to any extension of time or compensation for additional costs or expenses pursuant to the express provisions of the Contract Documents, the matter giving rise to such extension of time or additional costs or expenses shall be deemed to be a Change in the Scope of the Work and shall be processed as a Change Order pursuant to Schedule 11 – Change Procedure.

1.28 “**Change Order**” means a written amendment to the Contract Documents prepared in accordance with Schedule 11 – Change Procedure, by the Consultant and signed by HMQ and Project Co stating their agreement upon:

- (a) a Change in the Scope of the Work;
- (b) the method of adjustment or the amount of the adjustment in the Overhead and Profit Fee, if any;
- (c) the method of adjustment or the amount of the adjustment in the Guaranteed Price; and
- (d) the extent of the adjustment in the Contract Time, if any.

1.29 “**City**” means the City of Toronto.

1.30 “**Commercial Close**” has the meaning given in Section 2.1(a) of the Project Agreement.

1.31 “**Commissioning**” shall mean the process of:

- (a) moving a building from a static condition to a dynamic condition;
- (b) preparing a building, or a system for its intended use; and
- (c) the management of testing, verifying, recording and documenting and the training of HMQ’s employees and the employees and/or representatives of the Sponsors regarding the operation of systems within a building to assure specified operations through the range of operating conditions,

and shall include, for greater certainty but without limitation, the requirement that all active building systems and technologies forming part of the Work perform in accordance with the design intent, manufacturer’s performance specifications and the Contract Documents.

- 1.32** “**Commissioning Agent**” shall mean the person or entity chosen by HMQ, if any, to assist with Commissioning.
- 1.33** “**Compensation Event**” has the meaning given in Section 23.1 of the Project Agreement.
- 1.34** “**Compensation Payment**” means the Default Termination Payment or the Non Default Termination Sum, as defined in Schedule 12 – Compensation on Termination.
- 1.35** “**Confidant**” has the meaning given in Section 37.7(a)(i) of the Project Agreement.
- 1.36** “**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, which is clearly marked as confidential or proprietary when first disclosed, including information disclosed orally if it is identified as confidential at the time of disclosure and further confirmed in writing as confidential within 14 days of disclosure.
- 1.37** “**Construction Contract**” means the guaranteed price construction contract between Project Co and the Contractor dated on or about the date of the Project Agreement in the form set out in Schedule 6 – Form of Construction Contract.
- 1.38** “**Construction Defect**” has the meaning given in Section 35.1(b) of the Project Agreement.
- 1.39** “**Construction Latent Defect**” has the meaning given in Section 35.1(d).
- 1.40** “**Construction Guarantor**” means Bondfield Construction Company Limited.
- 1.41** “**Construction Schedule**” means each detailed computerized schedule prepared by Project Co in accordance with the terms and conditions of the Contract Documents, as updated from time to time in accordance with Section 12.1 of the Project Agreement.
- 1.42** “**Construction Work**” means the construction, supply, installation, testing, Commissioning and completion of the Facilities, including, rectification of any 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 (q) 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 Financing:
- (a) Recitals
 - (b) Article 2
 - (c) Sections 4.2, 4.3, 4.4, 4.9 and 4.11
 - (d) Sections 6.3 and 6.4

- (e) Article 7
- (f) Section 25.1(a)(iii)
- (g) Sections 38.3(c) and 38.3(d)
- (h) Article 41
- (i) Schedule 3 – Completion Documents
- (j) Schedule 4 – Project Co Information
- (k) Schedule 5 – Form of Lender’s Direct Agreement
- (l) Schedule 8 – [REDACTED]
- (l) Schedule 18 – Payments and Holdbacks
- (m) Schedule 22 – Form of Performance Guarantee of Construction Guarantor
- (n) Schedule 23 – Form of Assignable Subcontract Agreement for Construction Contract

1.43 “**Consultant**” means B+H Architects, or such other architect or engineer or entity licensed to practice in the Province of Ontario, as may be appointed from time to time by HMQ. The term Consultant means the Consultant or the Consultant’s representative.

1.44 “**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 Law. 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 for the purposes of the Project Agreement to be Contamination.

1.45 “**Contemplated Change Notice**” means a notice from HMQ to Project Co describing a contemplated Change in the Scope of the Work.

1.46 “**Contractor**” means Bondfield Construction Company Limited, engaged by Project Co to perform the Work and any substitute building contractor engaged by Project Co as may be permitted by the Project Agreement.

1.47 “**Contract Documents**” means the Project Agreement, the Construction Contract, the Drawings and Specifications, the Addenda, the Site Information and Assignable Subcontract Agreements.

1.48 “**Contract Time**” means the time commencing on the day following Financial Close to the Final Completion Date.

- 1.49** “**Cost of the Financing**” means all costs and expenses incurred in connection with the Financing pursuant to the indicative financing term sheet included in the Proposal Submission and Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in [REDACTED].
- 1.50** “**Cost of the Work**” means the cost to Project Co of performing the Work as set out in [REDACTED] and shall include all amounts to be included in the Cost of the Work set out in the Contract Documents, including, for greater certainty, the Project Co Design Contingency and the Project Co Fee.
- 1.51** “**CPM**” has the meaning given in Section 12.1(a)(ii) of the Project Agreement.
- 1.52** “**CSA Standard**” means, at the applicable time, the Canadian Standards Association standards.
- 1.53** “**Debt Amount**” has the meaning given in Schedule 12 - Compensation on Termination.
- 1.54** “**Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Lenders in the normal course under the Lending Agreements.
- 1.55** “**Default Termination Payment**” has the meaning given in Schedule 12 - Compensation on Termination.
- 1.56** “**Delay Events**” has the meaning given in Section 22.1(a) of the Project Agreement.
- 1.57** “**Design Issue**” means any matter arising under, with respect to, or in connection with the Contract Documents, and in particular, the Drawings and Specifications, which requires clarification in order to complete the Work.
- 1.58** “**Direct Losses**” means all damages, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the reasonable cost of legal or professional services, legal costs being on a full indemnity basis), suits, proceedings, demands and charges, whether arising under statute, contract or at common law, except Indirect Losses.
- 1.59** “**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 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; 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.

1.60 “**Disclosed Hazardous Substances**” has the meaning given in Section 14.1(c).

1.61 “**Disclosing Parties**” has the meaning given in Section 37.2(c) of the Project Agreement.

1.62 “**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 construction and financing are procured by a contract similar to the Project Agreement in relation to other facilities;
- (b) a Facility in relation to other international sporting competition facilities;
- (c) Project Co in relation to other persons; or
- (d) persons undertaking projects for 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.

1.63 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 14 – Dispute Resolution Procedure.

1.64 “**Drawings**” or “**drawings**” means the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work, and generally including plans, elevations, sections, details, schedules and diagrams and includes those Drawings listed in Schedule 2 – List of Consultants, Drawings and Specifications.

1.65 “**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.

- 1.66** “**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, Markham or TO2015) or any part of or the whole of a Facility;
 - (ii) causes or may cause damage or harm to property, buildings and/or equipment; or
 - (iii) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of a Facility, any part of a Site or, the conduct of Work,

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.
- 1.67** “**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.
- 1.68** “**Environmental Reports**” means the “Environmental Reports” for the Markham Pan Am Centre, Etobicoke Olympium and Pan Am Field Hockey Centre as defined in Part A of this Schedule 1.
- 1.69** “**Equipment Invoice**” has the meaning given in Section 13.13(b) of the Project Agreement.
- 1.70** “**Equipment Procurement Documentation**” has the meaning given in Section 13.9(iv) of the Project Agreement.
- 1.71** “**Equipment Subcommittee**” has the meaning given in Section 13.6 of the Project Agreement.
- 1.72** “**Etobicoke Olympium**” means an existing multisport facility that includes an Olympic size pool, a leisure pool, gymnasium and fitness centre and provides services including gym activities/rentals and pool operations with dive towers.
- 1.73** “**Existing Facility**” means the existing facility at the site of the Etobicoke Olympium.

1.74 “**Facility**” means any of the Markham Pan Am Centre, the Etobicoke Olympium or the Pan Am Field Hockey Centre, with each Facility being comprised of the following:

- (a) all buildings, facilities and other structures;
- (b) all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of HMQ, Markham, City, UofT and TO2015, as applicable;
- (c) all site services, utilities, roadways and parking spaces 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 Sites,

required by the Contract Documents and whether or not in the course of construction, installation or completion of the Projects. This description does not in any manner limit the scope of the Work as set out in the Contract Documents.

1.75 “**Final Completion**” shall occur when the Work, except those items arising from the provisions of Article 35, has been deemed to have been completed in accordance with the applicable provisions of the *Construction Lien Act* (Ontario) and is so certified by the Consultant in accordance with the Project Agreement, including satisfying the requirements of Section 4 of Schedule 18.

1.76 “**Final Completion Countdown Notice**” has the meaning given in Section 16.6(b) of the Project Agreement.

1.77 “**Final Completion Date**” means the date on which Final Completion is achieved as evidenced by the certificate of Final Completion of the Work issued by the Consultant, as such date shall be stated therein.

1.78 “**Final Completion Notice**” has the meaning given in Section 16.5(a) of the Project Agreement.

1.79 “**Financial Close**” means the date of execution and delivery of the Implementing Agreements and the Lending Agreements.

1.80 “**Financial Close Target Date**” means September 6, 2012 as such date may be extended in accordance with the provisions of the Project Agreement.

1.81 “**Financial Model**” means the Financial Model included in [REDACTED].

1.82 “**Financing**” means the financing with Lender, that is consistent in all material respects with [REDACTED] and the Project Agreement, to finance the Interim Payments until the Substantial Completion Payment Date.

- 1.83** “**Financing Plan**” has the meaning given in the Request for Proposals.
- 1.84** “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.85** “**First Interim Payment**” means \$[REDACTED].
- 1.86** “**First Scheduled Interim Payment Date**” means the later of April 15, 2013 or 5 Business Days after the issuance of the Consultant’s notice pursuant to Section 16.4(c)(i).
- 1.87** “**Force Majeure**” has the meaning given in Section 24.1(a) of the Project Agreement.
- 1.88** “**Geotechnical Reports**” means the “Geotechnical Reports” for the Markham Pan Am Centre and Pan Am Field Hockey Centre as defined in Part A of this Schedule 1.
- 1.89** “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, in conformity with Applicable Law and having regard to the standard of care set out in Section 11.2(a)(viii) of the Project Agreement.
- 1.90** “**Governmental Authority**” means the Authority, and any other 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 the Projects, any aspect of the performance of the Project Agreement or any of the Implementing Agreements in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.91** “**Government Entity**” means one or more of the Province, MOI, HMQ and the Government of Canada.
- 1.92** “**Guaranteed Price**” is the amount referred to in Section 3.1(a) of the Project Agreement.
- 1.93** “**Guarantee of Construction Guarantor**” means a guarantee given by Construction Guarantor in the form of Schedule 22.
- 1.94** “**Heritage Guidelines and Protocols**” means the guidelines, protocols, processes and best practices set out in Schedule 10 – Heritage Guidelines and Protocols.
- 1.95** “**HMQ**” means Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended.
- 1.96** “**HMQ Event of Default**” has the meaning given in Section 26.1(a) of the Project Agreement.
- 1.97** “**HMQ Holdback**” means any amount which HMQ may withhold from payment under Section 16.2(h) 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 Agent), notwithstanding that the Project Agreement expressly provides for deductions from payments to be made to Project Co.

- 1.98** “**HMQ Indemnified Hazardous Substances Claims**” has the meaning given in Section 32.2(a)(iv) of the Project Agreement.
- 1.99** “**HMQ Indemnified Parties**” has the meaning given in Section 32.1(a) of the Project Agreement.
- 1.100** “**HMQ Party**” means any of HMQ’s agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of the Work, including HMQ’s Project Manager and the Consultant but excluding Project Co and any Project Co Party, and the term “**HMQ Parties**” shall be construed accordingly.
- 1.101** “**HMQ Permits, Licences and Approvals**” means:
- (a) the Building Permits;
 - (b) any permanent easements; and
 - (c) any rights of servitude, pertaining to the Projects.
- 1.102** “**HMQ’s Project Manager**” means the individual appointed by HMQ to assist HMQ in the implementation of the Projects.
- 1.103** “**HMQ Taxes**” means taxes or payments in lieu of taxes imposed on HMQ, based on or measured by income or profit of HMQ or capital taxes based on or measured by the capital of HMQ and HST and property taxes for which HMQ is responsible pursuant to the provisions of the Project Agreement.
- 1.104** “**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.
- 1.105** “**Heritage Guidelines and Protocols**” means the Government of Ontario’s Best Practice Guidelines for the Treatment of Human Skeletal Remains Discovered Outside a Licensed Cemetery and the Cultural Heritage Protocol Agreement between the Ministry of Government Services and the Ministry of Culture and Communications.
- 1.106** “**HST**” means the value-added tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.107** “**Implementing Agreements**” means the Construction Contract, the Guarantee of Construction Guarantor, the Lender’s Direct Agreement and all other documents and

agreements delivered by the Parties at Financial Close under Section 2.3, excluding the Project Agreement, and the Lending Agreements.

- 1.108** “**In-Contract Equipment**” means all other furniture, fixtures and equipment that is not in Not-In-Contract Equipment.
- 1.109** “**Indemnifiable Taxes**” has the meaning given in Section 4.22(b) of the Project Agreement.
- 1.110** “**Indemnifier**” has the meaning given in Section 32.3(a) of the Project Agreement.
- 1.111** “**Indirect Losses**” has the meaning given in Section 34.1(a) of the Project Agreement.
- 1.112** “**Infrastructure Ontario**” means the Ontario Infrastructure and Lands Corporation.
- 1.113** “**Insurance**” means the insurance contemplated in Schedule 13 – Insurance and Performance Security.
- 1.114** “**Insurance and Bonding Trust Agreement**” means the agreement substantially in the form of Schedule 17 – Form of Insurance and Bonding Trust Agreement.
- 1.115** “**Interest Rate**” means [REDACTED]% as adjusted by the increase or decrease in the Interest Reference Rate as set out in Section 3.1(b) of the Project Agreement.
- 1.116** “**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.
- 1.117** “**Interim Payment**” means the First Interim Payment or the Second Interim Payment, as applicable.
- 1.118** “**Interim Payment Application**” has the meaning given in Section 16.4(a) of the Project Agreement.
- 1.119** “**Interim Payment Countdown Notice**” has the meaning given in Section 16.3(a) of the Project Agreement.
- 1.120** “**Interim Payment Requirements**” means,
- (a) [REDACTED]
- 1.121** “**IO**” means Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended and includes any successors thereto or persons exercising delegated power and the Minister's authority.
- 1.122** “**IPFP Framework**” has the meaning given in Recital D of the Project Agreement.

- 1.123** “**Irrecoverable Tax**” has the meaning given in Section 4.18(b) of the Project Agreement.
- 1.124** “**Key Personnel**” means the key personnel identified in Schedule 7 – Key Personnel.
- 1.125** “**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 13 – Insurance and Performance Security Requirements.
- 1.126** “**Legislative Holdback**” means the holdback to be maintained under Part IV of the *Construction Lien Act* (Ontario).
- 1.127** “**Legislative Holdback Payment Date**” means the date for payment of the Legislative Holdback pursuant to Section 4 of Schedule 18 - Payments and Holdbacks.
- 1.128** “**Lender**” means any or all of the persons who provide the Financing.
- 1.129** “**Lender Condition**” has the meaning given in Section 2.4(b) of the Project Agreement.
- 1.130** “**Lender’s Consultant**” means any consultant appointed from time to time by Lender providing Financing for the Work. Nothing contained in the Contract Documents and no action taken by Lender’s Consultant in connection with the Work or the Contract Documents shall constitute direction and/or control by HMQ, Project Co or Lender providing Financing for the Work.
- 1.131** “**Lender’s Direct Agreement**” means the direct agreement to be entered into between HMQ, Lender and Project Co in the form set out in Schedule 5 – Lender’s Direct Agreement.
- 1.132** “**Lending Agreements**” has the meaning given in Schedule 5 – Lender’s Direct Agreement.
- 1.133** “**Longstop Date**” has the meaning given in Section 25.1(a)(ii) of the Project Agreement.
- 1.134** “**Make Good**”, “**Made Good**” and derivatives thereof, means repairing, restoring, refurbishing, rehabilitating or performing filling operation on the Work as required under the Contract Documents or any existing components disturbed due to the Work, to at least the condition existing at the commencement of the Work, 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.
- 1.135** “**Markham**” means the City of Markham.
- 1.136** “**Markham Pan Am Centre**” means a new sports facility, including an aquatics area with an Olympic-size swimming pool, multipurpose gymnasium space, and training facilities, built to international sport standards.

- 1.137** “**MFIPPA**” means the *Municipal Freedom of Information and Projection of Privacy Act* (Ontario).
- 1.138** “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding Work (including in relation to seasonal work), which would not materially impair HMQ’s use and enjoyment of the Work and includes any damage to the Work of HMQ’s own forces or the work of HMQ’s other contractors caused by Project Co.
- 1.139** “**Minor Deficiencies List**” has the meaning given in Section 16.1(b) of the Project Agreement.
- 1.140** “**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.
- 1.141** “**Monthly Equipment Payment**” has the meaning given in Section 13.13(b) of the Project Agreement.
- 1.142** “**Monthly Equipment Payment Estimate**” has the meaning given in Section 13.13(a) of the Project Agreement.
- 1.143** “**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 13 – Insurance and Performance Security Requirements.
- 1.144** “**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 13 – Insurance and Performance Security Requirements.
- 1.145** “**No Default Payment Compensation Amount**” means the rate of interest per annum quoted by Bank of Montreal from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed from time to time.
- 1.146** “**Non-Default Termination Sum**” has the meaning given in Schedule 12 – Compensation on Termination.
- 1.147** “**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).
- 1.148** “**Not-In-Contract Equipment**” means all furniture, fixtures and equipment identified in the “FF&E List” in Section 12 06 40 of the Specifications.
- 1.149** “**Notice**” has the meaning given in Section 41.1(a) of the Project Agreement.

- 1.150** “**Notice of Project**” means a notice of project filed with the Ministry of Labour in compliance with O. Reg 213/91 under the OHSA.
- 1.151** “**OHSA**” means the *Occupational Health and Safety Act* (Ontario).
- 1.152** “**OLRA**” has the meaning given in Section 32.1(e)(ii) of the Project Agreement.
- 1.153** “**OLRB**” has the meaning given in Section 32.1(e)(i) of the Project Agreement.
- 1.154** “**Overhead and Profit Fee**” means the amount stipulated in Schedule 11 – Change Procedure, which excludes HST.
- 1.155** “**Pan Am Field Hockey Centre**” means a new international field hockey venue, including two fields meeting international specifications, located on the downtown campus of the University of Toronto.
- 1.156** “**Pan American Games**” means the Pan American Games taking place in Toronto on July 10, 2015 – July 26, 2015.
- 1.157** “**Parapan American Games**” means the Parapan American Games taking place in Toronto on August 7, 2015 – August 14, 2015.
- 1.158** “**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.
- 1.159** “**Payment Compensation Amount**” means an amount equal to simple interest at an annual rate equal to [REDACTED]% over the rate of interest per annum quoted by Bank of Montreal from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed from time to time.
- 1.160** “**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 13 – Insurance and Performance Security Requirements.
- 1.161** “**Permits, Licences and Approvals**” means the HMQ Permits, Licences and Approvals and the Project Co Permits, Licences and Approvals.
- 1.162** “**Personal Information**” means all personal information (as the term “personal information” is defined in the *Personal Information and Electronic Documents Act* (Canada) in the custody or control of Project Co or the Project Co Parties, other than personal information of employees of Project Co or the Project Co Parties that is wholly unrelated to the Work and not derived directly or indirectly from HMQ or any HMQ Party in respect of the Projects.
- 1.163** “**Pre-Existing Environmental Site Conditions**” means the environmental condition of the Site as set out in the Environmental Reports.

- 1.164** “**Product**” or “**Products**” means material, machinery, equipment and fixtures forming the Work but does not include machinery and equipment used to prepare, fabricate, convey or erect the Work, which is referred to as construction machinery and equipment.
- 1.165** “**Prohibited Act**” has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.166** “**Projects**” means the construction and financing of the Facilities.
- 1.167** “**Project Agreement**” means this Project Agreement and all schedules hereto, as the same may be amended, modified, restated, supplemented or replaced from time to time and for greater certainty, includes the Addenda but does not include the Proposal Submission or any of the responses to requests for information submitted by Project Co pursuant to the Request for Proposals, all of which are superseded by this Project Agreement and the Addenda.
- 1.168** “**Project Co**” means 2338301 Ontario Inc., a corporation incorporated under the laws of the Province of Ontario.
- 1.169** “**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 Construction Work, excluding a default under Section 25.1(a)(xiii) of the Project Agreement relating to a default by the Construction Guarantor under the guarantee of the Construction Guarantor, the form of which is attached to this Project Agreement as Schedule 22.
- 1.170** “**Project Co Delay**” means any delay in achieving Substantial Completion of the Work or Final Completion by the prescribed dates set out in Section 11.1(a)(ii) of the Project Agreement, other than as expressly permitted under Article 22 of the Project Agreement.
- 1.171** “**Project Co Design Contingency**” or “**PDC**” is the portion of the Guaranteed Price which comprises all the costs (including the Project Co Fee) to implement an acceptable resolution to any and all Design Issues that are properly characterized as Project Co Design Issues.
- 1.172** “**Project Co Design Issue**” has the meaning given in Section 11.17(b) of the Project Agreement.
- 1.173** “**Project Co Event of Default**” has the meaning given in Section 25.1(a) of the Project Agreement.
- 1.174** “**Project Co Fee**” means a fixed fee payable to Project Co included in the Cost of the Work.
- 1.175** “**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.

- 1.176** “**Project Co Hazardous Substances**” has the meaning given in Section 14.1(d)(i) of the Project Agreement.
- 1.177** “**Project Co Indemnified Hazardous Substances Claims**” has the meaning given in Section 32.1(a)(viii) of the Project Agreement.
- 1.178** “**Project Co Indemnified Parties**” has the meaning given in Section 32.2(a) of the Project Agreement.
- 1.179** “**Project Co Party**” means:
- (a) the Contractor;
 - (b) Construction Guarantor;
 - (c) any person engaged by Project Co and/or the Contractor, from time to time, as may be permitted by the Project Agreement to procure or manage the provision of the Work (or any part thereof); and
 - (d) in respect of each of the above, their Subcontractors or Suppliers of any tier, agents, employees, officers and directors,
- and “**Project Co Parties**” shall be construed accordingly.
- 1.180** “**Project Co Permits, Licences and Approvals**” 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, other than the HMQ Permits, Licenses and Approvals.
- 1.181** “**Project Co’s Preliminary Minor Deficiencies List**” has the meaning given in Section 16.1(a) of the Project Agreement.
- 1.182** “**Project Debt**” means the principal amount issued and secured by the Lending Agreements.
- 1.183** “**Project Debt Interest Cost**” means the budgeted amount of aggregate interest charges in respect of the Project Debt used to calculate the Cost of the Financing portion of the Guaranteed Price.
- 1.184** “**Project Deliverables**” has the meaning given in Section 16.1(i) of the Project Agreement.
- 1.185** “**Project Documents**” means the Implementing Agreements and the Lending Agreements.
- 1.186** “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.

- 1.187 “Proposal Submission”** means the proposal submitted by Project Co in accordance with the Request for Proposals.
- 1.188 “Proprietor”** has the meaning given in Section 37.7(a) of the Project Agreement.
- 1.189 “Provide”** means to supply, install and put into service.
- 1.190 “Province”** means Her Majesty the Queen in Right of Ontario.
- 1.191 “Record Documents”** means a collection of construction documents, including Shop Drawings, Product data sheets, reports, operation and maintenance information, as well as a revised set of the Contract Documents, recording the actual placement, configuration and nature of the various Products used in the construction of the Work and shall include record drawings prepared pursuant to Section 11.11(h). Record Documents shall include, where available, the Environmental Reports, pre-start health and safety review reports, and shall include in an electronic format system acceptable to the Consultant, As-Built Drawings on diskette or recordable CD, maintenance and operating instructions manual, 6 sets of prints of record drawings and miscellaneous closeout submittals required by the Contract Documents.
- 1.192 “Recoverable Tax”** has the meaning given in Section 4.18(c) of the Project Agreement.
- 1.193 “Recovery Amount”** has the meaning given in Section 32.3(g) of the Project Agreement.
- 1.194 “Reimbursement Event”** has the meaning given in Section 19.5 of the Project Agreement.
- 1.195 “Release”** has the meaning given in Section 14.1(c) of the Project Agreement.
- 1.196 “Relevant Change in Law”** means any Change in Law that:
- (a) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Facility which Project Co would not otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
 - (b) was not reasonably foreseeable at the date of the Project Agreement by an experienced contractor carrying out and performing activities similar to those to be carried out and/or performed by any Project Co Party in relation to the Projects,
- and includes a Discriminatory Change in Law.
- 1.197 “Request for Payment Approval”** has the meaning given in Section 3.2(d) of the Project Agreement.

1.198 “**Request for Proposals**” or “**RFP**” means the request for proposals issued for the delivery by Infrastructure Ontario, TO2015 and the Sponsors for the delivery of the Projects dated March 16, 2012.

1.199 “**Required Amount**” has the meaning given in Section 35.3(a) of the Project Agreement.

1.200 “**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.

1.201 “**Risk Assessment Guidelines**” means the Risk Assessment Guidelines for the Projects set out in Schedule 16 – Risk Assessment Guidelines.

1.202 “**Schedule**” means a schedule to the Project Agreement.

1.203 “**Schedule Cushion**” means a schedule contingency added to the last activity on the critical path of the Construction Schedule and consisting of 30 days duration. The Schedule Cushion shall be included in the Construction Schedule and, for greater certainty, the Schedule Cushion shall not extend the Contract Time. HMQ has ownership of the Schedule Cushion and can elect to use it at any time in respect of an HMQ initiated

Change Order, or upon the occurrence of a Delay Event which would otherwise grant to Project Co an extension of the Contract Time, provided any portion of the Schedule Cushion which has not been used by HMQ prior to the Substantial Completion Date will be given to Project Co. Use of the Schedule Cushion by HMQ shall not result in any right of Project Co to a claim for an increase in the Cost of the Financing.

- 1.204 “Scheduled Final Completion Date”** means August 31, 2014.
- 1.205 “Scheduled Substantial Completion Date”** means July 15, 2014, as such date may be extended pursuant to Article 22 of the Project Agreement.
- 1.206 “Second Interim Payment”** means \$[REDACTED].
- 1.207 “Second Scheduled Interim Payment Date”** means the later of October 15, 2013 or 5 Business Days after the issuance of the Consultant’s notice pursuant to Section 16.4(c)(i).
- 1.208 “Security”** means the Bonds, the Insurance and any other security interests granted by Project Co to the Agent pursuant to the Security Documents.
- 1.209 “Security Documents”** means all security granted by Project Co to the Lenders (or any trustee or agent thereof, including the Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
- (a) the general security agreement made on or about the date hereof between Project Co and the Agent;
 - (b) the direct agreement between Project Co, the Agent and the Contractor; and
 - (c) the assignment of material documents by Contractor, assignment of accounts by Project Co, limited recourse guarantee and pledge agreement and blocked account agreements.
- 1.210 “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.
- 1.211 “Shareholder(s)”** means a Party listed in Schedule 4 - Project Co Information, as amended from time to time in accordance with the Project Agreement.
- 1.212 “Shop Drawings” or “shop drawings”** means drawings, diagrams, illustrations, schedules, performance charts, brochures, samples, Product data, and other data which Project Co provides to illustrate details of a portion of the Work.

- 1.213 “Shop Drawing Schedule”** means the schedule for the submission of shop drawings described in Section 11.11(c).
- 1.214 “Sites”** means the sites described in Schedule 25 – Legal Descriptions of Sites.
- 1.215 “Site Background Reports”** means the Environmental Reports and the Geotechnical Reports.
- 1.216 “Site Conditions”** means the condition of the Sites, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.217 “Site Information”** means:
- (a) the Site Background Reports;
 - (b) other information respecting the Sites in the Contract Documents, including infrastructure drawings and other reports, information or plans; and
 - (c) information that would have been properly inferable, readily apparent or readily discoverable to Project Co from its inspections of the Sites carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Date.
- 1.218 “Sole Discretion”** has the meaning given in Section 1.1(e) of the Project Agreement.
- 1.219 “Specifications”** means that portion of the Contract Documents, wherever located and whenever issued, consisting of written requirements and standards for Products, systems, workmanship and the services necessary for the performance of the Work and includes those Specifications listed in Schedule 2 – List of Consultants, Drawings and Specifications.
- 1.220 “Sponsor”** means Markham in the case of the Markham Pan Am Centre, the City in the case of the Etobicoke Olympium, and UofT in the case of the Pan Am Field Hockey Centre, and TO2015 in the case of all facilities – Markham Pan Am Centre, Etobicoke Olympium and Pan Am Field Hockey Centre and **“Sponsor”** means any one of them.
- 1.221 “Sports Governing Authority Certifications”** means the certifications issued by Sports Governing Authorities required for the Pan American Games and Parapan American Games events planned for the Facilities.
- 1.222 “Stakeholder Operations”** means the operations of the Town of Markham, City of Toronto, University of Toronto and Toronto 2015 at each Facility, including the operation of each Facility and the hosting of the Pan American Games and Parapan American Games.
- 1.223 “Standby Letter of Credit”** has the meaning given in Section 2.2 of the Project Agreement.

- 1.224** “**Subcontractor**” means a person or entity having a direct contract with Project Co to perform all or a part or parts of the Work, or to supply Products worked to a special design for the Work or who supplies work, services or labour in any respect of the Work.
- 1.225** “**Sub-Subcontractor**” means a person or entity at any tier of the contracting chain beneath a Subcontractor or Supplier, who performs a part or parts of the Work, or supplies Products worked to a special design for the Work or who supplies work, services, materials, equipment or labour in any respect of the Work or who supplies Products not worked to a special design for the Work.
- 1.226** “**Subcontracts**” means the contracts entered into by or between Project Co and any Project Co Party at any tier, including the Contractor and any other Subcontractor at any tier in relation to any aspect of the Work.
- 1.227** “**Subguard Policy**” has the meaning given in Section 1.2(h) of Schedule 13 – Insurance and Performance Security.
- 1.228** “**Submission Date**” means June 19, 2012.
- 1.229** “**Substantial Completion of the Work**” or “**Substantial Completion**” means:
- (a) Project Co has performed its obligations under Article 16 of the Project Agreement;
 - (b) the Work with respect to all Projects is available for occupancy by the applicable Sponsor, in accordance with the standards for occupancy set out in the Building Code and the requirements of local municipal building authorities;
 - (c) without limitation to Project Co’s obligations under Article 16 of the Project Agreement, for purposes of Sports Governing Authority Certification, Project Co has complied with its obligations with respect to the Surveys in accordance with Section 16.2A(b);
 - (d) the Commissioning of the Work has been completed in accordance with the Contract Documents to the extent required to meet the requirements for occupancy of the Work set out in the Building Code and the building services required for HMQ to carry out its Commissioning activities are available in accordance with the Specifications; and
 - (e) all Project Deliverables, other than those included as Minor Deficiencies in accordance with Section 16.1(h), have been assigned and provided to HMQ.
- 1.230** “**Substantial Completion Date**” means the date on which Substantial Completion is achieved as evidenced by the certificate of Substantial Completion issued by the Consultant, as such date shall be stated therein.
- 1.231** “**Substantial Completion Holdback**” means the holdback pursuant to Section 3 of Schedule 18 of the Project Agreement.

1.232 “Substantial Completion Holdback Payment Date” means the date for payment of the Substantial Completion Holdback pursuant to Schedule 18 of the Project Agreement.

1.233 “Substantial Completion Payment” means the amount determined by subtracting from the amount of the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as at the end of the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date, the following amounts (without duplication):

- (a) the Interim Payments, if any, paid, payable, or which will become payable by HMQ in respect of Work performed in accordance with the terms of the Project Agreement up to the end of the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date;
- (b) all Additional HMQ Payments (including any payments pursuant to Section 8.5 of Schedule 5 – Form of Lender’s Direct Agreement) paid, payable, or which will become payable by HMQ in respect of Work performed in accordance with the Project Agreement on or before the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date;
- (c) the Certified Cost to Complete;
- (d) the HMQ Holdback as at the Substantial Completion Payment Date;
- (e) the Warranty Letter of Credit Holdback, as applicable; and
- (f) any Legislative Holdback then required to be maintained by HMQ as at the Substantial Completion Payment Date.

1.234 “Substantial Completion Payment Date” means the 10th Business Day following the later of:

- (a) the date of delivery by the Consultant of a certificate of substantial performance of the Work in accordance with the *Construction Lien Act* (Ontario) pursuant to Section 16.2(c) of the Project Agreement; and
- (b) the delivery by the Consultant of its report under Section 16.2(d) of the Project Agreement confirming that Substantial Completion of the Work has been achieved.

1.235 “Supplemental Instruction” means an instruction, including a field or site instruction, issued for recording any clarifications or interpretation of the Contract Documents or giving direction on field conditions and not involving adjustment in the Guaranteed Price or Contract Time, in the form of Specifications, Drawings, schedules, samples, models, or written instructions, consistent with the intent of the Contract Documents. A Supplemental Instruction is to be issued by the Consultant to supplement the Contract Documents as required for the performance of the Work.

- 1.236** “**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 Work.
- 1.237** “**Surety**” means the person issuing the Bonds.
- 1.238** “**Surveys**” means the surveys, drawings, tests and measurements required in accordance with:
- (a) Sections 1.13.3.6 and 1.13.3.7 of the Specifications for the Markham Pan Am Centre;
 - (b) Sections 1.13.4.6 and 1.13.4.7 of the Specifications for the Pan Am Field Hockey Centre; and
 - (c) Sections 1.2.1.1, 2.6, 2.6.1 and 2.6.2 of the Specifications for the Etobicoke Olympium.
- 1.239** “**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.
- 1.240** “**Termination Date**” means the earlier of the Final Completion Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.241** “**Toronto 2015**” or “**TO2015**” means the Toronto Organizing Committee for the Pan American Games and Parapan American Games.
- 1.242** “**Undisclosed Hazardous Substances**” has the meaning given in Section 14.1(e) of the Project Agreement.
- 1.243** “**UofT**” means the University of Toronto.
- 1.244** “**Utilities**” means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste, storm water, and bulk medical gas compounds.
- 1.245** “**Warranty Letter of Credit**” has the meaning given in Section 35.3(a) of the Project Agreement.
- 1.246** “**Warranty Letter of Credit Holdback**” has the meaning given in Section 35.3(b) of the Project Agreement.
- 1.247** “**Warranty Period**” has the meaning given in Section 35.1(c) of the Project Agreement.
- 1.248** “**Work**” means the construction, installation, testing, Commissioning and completion of the Facilities, including rectification of any Minor Deficiencies, and any other activities

required pursuant to the provisions of the Project Agreement. For greater certainty, Work does not include the Financing.

1.249 “**Work Committee**” has the meaning given in Section 13.1(a) of the Project Agreement.

1.250 “**Work Milestone**” means any of the following milestones in the Construction Schedule:

- (a) Mobilization
- (b) Caissons
- (c) Excavation
- (d) 80% of the Forming and Pool Concrete
- (e) 25% of the Waterproofing;
- (f) Underground Services;
- (g) Backfilling operations;
- (h) Forming and Pool Concrete;
- (i) Waterproofing;
- (j) Erect Structural Steel;
- (k) Erect Structural Timber;
- (l) Masonry Block Walls;
- (m) Steel Deck;
- (n) 50% of the Roofing;
- (o) 25% of the Curtain Wall;
- (p) Pool Material (Delivered); and
- (q) 50% of the Mechanical and Electrical Rough In;

and, for clarity, includes the applicable date for achieving such milestone (as such date may be extended pursuant to Section 22 of the Project Agreement); and “**Work Milestones**” means, collectively, all of such “**Work Milestones**”.

1.251 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).

2. Interpretation. Unless otherwise expressly provided in the Contract Documents, the Contract Documents 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 Contract Documents are for convenience of reference only, shall not constitute a part of the Contract Documents, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Contract Documents.
- 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** 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.
- 2.5** All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.6** 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.
- 2.7** Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.8** 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.
- 2.9** 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.

- 2.10** References to any standard, principle, agreement (including this Project 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.
- 2.11** 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.
- 2.12** References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.13** References to persons shall include their successors and assigns. References to a public organization shall include its 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.
- 2.14** 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.
- 2.15** The words in the Project Agreement and in any Implementing Agreements shall bear their natural meaning. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 2.16** Each Party's respective obligations shall be construed as separate obligations owed to the other Party or Parties, as the case may be.
- 2.17** 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;
 - (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”**; and

- (c) “**accepted**”, “**reviewed**”, “**designated**”, “**directed**”, “**inspected**”, “**instructed**”, “**permitted**”, “**required**” and “**selected**” when used in a Contract Document are deemed to be followed by the words “**by the Consultant**” unless the context provides otherwise; the words “**acceptable**”, “**submit**” and “**satisfactory**” when used in a Contract Document are deemed to be followed by the words “**to the Consultant**” unless the context provides otherwise.
- 2.18** 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.
- 2.19** Where the Project Agreement or any Implementing 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.
- 2.20** Where the Project Agreement or any Implementing 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.
- 2.21** 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.
- 2.22** Any reference to time of day or date means the local time or date in Toronto, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day.
- 2.23** Unless otherwise indicated, time periods will be strictly construed and time is of the essence of this Project Agreement.
- 2.24** 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.
- 2.25** 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.
- 2.26** 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.

2.27 Terms not defined herein and used in the Project Agreement or any Implementing Agreements which have a technical meaning commonly understood by the health care sector or construction industry in Ontario will be construed as having that meaning unless the context otherwise requires.

2.28 **[Intentionally Deleted.]**

2.29 Wherever in this Project Agreement Project Co covenants, agrees or undertakes:

- (a) to do any act, matter or thing, that shall be deemed to mean that Project Co will do or cause to be done such act, matter or thing itself or by a Project Co Party; and
- (b) not to do any act, matter or thing, that shall be deemed to mean that Project Co will not, and will cause each Project Co Party not to do such act, matter or thing.

SCHEDULE 2

LIST OF CONSULTANTS, DRAWINGS AND SPECIFICATIONS

LIST OF CONSULTANTS

THE CONSULTANT

B+H Architects
[REDACTED]

Telephone: [REDACTED]
Fax: [REDACTED]

STRUCTURAL CONSULTANT

Quinn Dressel Associates
[REDACTED]

Telephone: [REDACTED]
Fax: [REDACTED]

MECHANICAL CONSULTANT

TMP Consulting Engineers (The Mitchell Partnership Inc.)
[REDACTED]

Telephone: [REDACTED]
Fax: [REDACTED]

ELECTRICAL CONSULTANT

Mulvey+Banani Consulting Engineers
[REDACTED]

Telephone: [REDACTED]
Fax: [REDACTED]

SUSTAINABILITY CONSULTANT

Jain Sustainability Consultants Inc.
[REDACTED]

Telephone: [REDACTED]
Fax: [REDACTED]

LANDSCAPE CONSULTANT

Quinn Design Associates
[REDACTED]

Telephone: [REDACTED]
Fax: [REDACTED]

SITE SERVICES CONSULTANT

Delcan
[REDACTED]

Telephone: [REDACTED]
Fax: [REDACTED]

POOL CONSULTANT

RecTec Management Group
[REDACTED]

Telephone: [REDACTED]

LEGACY PLANNING & PROGRAMMING CONSULTANT

Sasaki Associates, Inc.
[REDACTED]

Telephone: [REDACTED]
Fax: [REDACTED]

LIFE SAFETY & BUILDING CODE CONSULTANT

LMDG Building Code Consultants Ltd.
[REDACTED]

Telephone: [REDACTED]
Fax: [REDACTED]

AUDIO/VISUAL CONSULTANT

Novita Techne
[REDACTED]

Telephone: [REDACTED]
Fax: [REDACTED]

ACOUSTICAL CONSULTANT

Aercoustics Engineering Limited.
[REDACTED]

Telephone: **[REDACTED]**
Fax: **[REDACTED]**

CIVIL FIELD OF PLAY CONSULTANT

Binnie Consulting Limited
[REDACTED]

Telephone: **[REDACTED]**
Fax: **[REDACTED]**

MARKHAM PAN AM CENTRE – LIST OF DRAWINGS

ARCHITECTURAL DRAWINGS

Architectural Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

"Issued for Construction".

STRUCTURAL DRAWINGS

Structural Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

"Issued for Construction".

MECHANICAL DRAWINGS

Mechanical Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

"Issued for Construction".

AQUATICS DRAWINGS

Aquatics Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

"Issued for Construction".

ELECTRICAL DRAWINGS

Electrical Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

"Issued for Construction".

COMMUNICATION DRAWINGS

Communication Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

"Issued for Construction".

AUDIO VISUAL DRAWINGS

Audio Visual Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

"Issued for Construction".

CIVIL DRAWINGS

Civil Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

"Issued for Construction".

LANDSCAPE DRAWINGS

Landscape Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

"Issued for Construction".

DRAWING LIST

Architectural

A000	COVER SHEET
A001	DRAWING LIST
A002	EXT. & INT. WALL, ROOF SCHEDULE AND DOOR FRAME TYPES
A004	INTERIOR SCREEN SCHEDULE AND DOOR TYPES
A005	INTERIOR SCREEN SCHEDULE
A101	SITE PLAN
A110	FIRE SEPARATION PLANS
A200	LEVEL 0 PLAN
A201a	LEVEL 1 NORTH PART PLAN
A201b	LEVEL 1 SOUTH PART PLAN
A202a	LEVEL 2 NORTH PART PLAN
A202b	LEVEL 2 SOUTH PART PLAN
A203a	LEVEL 3 NORTH PART PLAN
A203b	LEVEL 3 SOUTH PART PLAN
A204a	UPPER ROOF LEVEL PLAN, POOL HALL & LIGHT WELL
A204b	ROOF LEVEL SOUTH PART PLAN
A300	LEVEL 0 REFLECTED CEILING PLAN
A301a	LEVEL 1 NORTH PART REFLECTED CEILING PLAN
A301b	LEVEL 1 SOUTH PART REFLECTED CEILING PLAN
A302a	LEVEL 2 NORTH PART REFLECTED CEILING PLAN
A302b	LEVEL 2 SOUTH PART REFLECTED CEILING PLAN
A303a	LEVEL 3 NORTH PART REFLECTED CEILING PLAN
A303b	LEVEL 3 SOUTH PART REFLECTED CEILING PLAN
A310	INTERIOR CEILING DETAILS LEVEL 1 & LEVEL 2
A400	BUILDING ELEVATIONS
A401	ELEVATION DETAILS
A402	BUILDING PARTIAL ELEVATIONS
A501	BUILDING SECTIONS
A502	BUILDING SECTIONS
A503	SPINE SECTIONS
A504	SPINE SECTIONS

A600	WALL SECTIONS
A601	WALL SECTIONS
A602	WALL SECTIONS
A603	WALL SECTIONS
A650	WALL SECTION DETAILS
A651	WALL SECTION DETAILS
A652	WALL SECTION DETAILS
A653	WALL SECTION DETAILS
A654	WALL SECTION DETAILS
A660	EXTERIOR PLAN DETAILS - LEVEL 1
A661	EXTERIOR PLAN DETAILS - LEVEL 1 & 2
A662	EXTERIOR PLAN DETAILS - LEVEL 3
A680	INTERIOR PLAN DETAILS - LEVEL 1
A681	INTERIOR PLAN DETAILS - LEVEL 1 & LEVEL 2
A682	INTERIOR PLAN DETAILS - LEVEL 2 AND UPPER LEVEL
A700	CHANGE ROOM AND WASHROOM DETAILS
A701	CHANGE ROOM AND WASHROOM DETAILS
A703	CHANGE ROOM AND WASHROOM DETAILS - INT. ELEVATIONS
A704	CHANGE ROOM AND WASHROOM DETAILS - INT. ELEVATIONS
A705	CHANGE ROOM AND WASHROOM DETAILS - INT. ELEVATIONS
A710	POOL SEATING DETAIL SECTIONS
A711	POOL SEATING ENLARGED PLANS, STRS, RAILING & GUARD DETAILS
A712	MISCELLANEOUS INTERIOR DETAILS
A713	MISCELLANEOUS INTERIOR DETAILS
A750	VESTIBULE DETAILS
A751	VESTIBULE DETAILS
A800	STAIR DETAILS, STAIR 1
A801	STAIR DETAILS, STAIR 1
A802	STAIR DETAILS, STAIR 3 & 4
A803	STAIR DETAILS, STAIR 2, 5 & 6
A804	TYPICAL GUARD DETAILS
A850	ELEVATOR DETAILS
A901	INTERIOR ELEVATIONS - CORRIDORS LEVELS 1 & 2
A902	INTERIOR ELEVATIONS - BADMINTON HALL ELEVATIONS
A903	INTERIOR ELEVATIONS - POOL HOUSE
A904	INTERIOR ELEVATIONS - WARM UP HALL ELEVATIONS
A950	MILLWORK
A951	MILLWORK
A960	SIGNAGE AND WAYFINDING LEVELS 0-3
A961	SIGNAGE AND WAYFINDING DETAILS - LEVELS 0-3
A962	SIGN DETAILS
A1000	LEVEL 0 FINISHED FLOOR PLAN
A1001a	LEVEL 1 FINISHED FLOOR, NORTH PART PLAN

A1001b	LEVEL 1 FINISHED FLOOR, SOUTH PART PLAN
A1002a	LEVEL 2 FINISHED FLOOR, NORTH PART PLAN
A1002b	LEVEL 2 FINISHED FLOOR, SOUTH PART PLAN
A1003a	LEVEL 3 FINISHED FLOOR, NORTH PART PLAN
A1003b	LEVEL 3 FINISHED FLOOR, SOUTH PART PLAN

STRUCTURAL

S101	GENERAL NOTES AND TYPICAL DETAILS
S102	TYPICAL DETAILS
S103	TYPICAL DETAILS
S201	FOUNDATION PLAN (LEVEL 0) PLAN
S201A	FOUNDATION PLAN (LEVEL 0) PLAN NORTH PART
S201B	FOUNDATION PLAN (LEVEL 0) PLAN SOUTH PART
S202	LEVEL 1 FRAMING PLAN
S202A	LEVEL 1 FRAMING PLAN (NORTH PART)
S202B	LEVEL 1 FRAMING PLAN (SOUTH PART)
S203	LEVEL 2 FRAMING PLAN
S203A	LEVEL 2 FRAMING PLAN (NORTH PART)
S203B	LEVEL 2 FRAMING PLAN (SOUTH PART)
S204	LEVEL 3 FRAMING PLAN
S204A	LEVEL 3 FRAMING PLAN (NORTH PART)
S204B	LEVEL 3 FRAMING PLAN (SOUTH PART)
S205	WARM UP HALL ROOF LEVEL PLAN
S205A	WARM UP HALL ROOF LEVEL PLAN (NORTH PART)
S205B	WARM UP HALL ROOF LEVEL PLAN (SOUTH PART)
S206	BADMINTON HALL ROOF LEVEL PLAN
S206A	BADMINTON HALL ROOF LEVEL PLAN (NORTH PART)
S206B	BADMINTON HALL ROOF LEVEL PLAN (SOUTH PART)
S207	POOL ROOF PLAN
S207A	POOL ROOF PLAN
S208	BLEACHERS PRE-CAST PANEL LAYOUT
S209	ROOF LOADING CRITERIA
S301	COLUMN SCHEDULE
S302	COLUMN SCHEDULE
S303	COLUMN SCHEDULE
S304	CFA AND CAP DETAILS
S401	SECTIONS
S402	SECTIONS
S403	SECTIONS
S404	SECTIONS
S405	SECTIONS
S406	SECTIONS
S407	SECTIONS
S408	SECTIONS
S409	SECTIONS
S410	TRUSSES AND DETAILS
S411	TRUSSES AND DETAILS
S412	SECTIONS
S414	SECTIONS
S415	SECTIONS
S416	SECTIONS
S417	SECTIONS

S420	SECTIONS
S421	SECTIONS
S422	SECTIONS
S423	SECTIONS
S501	ELEVATIONS
S502	ELEVATIONS
S503	ELEVATIONS
S504	ELEVATIONS
S505	ELEVATIONS
S506	ELEVATIONS DETAILS
S507	ELEVATION DETAILS
S508	ELEVATIONS DETAILS
S601	CORE PLANS
S602	CORE PLANS
S603	CORE ELEVATIONS
S801	BEAM SCHEDULE
S802	BEAM SCHEDULE
S803	BEAM SCHEDULE
S804	BEAM SCHEDULE
MECHANICAL	
M-100	LEGEND, DRAWING LIST AND DETAILS
M-101	DETAILS
M-102	DETAILS
M-103	DETAILS
M-104	SCHEDULES
M-105	SCHEDULES
M-109	DETAILS
M-110	MECHANICAL SITE PLAN
M-120	HTG & CLG, GAS, POOL, CISTERN, CHILLED WATER SCHEMATICS
M-121	STEAM HUM., DOM. WATER, LOW TEMP HOT WATER SCHEMATICS
M-130	CONTROLS
M-131	CONTROLS
M-140	FIRE PROTECTIONS RISER DIAGRAM
M-150	LEVEL 3 MECHANICAL ROOM
M-151	LEVEL 3 MECHANICAL ROOM SECTIONS
M-152	LEVEL 3 MECHANICAL ROOM SECTIONS
M-153	LEVEL 3 MECHANICAL ROOM 3D VIEW 1
M-154	LEVEL 3 MECHANICAL ROOM 3D VIEW 2
M-160	AHU DETAILS
M-161	WORKING SECTIONS
M-200	LEVEL 0 FLOOR PLAN - PLUMBING AND DRAINAGE
M-200.1	PART LEVEL 0 FLOOR PLAN - PLUMBING AND DRAINAGE
M-200.2	PART LEVEL 0 FLOOR PLAN - PLUMBING AND DRAINAGE
M-200.3	PART LVL 0 INCOMING SERVICES ROOM - PLUMBING AND DRAINAGE
M-201	LEVEL 1 FLOOR PLAN - PLUMBING AND DRAINAGE
M-201.1	PART LEVEL 1 FLOOR PLAN - PLUMBING AND DRAINAGE
M-201.2	PART LEVEL 1 FLOOR PLAN - PLUMBING AND DRAINAGE
M-202	LEVEL 2 FLOOR PLAN - PLUMBING AND DRAINAGE
M-202.1	PART LEVEL 2 FLOOR PLAN - PLUMBING AND DRAINAGE
M-202.2	PART LEVEL 2 FLOOR PLAN - PLUMBING AND DRAINAGE

M-203 LEVEL 3 FLOOR PLAN - PLUMBING AND DRAINAGE
M-203.1 PART LEVEL 3 FLOOR PLAN - PLUMBING AND DRAINAGE
M-203.2 PART LEVEL 3 FLOOR PLAN - PLUMBING AND DRAINAGE
M-203.3 PART LEVEL 3 MECH. ROOM AND EMER. GENERATOR ROOM - P&D

M-300 LEVEL 0 FLOOR PLAN - FIRE PROTECTION
M-300.1 PART LEVEL 0 FLOOR PLAN - FIRE PROTECTION
M-300.2 PART LEVEL 0 FLOOR PLAN - FIRE PROTECTION
M-300.3 PART LEVEL 0 INCOMING SERVICES ROOM - FIRE PROTECTION
M-301 LEVEL 1 FLOOR PLAN - FIRE PROTECTION
M-301.1 PART LEVEL 1 FLOOR PLAN - FIRE PROTECTION
M-301.2 PART LEVEL 1 FLOOR PLAN - FIRE PROTECTION
M-302 LEVEL 2 FLOOR PLAN - FIRE PROTECTION
M-302.1 PART LEVEL 2 FLOOR PLAN - FIRE PROTECTION
M-302.2 PART LEVEL 2 FLOOR PLAN - FIRE PROTECTION
M-303 LEVEL 3 FLOOR PLAN - FIRE PROTECTION
M-303.1 PART LEVEL 3 FLOOR PLAN - FIRE PROTECTION
M-303.2 PART LEVEL 3 FLOOR PLAN - FIRE PROTECTION
M-303.3 LV 3 FLR PLAN MECH. RM. AND EMERG. GEN. RM. - FP

M-400 LEVEL 0 FLOOR PLAN - HVAC
M-400.1 PART LEVEL 0 FLOOR PLAN - HVAC
M-400.2 PART LEVEL 0 INCOMING SERVICES ROOM - HVAC
M-401 LEVEL 1 FLOOR PLAN - HVAC
M-401.1 PART LEVEL 1 FLOOR PLAN - HVAC
M-401.2 PART LEVEL 1 FLOOR PLAN - HVAC
M-402 LEVEL 2 FLOOR PLAN - HVAC
M-402.1 PART LEVEL 2 FLOOR PLAN - HVAC
M-402.2 PART LEVEL 2 FLOOR PLAN - HVAC
M-403 LEVEL 3 FLOOR PLAN - HVAC
M-403.1 PART LEVEL 3 FLOOR PLAN - HVAC
M-403.2 PART LEVEL 3 FLOOR PLAN - HVAC
M-403.3 PART LV 3 MECH. AND EMERG. GEN. ROOM - HVAC
M-410 LEVEL 0 FLOOR PLAN - HVAC PIPING
M-410.1 PART LEVEL 0 FLOOR PLAN - HVAC PIPING
M-410.2 PART LEVEL 0 INCOMING SERVICES ROOM - HVAC PIPING
M-411 LEVEL 1 FLOOR PLAN - HVAC PIPING
M-411.1 LEVEL 1 FLOOR PLAN - HVAC PIPING
M-411.2 LEVEL 1 FLOOR PLAN - HVAC PIPING
M-412 LEVEL 2 FLOOR PLAN - HVAC PIPING
M-412.1 PART LEVEL 2 FLOOR PLAN - HVAC PIPING
M-412.2 PART LEVEL 2 FLOOR PLAN - HVAC PIPING
M-413 LEVEL 3 FLOOR PLAN - HVAC PIPING
M-413.1 PART LEVEL 3 FLOOR PLAN - HVAC PIPING
M-413.2 MECH ROOM AND EMERGENCY GENERATOR ROOM, HVAC PIPING

M-500 MECHANICAL ROOF PLAN
M-500.1 PART MECHANICAL ROOF PLAN
M-500.2 PART MECHANICAL ROOF PLAN
M-501 PART PLAN ROOF OVERHANG - PLUMBING AND DRAINAGE

AQUATIC

AQ101 GENERAL LAYOUT
ALT AQ101 GENERAL LAYOUT - 3M DEPTH ALTERNATE BID

AQ102 COMPETITIVE SWIMMING - LONG COURSE LAYOUT
 ALT AQ102 COMPETITIVE SWIMMING - LONG COURSE LAYOUT
 AQ103 COMPETITIVE SWIMMING - SHORT COURSE LAYOUT
 ALT AQ103 COMPETITIVE SWIMMING - SHORT COURSE LAYOUT
 AQ104 MEN'S WATER POLO LAYOUT
 ALT AQ104 MEN'S WATER POLO LAYOUT
 AQ105 WOMEN'S WATER POLO
 ALT AQ105 WOMEN'S WATER POLO
 AQ106 POOL DETAILS - SHELL FITTINGS
 ALT AQ106 POOL DETAILS - SHELL FITTINGS
 AQ107 POOL DETAILS - WALLS / MARKERS
 ALT AQ107 POOL DETAILS - WALLS / MARKERS
 AQ108 SHELL ACCESSORIES
 AQ109 HEADWALL / STARTING BLOCKS
 AQ110 BULKHEADS
 AQ111 MOVABLE FLOOR
 ALT AQ111 MOVABLE FLOOR
 AQ112 POOL MAIN DRAINS

AQ201 FILTRATION SYSTEM DETAILS
 AQ202 FILTRATION ROOM DETAILS
 AQ203 FILTRATION SYSTEM SCHEMATIC
 AQ204 ELECTRONIC TIMING / SCORING SYSTEM DETAILS
 AQ205 WET / DRY CHEMICAL ROOM LAYOUTS
 AQ206 LANE ROPE STORAGE SYSTEM
 AQ207 POOL MECHANICAL DETAILS

ELECTRICAL

E100 ELECTRICAL LEGEND, NOTES AND DRAWING LIST
 E101 SITE PLAN - ELECTRICAL - NEW LAYOUT

E200 LEVEL 0 FLOOR PLAN - LIGHTING
 E201A LEVEL 1 FLOOR PLAN - LIGHTING - NORTH
 E201B LEVEL 1 FLOOR PLAN - LIGHTING - SOUTH
 E202A LEVEL 2 FLOOR PLAN - LIGHTING - NORTH
 E202B LEVEL 2 FLOOR PLAN - LIGHTING - SOUTH
 E203A LEVEL 3 FLOOR PLAN - LIGHTING - NORTH
 E203B LEVEL 3 FLOOR PLAN - LIGHTING - SOUTH

E300A LEVEL 0 FLOOR PLAN - POWER & SYSTEMS - NORTH
 E300B LEVEL 0 FLOOR PLAN - POWER & SYSTEMS - SOUTH
 E301A LEVEL 1 FLOOR PLAN - POWER & SYSTEMS - NORTH
 E301B LEVEL 1 FLOOR PLAN - POWER & SYSTEMS - SOUTH
 E302A LEVEL 2 FLOOR PLAN - POWER & SYSTEMS - NORTH
 E302B LEVEL 2 FLOOR PLAN - POWER & SYSTEMS - SOUTH
 E303A LEVEL 3 FLOOR PLAN - POWER & SYSTEMS - NORTH
 E303B LEVEL 3 FLOOR PLAN - POWER & SYSTEMS - SOUTH
 E304A ROOF LEVEL - ELECTRICAL - NORTH
 E304B ROOF PLAN - ELECTRICAL - SOUTH

E401 POWER DISTRIBUTION RISER BLOCK DIAGRAM
 E402 SYSTEMS SCHEMATIC RISER BLOCK DIAGRAMS
 E403 LIGHTING CONTROL SCHEMATIC DIAGRAMS
 E404 FIRE ALARM ZONES
 E405 MOTORIZED SHADES DETAILS

E406	SECURITY SYSTEM RISER BLOCK DIAGRAM
E501	ELECTRICAL INCOMING SERVICES & SITE DETAILS
E502	ELECTRICAL & COMMUNICATION ROOMS DETAILS
E503	ELECTRICAL DETAILS
E504	ELECTRICAL DETAILS
E505	ELECTRICAL DETAILS
E506	ELECTRICAL DETAILS FOR AUDIO VISUAL
E507	SECURITY DETAILS
E601	MECHANICAL AND POOL EQUIPMENT SCHEDULE

COMMUNICATION

C100	COMMUNICATION NOTES, LEGEND AND DRAWING LIST
C200	COMMUNICATIONS SITE PLAN
C201A	LEVEL 0 NORTH COMMUNICATIONS PLAN
C201B	LEVEL 0 SOUTH COMMUNICATIONS PLAN
C202A	LEVEL 1 NORTH COMMUNICATIONS PLAN
C202B	LEVEL 1 SOUTH COMMUNICATIONS PLAN
C203A	LEVEL 2 NORTH COMMUNICATIONS PLAN
C203B	LEVEL 2 SOUTH COMMUNICATIONS PLAN
C204A	LEVEL 3 NORTH COMMUNICATIONS PLAN
C204B	LEVEL 3 SOUTH COMMUNICATIONS PLAN
C301	COMMUNICATIONS TELECOM ROOM DETAILS
C401	COMMUNICATIONS RISER DIAGRAMS

AUDIO VISUAL

AV-0.0	LEGEND & NOTES
AV-1.0	LEVEL 1 PLAN - AV DISTRIBUTIONS
AV-1.1	LEVEL 2 PLAN - AV DISTRIBUTIONS
AV-1.2	LEVEL 3 RCP - AV DISTRIBUTIONS
AV-2.0	AV RISERS
AV-2.1	AV RISERS
AV-3.0	AV FUNCTIONALS
AV-3.1	AV FUNCTIONALS
AV-3.2	AV FUNCTIONALS
AV-4.0	AV DETAILS
AV-5.0	AV ELEVATIONS

CIVIL

ESC-1	SITE ALTERATION PLAN
ESC-2	SITE ALTERATION PLAN
GRAD-1	SITE GRADING PLAN
SERV-1	SITE SERVICING PLAN

LANDSCAPE

L-101A	LANDSCAPE LAYOUT PLAN, PRE-GAMES
L-101B	LANDSCAPE LAYOUT PLAN, LEGACY
L-102A	LANDSCAPE PLANTING & SODDING PLAN, PRE-GAMES
L-102B	LANDSCAPE PLANTING & SODDING PLAN, LEGACY
L-103	SCHEMATIC IRRIGATION PLAN
L-104A	LANDSCAPE DETAILS
L-104B	LANDSCAPE DETAIL, ENLARGEMENT & SECTION

MARKHAM PAN AM CENTE – SPECIFICATIONS

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00 30 00 (R0)	AVAILABLE INFORMATION	06 Sep 2012	B+H	
Contracting Requirements				
00 65 37 (R0)	MAINTENANCE MATERIAL FORM (SPECIMEN)	06 Sep 2012	B+H	
SPECIFICATIONS GROUP				
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1 General Requirements				
01 10 00 (R0)	GENERAL REQUIREMENTS	06 Sep 2012	B+H	
01 20 00 (R0)	PRICE AND PAYMENT PROCEDURES	06 Sep 2012	B+H	
01 30 00 (R0)	ADMINISTRATIVE REQUIREMENTS	06 Sep 2012	B+H	
01 40 00 (R0)	QUALITY REQUIREMENTS	06 Sep 2012	B+H	
01 41 13 (R0)	CODES	06 Sep 2012	B+H	
01 50 00 (R0)	TEMPORARY FACILITIES AND CONTROLS	06 Sep 2012	B+H	
01 60 00 (R0)	PRODUCT REQUIREMENTS	06 Sep 2012	B+H	

01 70 00 (R0)	EXECUTION AND CLOSEOUT REQUIREMENTS	06 Sep 2012	B+H
*01 74 19	WASTE MANAGEMENT AND DISPOSAL	06 Sep 2012	JAIN
01 78 24 (R0)	PREVENTATIVE MAINTENANCE	06 Sep 2012	B+H
FACILITY CONSTRUCTION SUBGROUP			
3 Concrete			
*03 30 00 (R0)	CAST-IN-PLACE CONCRETE	06 Sep 2012	QDA
*03 41 00 (R0)	PRECAST STRUCTURAL CONCRETE	06 Sep 2012	QDA
4 Masonry			
04 20 00 (R0)	MASONRY UNITS	06 Sep 2012	B+H
5 Metals			
05 05 13 (R0)	SHOP-APPLIED COATINGS FOR METAL	06 Sep 2012	B+H
*05 12 00 (R0)	STRUCTURAL STEEL	06 Sep 2012	QDA
05 12 13 (R0)	ARCHITECTURALLY EXPOSED STRUCTURAL STEEL	06 Sep 2012	B+H
*05 30 00 (R0)	METAL DECKING	06 Sep 2012	QDA
05 41 00 (R0)	STRUCTURAL METAL STUD FRAMING SYSTEM	06 Sep 2012	B+H
05 50 00 (R0)	METAL FABRICATIONS	06 Sep 2012	B+H
05 51 00 (R0)	METAL STAIRS AND BALUSTRADES	06 Sep 2012	B+H
05 73 13 (R0)	GLAZED DECORATIVE METAL RAILINGS	06 Sep 2012	B+H
6 Wood, Plastics and Composites			
06 10 00 (R0)	ROUGH CARPENTRY	06 Sep 2012	B+H
*06 18 00 (R0)	GLUED-LAMINATED CONSTRUCTION	06 Sep 2012	QDA
*06 18 17 (R0)	GLUED-LAMINATED HYBRID TRUSSES	06 Sep 2012	QDA
06 40 00 (R0)	ARCHITECTURAL WOODWORK	06 Sep 2012	B+H
06 61 16 (R0)	SOLID POLYMER FABRICATIONS	06 Sep 2012	B+H
06 90 00 (R0)	GENERAL INSTALLATIONS	06 Sep 2012	B+H

7 Thermal and Moisture Protection			
07 13 52 (R0)	MODIFIED BITUMINOUS SHEET WATERPROOFING	06 Sep 2012	B+H
07 16 16 (R0)	CRYSTALLINE WATERPROOFING	06 Sep 2012	B+H
07 18 13 (R0)	MECHANICAL ROOM WATERPROOFING	06 Sep 2012	B+H
07 21 00 (R0)	BUILDING INSULATION	06 Sep 2012	B+H
07 21 19 (R0)	FOAMED-IN-PLACE INSULATION	06 Sep 2012	B+H
07 25 00 (R0)	MISCELLANEOUS AIR/VAPOUR BARRIERS	06 Sep 2012	B+H
07 42 43 (R0)	ALUMINUM COMPOSITE PANEL SYSTEM	06 Sep 2012	B+H
07 52 16 (R0)	MODIFIED BITUMINOUS MEMBRANE ROOFING	06 Sep 2012	B+H
07 62 00 (R0)	SHEET METAL FLASHINGS AND TRIM	06 Sep 2012	B+H
07 81 00 (R0)	SPRAYED FIRE-RESISTIVE MATERIALS	06 Sep 2012	B+H
07 84 00 (R0)	FIRESTOPPING AND SMOKE SEALS	06 Sep 2012	B+H
07 92 00 (R0)	JOINT SEALANTS	06 Sep 2012	B+H
07 95 13 (R0)	EXPANSION JOINT ASSEMBLIES	06 Sep 2012	B+H
8 Openings			
08 11 13 (R0)	STEEL DOORS AND FRAMES	06 Sep 2012	B+H
08 11 16 (R0)	ALUMINUM DOORS AND FRAMES	06 Sep 2012	B+H
08 11 19 (R0)	STAINLESS STEEL DOORS AND FRAMES	06 Sep 2012	B+H
08 14 00 (R0)	WOOD DOORS	06 Sep 2012	B+H
08 16 00 (R0)	COMPOSITE DOORS	06 Sep 2012	B+H
08 31 13 (R0)	ACCESS DOORS AND FRAMES	06 Sep 2012	B+H
08 33 16 (R0)	COILING COUNTER SHUTTERS	06 Sep 2012	B+H
08 33 23 (R0)	OVERHEAD COILING DOORS	06 Sep 2012	B+H
08 42 29 (R0)	AUTOMATIC SLIDING DOORS	06 Sep 2012	B+H
08 44 13 (R0)	GLAZED ALUMINUM CURTAIN WALL	06 Sep 2012	B+H
08 63 00 (R0)	METAL-FRAMED SKYLIGHTS	06 Sep 2012	B+H

08 71 00 (R0)	PLASTIC-FRAMED SKYLIGHTS	06 Sep 2012	B+H
08 80 00 (R0)	GLASS AND GLAZING	06 Sep 2012	B+H
08 91 00 (R0)	LOUVRES	06 Sep 2012	B+H
9 Finishes			
09 21 16 (R0)	GYPSUM BOARD	06 Sep 2012	B+H
09 30 00 (R0)	TILING	06 Sep 2012	B+H
09 51 00 (R0)	ACOUSTIC TILE CEILINGS	06 Sep 2012	B+H
09 51 13 (R0)	ACOUSTICAL PANEL CEILING	06 Sep 2012	B+H
09 54 23 (R0)	LINEAR WOOD CEILINGS	06 Sep 2012	B+H
09 64 66 (R0)	WOOD ATHLETIC FLOORING	06 Sep 2012	B+H
09 65 00 (R0)	RESILIENT BASES	06 Sep 2012	B+H
09 65 15 (R0)	RESILIENT SHEET RUBBER FLOORING	06 Sep 2012	B+H
09 65 18 (R0)	LINOLEUM	06 Sep 2012	B+H
09 67 23 (R0)	RESINOUS FLOORING	06 Sep 2012	B+H
09 68 13 (R0)	CARPET TILE	06 Sep 2012	B+H
09 72 00 (R0)	VINYL COATED FABRIC WALL COVERINGS	06 Sep 2012	B+H
09 91 00 (R0)	PAINTING	06 Sep 2012	B+H
09 96 03 (R0)	HIGH-PERFORMANCE INTERIOR COATINGS	06 Sep 2012	B+H
10 Specialties			
10 14 00 (R0)	SIGNAGE AND WAYFINDING	06 Sep 2012	B+H
10 21 14 (R0)	PHENOLIC TOILET PARTITIONS	06 Sep 2012	B+H
10 21 19 (R0)	SOLID PLASTIC TOILET PARTITONS	06 Sep 2012	B+H
10 22 13 (R0)	WIRE MESH PARTITIONS	06 Sep 2012	B+H
10 22 19 (R0)	INTERIOR GLAZED PARTITIONS	06 Sep 2012	B+H
10 22 26 (R0)	FOLDING PANEL OPERABLE PARTITIONS	06 Sep 2012	B+H
10 26 13 (R0)	CORNER GUARDS	06 Sep 2012	B+H

10 28 00 (R0)	WASHROOM ACCESSORIES	06 Sep 2012	B+H
10 51 27 (R0)	PHENOLIC LOCKERS	06 Sep 2012	B+H
10 75 00 (R0)	FLAGPOLES	06 Sep 2012	B+H
10 81 13 (R0)	BIRD CONTROL DEVICES	06 Sep 2012	B+H
10 95 00 (R0)	MISCELLANEOUS SPECIALTIES	06 Sep 2012	B+H
11 Equipment			
11 66 00 (R0)	ATHLETIC EQUIPMENT	06 Sep 2012	B+H
12 Furnishings			
12 21 13 (R0)	HORIZONTAL LOUVRE BLINDS	06 Sep 2012	B+H
12 21 16 (R0)	VERTICAL LOUVRE BLINDS	06 Sep 2012	B+H
12 22 13 (R0)	DRAPERIES	06 Sep 2012	B+H
12 24 13 (R0)	ROLLER WINDOW SHADES	06 Sep 2012	B+H
12 35 54 (R0)	METAL LABORATORY CASEWORK	06 Sep 2012	B+H
12 35 55 (R0)	WOOD LABORATORY CASEWORK	06 Sep 2012	B+H
12 36 40 (R0)	STONE COUNTERTOPS	06 Sep 2012	B+H
12 48 13 (R0)	RECESSED FLOOR GRILLES	06 Sep 2012	B+H
12 61 00 (R0)	FIXED AUDIENCE SEATING	06 Sep 2012	B+H
12 63 00 (R0)	STADIUM AND ARENA SEATING	06 Sep 2012	B+H
12 66 13 (R0)	TELESCOPIC BLEACHERS	06 Sep 2012	B+H
12 66 23 (R0)	TELESCOPIC CHAIR PLATFORMS	06 Sep 2012	B+H
12 93 13 (R0)	BICYCLE RACKS	06 Sep 2012	B+H
13 Special Construction			
*13 11 13 (R0)	COMPETITION POOL – GENERAL	06 Sep 2012	REC
13 21 26 (R0)	COLD STORAGE ROOMS	06 Sep 2012	B+H
13 34 23 (R0)	FABRICATED STRUCTURES	06 Sep 2012	B+H
13 48 00 (R0)	ACOUSTIC ISOLATED FLOATING	06 Sep	B+H

	FLOORS	2012	
13 49 00 (R0)	RADIATION PROTECTION	06 Sep 2012	B+H
13 49 13 (R0)	MRI INTEGRATED MAGNETIC & RADIO FREQUENCY SHIELDING	06 Sep 2012	B+H
14 Conveying Equipment			
14 01 20 (R0)	OPERATION AND MAINTENANCE OF ELEVATORS	06 Sep 2012	B+H
14 21 00 (R0)	ELECTRIC TRACTION ELEVATORS	06 Sep 2012	B+H
14 24 00 (R0)	HYDRAULIC ELEVATORS	06 Sep 2012	B+H
14 31 00 (R0)	ESCALATORS	06 Sep 2012	B+H
14 42 00 (R0)	WHEELCHAIR LIFTS	06 Sep 2012	B+H
14 91 33 (R0)	LAUNDRY CHUTES	06 Sep 2012	B+H
14 92 00 (R0)	PNEUMATIC TUBE SYSTEM	06 Sep 2012	B+H
20 Mechanical			
*20 04 00 (R0)	MECHANICAL GENERAL PROVISIONS	06 Sep 2012	TMP 1 thru 15
*20 05 00 (R0)	BASIC MECHANICAL MATERIALS AND METHODS	06 Sep 2012	TMP 1 thru 17
*20 05 48 (R0)	SOUND AND VIBRATION CONTROL	06 Sep 2012	TMP 1 thru 5
*20 05 49 (R0)	SEISMIC RESTRAINT SYSTEM	06 Sep 2012	TMP 1 thru 4
*20 07 00 (R0)	INSULATION	06 Sep 2012	TMP 1 thru 9
*20 09 00 (R0)	MOTORS, STARTERS, CONTROL CENTRES & WIRING	06 Sep 2012	TMP 1 thru 5
*20 09 50 (R0)	VARIABLE SPEED DRIVES	06 Sep 2012	TMP 1 thru 5
21 Fire Suppression			
*21 12 00 (R0)	STANDPIPE AND HOSE SYSTEMS	06 Sep 2012	TMP 1 thru 6
*21 13 00 (R0)	SPRINKLER SYSTEMS	06 Sep 2012	TMP 1 thru 7
22 Plumbing			
*22 11 00 (R0)	PLUMBING AND DRAINAGE PIPING SYSTEMS	06 Sep 2012	TMP 1 thru 5
*22 11 23 (R0)	DOMESTIC WATER BOOSTER PUMPS	06 Sep 2012	TMP 1 thru 5
*22 13 29 (R0)	BILGE AND SEWAGE PUMPS	06 Sep 2012	TMP 1 and 2

*22 (R0)	30 00	PLUMBING SPECIALTIES	06 2012	Sep	TMP	1 thru 10
*22 (R0)	33 00	DOMESTIC WATER HEATERS	06 2012	Sep	TMP	1 and 2
*22 (R0)	40 00	PLUMBING FIXTURES	06 2012	Sep	TMP	1 thru 48
23 Heating, Ventilating and Air Conditioning						
*23 (R0)	05 93	TESTING AND BALANCING (TAB)	06 2012	Sep	TMP	1 thru 5
*23 (R0)	11 23	NATURAL GAS PIPING SYSTEMS	06 2012	Sep	TMP	1 and 2
*23 (R0)	14 00	DIESAL GENERATOR FUEL OIL AND EXHAUST SYSTEM	06 2012	Sep	TMP	1 and 2
*23 (R0)	21 13	HYDRONIC PIPING SYSTEMS	06 2012	Sep	TMP	1 thru 4
*23 (R0)	21 23	HVAC PUMPS	06 2012	Sep	TMP	1 and 2
*23 (R0)	25 00	HVAC WATER TREATMENT SYSTEMS	06 2012	Sep	TMP	1 thru 5
*23 (R0)	31 00	SHEET METAL	06 2012	Sep	TMP	1 thru 15
*23 (R0)	34 00	FANS	06 2012	Sep	TMP	1 thru 6
*23 (R0)	36 30	AIR TERMINAL CONTROL UNITS – DIGITAL	06 2012	Sep	TMP	1 thru 3
*23 (R0)	39 00	LOUVRES	06 2012	Sep	TMP	1 thru 4
*23 (R0)	52 38	PACKAGED STEAM HUMIDIFICATION GENERATION	06 2012	Sep	TMP	1 thru 10
*23 (R0)	57 00	HEAT EXCHANGERS	06 2012	Sep	TMP	1 and 2
*23 (R0)	74 00	PACKAGED ROOFTOP POOL DEHUMIDIFICATION	06 2012	Sep	TMP	1 thru 17
*23 (R0)	75 00	CUSTOM AIR HANDLING UNITS	06 2012	Sep	TMP	1 thru 14
*23 (R0)	82 00	HYDRONIC TERMINAL UNITS	06 2012	Sep	TMP	1 thru 3
*23 (R0)	82 19	FAN COIL UNITS	06 2012	Sep	TMP	1 thru 4
*28 (R0)	82 50	ELECTRICAL HEATING	06 2012	Sep	TMP	1 Only
*23 (R0)	84 13	HUMIDIFIERS	06 2012	Sep	TMP	1 thru 9
*25 (R0)	08 00	ECMS Inspection and Acceptance Testing				
*25 (R0)	30 00	ECMS Instrumentation				
*25 (R0)	50 00	Electronic Controls & Monitoring				
26 Electrical						

*26 05 01 (R0)	COMMON WORK RESULTS - ELECTRICAL	06 Sep 2012	MBII
	ATTACHMENT: DRAWING REQUEST FORM	06 Sep 2012	MBII
*26 05 20 (R0)	WIRE AND BOX CONNECTORS – 0- 1000V	06 Sep 2012	MBII
*26 05 21 (R0)	WIRES AND CABLES (0-1000V)	06 Sep 2012	MBII
*26 05 27 (R0)	GROUND – PRIMARY	06 Sep 2012	MBII
*26 05 28 (R0)	GROUNDING – SECONDARY	06 Sep 2012	MBII
*26 05 29 (R0)	HANGERS AND SUPPORTS FOR ELECTRICAL SYSTEMS	06 Sep 2012	MBII
*26 05 31 (R0)	SPLITTERS, JUNCTION BOXES, PULL BOXES AND CABINETS	06 Sep 2012	MBII
*26 05 32 (R0)	OUTLET BOXES, CONDUIT BOXES AND FITTINGS	06 Sep 2012	MBII
*26 05 34 (R0)	CONDUITS, CONDUIT FASTENINGS AND CONDUIT FITTINGS	06 Sep 2012	MBII
	ATTACHMENT: RECOMMENDED COMMUNICATION PULL BOX CONFIGURATION	06 Sep 2012	MBII
*26 05 36 (R0)	CABLE TRAYS FOR ELECTRICAL SYSTEMS	06 Sep 2012	MBII
*26 05 44 (R0)	INSTALLATION OF CABLES IN TRENCHES AND IN DUCTS	06 Sep 2012	MBII
*26 05 45 (R0)	TELEPHONE, DATA, A/V, SECURITY, P/A AND CABLE TV – AM/FM EMPTY RACEWAY SYSTEM	06 Sep 2012	MBII
*26 09 02 (R0)	POWER MONITORING	06 Sep 2012	MBII
*26 09 24 (R0)	LOW VOLTAGE LIGHTING CONTROL EQUIPMENT	06 Sep 2012	MBII
*26 09 25 (R0)	LIGHTING CONTROL DEVICES – PHOTOELECTRIC AND TIME SWITCH	06 Sep 2012	MBII
*26 09 36 (R0)	OCCUPANCY SENSOR	06 Sep 2012	MBII
*26 12 17 (R0)	DRY TYPE TRANSFORMERS UP TO 600V PRIMARY	06 Sep 2012	MBII
	ATTACHMENT: TRANSFORMER SCHEDULE	06 Sep 2012	MBII
*26 12 18 (R0)	SINGLE OUTPUT HARMONIC MITIGATION TRANSFORMERS	06 Sep 2012	MBII
	ATTACHMENT: FEEDER SCHEDULE FOR SINGLE OUTPUT HARMONIC MITIGATION TRANSFORMER	06 Sep 2012	MBII
*26 18 41 (R0)	INTERLOCK SYSTEMS	06 Sep 2012	MBII
*26 22 19 (R0)	CONTROL AND SIGNAL TRANSFORMERS	06 Sep 2012	MBII
*26 23 00 (R0)	LOW VOLTAGE SWITCHGEAR	06 Sep 2012	MBII
*26 24 16	DISTRIBUTION PANELS	06 Sep	MBII

(R0)		2012	
*26 24 17 (R0)	PANELBOARD BREAKER TYPE	06 Sep 2012	MBII
*26 24 18 (R0)	PANELBOARDS SWITCH AND FUSE TYPE	06 Sep 2012	MBII
*26 27 26 (R0)	WIRING DEVICES	06 Sep 2012	MBII
*26 28 14 (R0)	FUSES – LOW VOLTAGE	06 Sep 2012	MBII
*26 28 17 (R0)	AIR CIRCUIT BREAKERS	06 Sep 2012	MBII
*26 28 20 (R0)	GROUND FAULT CIRCUIT INTERRUPTERS – CLASS “A”	06 Sep 2012	MBII
*26 28 21 (R0)	MOULDED CASE CIRCUIT BREAKERS	06 Sep 2012	MBII
*26 28 23 (R0)	DISCONNECT SWITCHES – FUSED AND NON-FUSED	06 Sep 2012	MBII
*26 28 24 (R0)	LOW VOLTAGE – AC POWER PLANEL SURGE PROTECTIVE DEVICES	06 Sep 2012	MBII
*26 29 01 (R0)	CONTACTORS	06 Sep 2012	MBII
*26 29 10 (R0)	MOTOR STARTERS TO 600V	06 Sep 2012	MBII
*26 32 10 (R0)	ELECTRIC GENERATING UNIT	06 Sep 2012	MBII
*26 36 23 (R0)	AUTOMATIC TRANSFER SWITCHES	06 Sep 2012	MBII
*26 41 13 (R0)	LIGHTNING PROTECTION FOR STRUCTURE	06 Sep 2012	MBII
*26 50 00 (R0)	LIGHTING	06 Sep 2012	MBII
*26 52 01 (R0)	UNIT EQUIPMENT FOR EMERGENCY LIGHTING	06 Sep 2012	MBII
*26 53 00 (R0)	EXIT SIGNS	06 Sep 2012	MBII
*26 54 00 (R0)	SPORT FIELD LIGHTING	06 Sep 2012	MBII
*26 60 00 (R0)	ELEVATOR SERVICES	06 Sep 2012	MBII
*26 70 00 (R0)	TESTING OF ELECTRICAL SYSTEMS	06 Sep 2012	MBII
*26 80 00 (R0)	SEISMIC RESTRAINT	06 Sep 2012	MBII

27 Communications

*27 05 01	COMMON WORK RESULTS COMMUNICATIONS	06 Sep 2012	MBII
*27 05 53	IDENTIFICATION FOR COMMUNICATION SYSTEMS	06 Sep 2012	MBII
*27 08 00	COMMISSIONING OF COMMUNICATIONS CABLING SYSTEMS	06 Sep 2012	MBII
*27 11 16	COMMUNICATIONS CABINETS,	06 Sep	MBII

	RACKS, FRAMES AND ENCLOSURES	2012	
*27 11 26	COMMUNICATIONS RACK MOUNTED PDU	06 Sep 2012	MBII
*27 13 13	COMMUNICATIONS COPPER BACKBONE CABLING	06 Sep 2012	MBII
*27 13 23	COMMUNICATIONS OPTICAL FIBER BACKBONE CABLING	06 Sep 2012	MBII
*27 15 13	COMMUNICATIONS COPPER HORIZONTAL CABLING	06 Sep 2012	MBII
*27 15 43	COMMUNICATIONS FACEPLATES AND CONNECTORS	06 Sep 2012	MBII
*27 16 19	COMMUNICATIONS PATCH CORDS STATION CORDS AND CROSS-CONNECT WIRE	06 Sep 2012	MBII
	TABLE 1 – MINIMUM SEPARATION SCHEDULE	06 Sep 2012	MBII
28 Electronic Safety and Security			
*28 13 00 (R0)	SECURITY SYSTEMS	06 Sep 2012	MBII
*28 31 02 (R0)	ADDRESSABLE FIRE ALARM SYSTEM	06 Sep 2012	MBII
	ATTACHMENT: LIFE SAFETY SYSTEM SCHEDULE	06 Sep 2012	MBII
SITE AND INFRASTRUCTURE SUBGROUP			
31 Earthwork			
*31 63 16 (R0)	CONTINUOUS FLIGHT AUGURED PILES	06 Sep 2012	QDA
32 Exterior Improvements			
*32 13 00	SOIL CELLS	06 Sep 2012	QDAL
*32 13 10	UNIT PAVING	06 Sep 2012	QDAL
*32 13 13	CONCRETE PAVING	06 Sep 2012	QDAL
*32 32 13	CAST IN PLACE CONCRETE (LANDSCAPE)	06 Sep 2012	QDAL
*32 84 00	IRRIGATION	06 Sep 2012	QDAL
*32 91 21	TOPSOIL & FINISH GRADING	06 Sep 2012	QDAL
*32 92 23	SODDING	06 Sep 2012	QDAL
*32 92 30	TREES, SHRUBS & GROUNDCOVERS	06 Sep 2012	QDAL
*32 93 00	SITE FURNISHINGS	06 Sep 2012	QDAL
*32 93 90	LANDSCAPE MAINTENANCE	06 Sep	QDAL

		2012	
33 Utilities			
*33 65 73 (R0)	CONCRETE ENCASED DUCT BANKS	06 Sep 2012	MBII
*33 65 76 (R0)	DIRECT BURIED UNDERGROUND CABLE DUCTS	06 Sep 2012	MBII

ETOBICOKE OLYMPIUM – LIST OF DRAWINGS

1.1. ARCHITECTURAL DRAWINGS

- 1.1.1. Architectural Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:
 - 1.1.1.1. "Issued for Construction".

1.2. STRUCTURAL DRAWINGS

- 1.2.1. Structural Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "March 15, 2012" with the following statement in the revision column:
 - 1.2.1.1. "Issued for Construction".

1.3. MECHANICAL DRAWINGS

- 1.3.1. Mechanical Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "March 15, 2012" with the following statement in the revision column:
 - 1.3.1.1. "Issued for Construction".

1.4. AQUATICS DRAWINGS

- 1.4.1. Electrical Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "March 15, 2012" with the following statement in the revision column:
 - 1.4.1.1. "Issued for Construction".

1.5. ELECTRICAL DRAWINGS

- 1.5.1. Electrical Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "March 15, 2012" with the following statement in the revision column:
 - 1.5.1.1. "Issued for Construction".

Architectural

A001	Cover Sheet & Drawing List, OBC Chart
A100	Context Plans & Interior Screen Elevations & Wall, Door, Frame Types
A201	Demolition & Legacy Partial Floor Plans: Basement, Ground and 2 nd Level
A210	Dive Tower Extension
A301	Reflected Ceiling Plans & Floor Finishes Plans: Ground Level & 2 nd Level
A400	Part Elevations and Details
A700	Washrooms, Mens Showers & Timing Booth
A710	Section Details
A711	Section Details

A712 Section Details

A900 Millwork

Structural

S201 Dive Tower Extension – Concrete Restoration, Typical Details

S202 Glass Rail At Main Stair – Work Raised Frame for Mechanical Roof Top Units, Timing Booth Modification

Mechanical

M-100 Legend, Drawing List, Details & Site Plan

M-101 Details

M-102 Schedules

M-103 Schedules

M-110 Incoming Domestic Water & Fire Protection Schematics

M-120 HVAC Schematics

M-130 Controls

M-200 Level 0 Floor Plan – Fire Protection & Plumbing and Drainage – Demo & New

M-201 Level 1 Floor Plan – Fire Protection & Plumbing and Drainage – Demo

M201.1 Level 1 Floor Plan – Fire Protection & Plumbing and Drainage – New

M202 Level 2 Floor Plan – Fire Protection & Plumbing and Drainage – New

M-300 Level – Floor Plan – HVAC – New

M301 Level 1 Floor Plan – HVAC – Demo

M-301.1 Level 1 Floor Plan– HVAC – New

M-302 Level 2 Floor Plan – HVAC

M-303 Level 3 Floor Plan – HVAC

M-304 Roof Plan – HVAC

M-500 Levels 0 and 1 – Mechanical Room Section & Plans – Demo

M-500.1 Levels 0 and 1 – Mechanical Room Section & Plans – New

M-501 North Penthouse – Mechanical Room Section & Plans – Demo & New

M-502 South Penthouse – Mechanical Room Plans – Demo

M502.1 South Penthouse – Mechanical Room Plans – New

Electrical

E001 Electrical Legend, Drawing List & Notes

E100 Basement Plan – Demolition

E101 Ground Floor Plan – Demolition

E102 Second Floor Plan – Demolition

E103	Third Floor Plan – Demolition
E200	Lighting Key Plans & Partial Basement Plan – In Pool Lighting
E201	Partial Ground, Second and Third Floor Plan – Lighting
E300	Basement Plan – Power & Systems
E301	Ground Floor Plan – Power & Systems
E302	Second Floor Plan – Power & Systems
E303	Third Floor Plan – Power & Systems
E401	Electrical Single Line Diagram Demolition
E402	Electrical Single Line Diagram New
E403	Fire Alarm Riser Diagram
E404	Public Address Functional Diagram
E405	Public Address Infrastructure Riser Diagram
E501	Electrical Details
E502	Electrical Details
E503	Electrical Details
E504	Public Address System Details

Communications

C1	Communications General Notes, Legend, Specifications, Separation Schedule & Drawing List
C2	Communications Ground Floor Plan
C3	Communications Details

Aquatics

	General – Pool Layout
AQ101	
AQ102	Filtration Equipment Demo Details
AQ103	Filtration Room Equipment Layout
AQ104	Filtration System Schematic
AQ105	Liquid Chlorine Room
AQ106	Gas CO2 Room
AQ107a	Spager System
AQ107b	Spager System
AQ108	Headwall / Surface Sprayer
AQ201	Renovaction – Plan View / Sections
AQ202	Renovaction – Plan View / Sections
AQ203	Renovaction – Pool Wall Details
AQ204	Renovaction – Pool Accessories / Markings
AQ205	Renovaction – Pool Perimeter Piping
AQ206	Pool Main Drains

ETOBICOKE OLYMPIUM – SPECIFICATIONS

Specifications forming part of the Contract Documents are those listed in Section 00 01 11 (R0) dated "September 6, 2012 – Issued for Construction"

PROCUREMENT AND CONTRACTING REQUIREMENTS GROUP			
Introductory Information			
00 00 01	TITLE PAGE	06 Sep 2012	B+H
00 01 20 (R0)	LIST OF SCHEDULES	06 Sep 2012	B+H
Procurement Requirements			
00 30 00 (R0)	AVAILABLE INFORMATION	06 Sep 2012	B+H
SPECIFICATIONS GROUP			
GENERAL REQUIREMENTS SUBGROUP			
1 General Requirements			
01 10 00 (R0)	GENERAL REQUIREMENTS	06 Sep 2012	B+H
01 20 00 (R0)	PRICE AND PAYMENT PROCEDURES	06 Sep 2012	B+H
01 30 00 (R0)	ADMINISTRATIVE REQUIREMENTS	06 Sep 2012	B+H
01 40 00 (R0)	QUALITY REQUIREMENTS	06 Sep 2012	B+H
01 50 00 (R0)	TEMPORARY FACILITIES AND CONTROLS	06 Sep 2012	B+H
01 60 00 (R0)	PRODUCT REQUIREMENTS	06 Sep 2012	B+H
01 70 00 (R0)	EXECUTION AND CLOSEOUT REQUIREMENTS	06 Sep 2012	B+H
FACILITY CONSTRUCTION SUBGROUP			
2 Existing Conditions			
02 41 00 (R0)	DEMOLITION AND SALVAGE	06 Sep 2012	B+H
3 Concrete			
*03 30 00 (R0)	CAST IN PLACE CONCRETE	06 Sep 2012	QDA
*03 30 10 (R0)	CONCRETE REPAIRS	06 Sep 2012	QDA
4 Masonry			
04 20 00 (R0)	MASONRY UNITS	06 Sep 2012	B+H
5 Metals			
*05 12 00 (R0)	STRUCTURAL STEEL	06 Sep 2012	QDA
*05 13 00 (R0)	STRUCTURAL STAINLESS STEEL	06 Sep 2012	QDA
05 50 00 (R0)	METAL FABRICATIONS	06 Sep 2012	B+H
05 73 13 (R0)	GLAZED DECORATIVE METAL RAILINGS	06 Sep 2012	B+H
6 Wood, Plastics and Composites			

06 10 00 (R0)	ROUGH CARPENTRY	06 Sep 2012	B+H
06 40 00 (R0)	ARCHITECTURAL WOODWORK	06 Sep 2012	B+H
06 61 16 (R0)	SOLID POLYMER FABRICATIONS	06 Sep 2012	B+H
06 90 00 (R0)	GENERAL INSTALLATIONS	06 Sep 2012	B+H
7 Thermal and Moisture Protection			
07 21 00 (R0)	BUILDING INSULATION	06 Sep 2012	B+H
07 21 29 (R0)	SPRAYED INSULATION	06 Sep 2012	B+H
07 25 00 (R0)	MISCELLANEOUS AIR/VAPOUR BARRIERS	06 Sep 2012	B+H
07 62 00 (R0)	SHEET METAL FLASHINGS AND TRIM	06 Sep 2012	B+H
07 81 00 (R0)	SPRAYED FIRE-RESISTIVE MATERIALS	06 Sep 2012	B+H
07 84 00 (R0)	FIRESTOPPING AND SMOKE SEALS	06 Sep 2012	B+H
*07 90 00 (R0)	INJECTION REPAIRS AND SEALING	06 Sep 2012	QDA
07 92 00 (R0)	JOINT SEALANTS	06 Sep 2012	B+H
8 Openings			
08 11 13 (R0)	STEEL DOORS AND FRAMES	06 Sep 2012	B+H
08 11 16 (R0)	ALUMINUM DOORS AND FRAMES	06 Sep 2012	B+H
08 15 00 (R0)	PLASTIC LAMINATE WOOD DOORS	06 Sep 2012	B+H
08 31 13 (R0)	ACCESS DOORS AND FRAMES	06 Sep 2012	B+H
08 33 16 (R0)	COILING COUNTER SHUTTERS	06 Sep 2012	B+H
08 41 13 (R0)	ALUMINUM FRAMED ENTRANCES & STOREFRONTS	06 Sep 2012	B+H
08 71 00 (R0)	DOOR HARDWARE	06 Sep 2012	B+H
08 80 00 (R0)	GLASS AND GLAZING	06 Sep 2012	B+H
9 Finishes			
09 21 16 (R0)	GYPSON BOARD	06 Sep 2012	B+H
09 30 00 (R0)	TILING	06 Sep 2012	B+H
09 51 00 (R0)	ACOUSTIC TILE CEILINGS	06 Sep 2012	B+H
09 68 13 (R0)	CARPET TILE	06 Sep 2012	B+H
09 91 00 (R0)	PAINTING	06 Sep 2012	B+H
10 Specialties			
10 21 13 (R0)	METAL TOILET PARTITIONS	06 Sep 2012	B+H
10 28 00 (R0)	WASHROOM ACCESSORIES	06 Sep 2012	B+H
12 Furnishings			
12 24 13 (R0)	ROLLER WINDOW SHADES	06 Sep 2012	B+H
12 48 13 (R0)	RECESSED FLOOR GRILLES	06 Sep 2012	B+H
13 Special Construction			
*13 11 13 (R0)	COMPETITION POOL	06 Sep 2012	REC
*13 11 16 (R0)	MYRTHA POOL ALTERNATIVE	06 Sep 2012	REC
FACILITY SERVICES SUBGROUP			

20 Mechanical			
*20 04 00 (R0)	MECHANICAL GENERAL PROVISIONS	06 Sep 2012	TMP
*20 05 00 (R0)	BASIC MECHANICAL MATERIALS AND METHODS	06 Sep 2012	TMP
*20 05 48 (R0)	SOUND AND VIBRATION CONTROL	06 Sep 2012	TMP
*20 07 00 (R0)	INSULATION	06 Sep 2012	TMP
*20 09 00 (R0)	MOTORS, STARTERS, CONTROL CENTRES & WIRING	06 Sep 2012	TMP
*20 09 50 (R0)	VARIABLE SPEED DRIVES	06 Sep 2012	TMP
*20 94 00 (R0)	MECHANICAL DEMOLITION	06 Sep 2012	TMP
21 Fire Suppression			
*21 12 00 (R0)	STANDPIPE AND HOSE SYSTEMS	06 Sep 2012	TMP
*21 13 00 (R0)	SPRINKLER SYSTEMS	06 Sep 2012	TMP
22 Plumbing			
*22 11 00 (R0)	PLUMBING AND DRAINAGE PIPING SYSTEMS	06 Sep 2012	TMP
*22 30 00 (R0)	PLUMBING SPECIALTIES	06 Sep 2012	TMP
*22 33 00 (R0)	DOMESTIC WATER HEATERS	06 Sep 2012	TMP
*22 40 00 (R0)	PLUMBING FIXTURES	06 Sep 2012	TMP
23 Heating, Ventilating and Air Conditioning			
*23 05 93 (R0)	TESTING AND BALANCING (TAB)	06 Sep 2012	TMP
*23 11 23 (R0)	NATURAL GAS PIPING SYSTEMS	06 Sep 2012	TMP
*23 21 13 (R0)	HYDRONIC PIPING SYSTEMS	06 Sep 2012	TMP
*23 21 23 (R0)	HVAC PUMPS	06 Sep 2012	TMP
*23 25 00 (R0)	HVAC CHEMICAL WATER TREATMENT SYSTEMS	06 Sep 2012	TMP
*23 31 00 (R0)	SHEET METAL	06 Sep 2012	TMP
*23 34 00 (R0)	FANS	06 Sep 2012	TMP
*23 52 33 (R0)	FORCED DRAFT WATERTUBE BOILERS	06 Sep 2012	TMP
*23 75 00 (R0)	PACKAGED AIR HANDLING UNITS	06 Sep 2012	TMP
*23 82 00 (R0)	HYDRONIC TERMINAL UNITS	06 Sep 2012	TMP
*23 82 16 (R0)	AIR COILS	06 Sep 2012	TMP
25 Integrated Automation			
*25 30 00 (R0)	ECMS INSTRUMENTATION	06 Sep 2012	TMP
26 Electrical			
*26 05 01 (R0)	Common Work Results – Electrical	06 Sep 2012	MBII
	Attachment: Drawing Request Form	06 Sep 2012	MBII
*26 05 20 (R0)	Wire And box Connectors 0-1000 V	06 Sep 2012	MBII
*26 05 21 (R0)	Wires and Cables (0-1000 V)	06 Sep 2012	MBII
*26 05 22 (R0)	Connectors And Terminations	06 Sep 2012	MBII
*26 05 27 (R0)	Grounding – Primary	06 Sep 2012	MBII
*26 05 28 (R0)	Grounding – Secondary	06 Sep 2012	MBII

*26 05 29 (R0)	Hangers and Supports for Electrical Systems	06 Sep 2012	MBII
*26 05 31 (R0)	Splitters, Junction, Pull Boxes and Cabinets	06 Sep 2012	MBII
*26 05 32 (R0)	Outlet Boxes, Conduit Boxes and Fittings	06 Sep 2012	MBII
*26 05 34 (R0)	Conduits, Conduit Fastenings and Conduit Fittings	06 Sep 2012	MBII
	Attachment: Recommended Communication Pull Box Configuration	06 Sep 2012	MBII
*26 09 02 (R0)	Power Monitoring	06 Sep 2012	MBII
*26 09 36 (R0)	Occupancy Sensors	06 Sep 2012	MBII
*26 12 16 (R0)	Dry Type Power Transformers	06 Sep 2012	MBII
*26 12 17 (R0)	Dry Type Transformers (Up to 600V)	06 Sep 2012	MBII
	Attachment: Transformer Schedule	06 Sep 2012	MBII
*26 13 18 (R0)	Primary Switchgear Assembly to 28kV	06 Sep 2012	MBII
*26 23 00 (R0)	Low Voltage Switchgear	06 Sep 2012	MBII
*26 24 16 (R0)	Distribution Panelboards	06 Sep 2012	MBII
*26 24 17 (R0)	Panelboards Breaker Type	06 Sep 2012	MBII
*26 27 26 (R0)	Wiring Devices	06 Sep 2012	MBII
*26 28 20 (R0)	Ground Fault Circuit Interrupters – Class “A”	06 Sep 2012	MBII
*26 28 21 (R0)	Moulded Case Circuit Breakers	06 Sep 2012	MBII
*26 28 23 (R0)	Disconnect Switches – Fused and Non-Fused	06 Sep 2012	MBII
*26 28 24 (R0)	Low Voltage – AC Power Panel Surge Protective Devices	06 Sep 2012	MBII
*26 29 01 (R0)	Contractors	06 Sep 2012	MBII
*26 32 10 (R0)	Diesel Electric Generating Units – Liquid Cooled	06 Sep 2012	MBII
*26 35 33 (R0)	Power Factor Correction Equipment	06 Sep 2012	MBII
*26 36 23 (R0)	Automatic Transfer Switches	06 Sep 2012	MBII
*26 50 00 (R0)	Lighting	06 Sep 2012	MBII
*26 52 01 (R0)	Unit Equipment for Emergency Lighting	06 Sep 2012	MBII
*26 53 00 (R0)	Exit Signs	06 Sep 2012	MBII
*26 70 00 (R0)	Testing of Electrical Systems (By Independent Testing Consultant)	06 Sep 2012	MBII
28 Electronic Safety and Security			
*28 31 02 (R0)	Addressable Fire Alarm System	06 Sep 2012	MBII
	Attachment: Life Safety System Schedule	06 Sep 2012	MBII

LEGEND

* Specifications prepared by Consultants other than B+H Architects have been prefixed with an asterisk and are not included under, nor governed by, B+H Architects' seal.

Consultant's Abbreviations:

B+H	B+H Architects	Architectural (A)
QDA	Quinn Dressel Associates	Structural Consultant (S)
TMP	TMP	Mechanical Consultant (M)
MB	Mulvey & Banani International	Electrical Consultant (E)
REC	RecTec Management Group Inc.	Pool Consultant (P)

U OF T FIELD HOCKEY – LIST OF DRAWINGS

1.6. ARCHITECTURAL DRAWINGS

1.6.1. Architectural Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

1.6.1.1. "Issued for Construction".

1.7. STRUCTURAL DRAWINGS

1.7.1. Structural Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

1.7.1.1. "Issued for Construction".

1.8. ELECTRICAL DRAWINGS

1.8.1. Electrical Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

1.8.1.1. "Issued for Construction".

1.9. CIVIL DRAWINGS

1.9.1. Civil Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

1.9.1.1. "Issued for Construction".

1.10. FIELD OF PLAY DRAWINGS

1.10.1. Civil Field of Play Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

1.10.1.1. "Issued for Construction".

1.11. LANDSCAPE DRAWINGS

1.11.1. Landscape Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

1.11.1.1. "Issued for Construction".

1.12. HMQ's DRAWINGS

1.12.1. HMQ's Drawings forming part of the Contract Documents are those listed on Drawing No. A001 dated "September 6, 2012" with the following statement in the revision column:

1.12.1.1. "Issued for Construction".

1.12.1.2.

Drawing No.	Drawing Title	Discipline
A001	Cover Sheet & Drawing List	B+H
A100	Early Site Works Layout	B+H
A101	Context Plan - Legacy	B+H
A102-L	Site Plan – Legacy	B+H

A102-G	Site Plan – Games (NIC)	B+H
A103	Construction Limits	B+H
A501	Site Sections	B+H
S-1	Typical Detail & General Notes	QDA
S-2	Site Plan – Legacy	QDA
S-3	Retaining Wall Details	QDA
E-0	Legend, General Notes, Drawing List & Electrical Details	MBII
E-1	Early Electrical Site Work	MBII
E-2	Overall Site Plan – Electrical	MBII
E-3B	Site Plan Electrical – Base Price	MBII
E-3S	Site Plan Electrical – Separate Price	MBII
E-4	Electrical Details	MBII
E-5	Electrical Details	MBII
E-6	Base and Separate Price Electrical Single Line Riser Diagram	MBII
ESC-1	Site Alteration Plan	DC
ESC-2	Early Civil Site Works	DC
RMVL-1	Removal Plan – Civil	DC
SERV-1	Site Servicing Plan	DC
SERV-2	Profile of Site Storm Sewer System & General Notes	DC
GRAD-1	Site Grading Plan	DC
GRAD-2	Site Grading Sections	DC
11-431-F1	Synthetic Turf Surfacing	RFB
11-431-F2	Field Lines & Markings	RFB
11-431-F3	Field Drainage	RFB
11-431-F4	Wetdown Irrigation	RFB
11-431-F5	Notes & Legend	RFB

11-431-F6	Details	RFB
L101	Landscape Site Preparation Plan – Legacy	QDAC
L102	Landscape Layout Plan – Legacy	QDAC
L103	Fencing Plan	QDAC
L104	Landscape Details	QDAC
L105	Landscape Details	QDAC
HMQ 001	Topographical Survey	HMQ
HMQ 002	R Plan	HMQ
HMQ 003	Subsurface Utility Engineering Investigation – Level 8	HMQ
HMQ 004	Preliminary Subsurface Utility Engineering Investigation – Level A	HMQ
M-01	Details	TMP

U OF T FIELD HOCKEY – SPECIFICATIONS

Specifications forming part of the Contract Documents are those listed in Section 00 01 12 (R0) dated "September 6, 2012 – Issued for Construction"

PROCUREMENT AND CONTRACTING REQUIREMENTS GROUP				
Introductory Information				
00 00 01	TITLE PAGE	06 Sep 2012	B+H	1 Only
Procurement Requirements				
00 30 00 (R0)	AVAILABLE INFORMATION	06 Sep 2012	B+H	1 thru 2
SPECIFICATIONS GROUP				
GENERAL REQUIREMENTS SUBGROUP				
1 General Requirements				
01 10 00 (R0)	GENERAL REQUIREMENTS	06 Sep 2012	B+H	1 thru 4
01 20 00 (R0)	PRICE AND PAYMENT PROCEDURES	06 Sep 2012	B+H	1 thru 3
01 30 00 (R0)	ADMINISTRATIVE REQUIREMENTS	06 Sep 2012	B+H	1 thru 10
01 40 00 (R0)	QUALITY REQUIREMENTS	06 Sep 2012	B+H	1 thru 6
01 50 00 (R0)	TEMPORARY FACILITIES AND CONTROLS	06 Sep 2012	B+H	1 thru 8
01 60 00 (R0)	PRODUCT REQUIREMENTS	06 Sep 2012	B+H	1 thru 6
01 70 00 (R0)	EXECUTION AND CLOSEOUT			

	REQUIREMENTS	06 Sep 2012	B+H	1 thru 11
01 74 19 (R0)	WASTE MANAGEMENT AND DISPOSAL	06 Sep 2012	B+H	1 thru 3
FACILITY SERVICES SUBGROUP				
20 Mechanical				
*20 01 00 (R0)	TABLE OF CONTENTS	06 Sep 2012	TMP	1 and 2
22 Plumbing				
*22 11 00 (R0)	SUMP PUMP AND PIPING SYSTEMS	06 Sep 2012	TMP	1 and 2
26 Electrical				
*26 05 01 (R0)	COMMON WORK RESULTS - ELECTRICAL	06 Sep 2012	MBII	1 thru 14
*26 05 14 (R0)	POWER CABLES	06 Sep 2012	MBII	1 and 2
*26 05 20 (R0)	WIRE AND BOX CONNECTORS 0-100V	06 Sep 2012	MBII	1 and 2
*26 05 20 (R0)	WIRE AND BOX CONNECTORS 0-1000V	06 Sep 2012	MBII	1 and 2
*26 05 21 (R0)	WIRES AND CABLES (0-1000V)	06 Sep 2012	MBII	1 thru 3
*26 05 22 (R0)	CONNECTORS AND TERMINATIONS	06 Sep 2012	MBII	1 Only
*26 05 27 (R0)	GROUNDING - PRIMARY	06 Sep 2012	MBII	1 thru 3
*26 05 28 (R0)	GROUNDING - SECONDARY	06 Sep 2012	MBII	1 thru 3
*26 05 29 (R0)	HANGERS AND SUPPORTS FOR ELECTRICAL SYSTEMS	06 Sep 2012	MBII	1 and 2
*26 05 31 (R0)	SPLITTERS, JUNCTION BOXES, PULL BOXES AND CABINETS	06 Sep 2012	MBII	1 and 2
*26 05 32 (R0)	OUTLET BOXES, CONDUIT BOXES AND FITTINGS	06 Sep 2012	MBII	1 and 2
*26 05 34 (R0)	CONDUITS, CONDUIT FASTENINGS AND CONDUIT FLASHINGS	06 Sep 2012	MBII	1 thru 5
*26 05 44 (R0)	INSTALLATION OF CABLES IN TRENCHES AND IN DUCTS	06 Sep 2012	MBII	1 thru 3
*26 05 45 (R0)	DATA, A/V AND CABLE TV EMPTY RACEWAY SYSTEM	06 Sep 2012	MBII	1 and 2
*26 12 17 (R0)	DRY TYPE TRANSFORMERS UP TO 600V PRIMARY	06 Sep 2012	MBII	1 and 2
*26 12 17 (R0)	ATTACHMENT: TRANSFORMER SCHEDULE	06 Sep 2012	MBII	1 Only
*26 22 19 (R0)	CONTROL AND SIGNAL TRANSFORMERS	06 Sep 2012	MBII	1 and 2
*26 24 16 (R0)	DISTRIBUTION PANELBOARDS	06 Sep 2012	MBII	1 and 2
*26 24 17 (R0)	PANELBOARD BREAKER TYPE	06 Sep 2012	MBII	1 and 2
*26 27 16 (R0)	ELECTRICAL CABINETS AND ENCLOSURES	06 Sep 2012	MBII	1 Only
*26 27 26 (R0)	WIRING DEVICES	06 Sep 2012	MBII	1 and 2
*26 28 14 (R0)	FUSES – LOW VOLTAGE	06 Sep 2012	MBII	1 and 2
*26 28 20 (R0)	GROUND FAULT CIRCUIT INTERRUPTERS – CLASS 'A'	06 Sep 2012	MBII	1 and 2
*26 28 21 (R0)	MOULDED CASE CIRCUIT BREAKERS	06 Sep 2012	MBII	1 and 2
*26 28 23 (R0)	DISCONNECT SWITCHES – FUSED AND NON-FUSED	06 Sep 2012	MBII	1 Only
*26 28 24 (R0)	LOW VOLTAGE – AC POWER PANEL		MBII	1 thru 6

	SURGE PROTECTIVE DEVICES	06 Sep 2012		
*26 29 01 (R0)	CONTACTORS	06 Sep 2012	MBII	1 Only
*26 36 23 (R0)	AUTOMATIC TRANSFER SWITCHES	06 Sep 2012	MBII	1 thru 4
*26 54 00 (R0)	SPORTS FIELD LIGHTING	06 Sep 2012	MBII	1 thru 10
*26 70 00 (R0)	TESTING OF ELECTRICAL SYSTEMS	06 Sep 2012	MBII	1 thru 5
SITE AND INFRASTRUCTURE SUBGROUP				
31 Earthwork				
*31 23 33 (R0)	EXCAVATING, TRENCHING AND BACKFILLING	06 Sep 2012	DC	1 thru 4
*31 63 23 (R0)	CAISSONS	06 Sep 2012	QDA	1 thru 5
32 Exterior Improvements				
*32 16 13.16 (R0)	CAST-IN-PLACE CONCRETE CURBS AND PAVEMENTS	06 Sep 2012	RFB	1 thru 5
*32 18 23.29 (R0)	SYNTHETIC FIELD SPORT SURFACING	06 Sep 2012	RFB	1 thru 19
*32 18 23.30 (R0)	SYNTHETIC FIELD AGGREGATES	06 Sep 2012	RFB	1 thru 4
32 31 19 (R0)	DECORATIVE METAL FENCES AND GATES	06 Sep 2012	B+H	1 thru 10
32 31 13 (R0)	CHAIN LINK FENCES AND GATES	06 Sep 2012	B+H	1 thru 5
32 92 23 (R0)	SODDING	06 Sep 2012	B+H	1 thru 5
33 Utilities				
*33 05 13 (R0)	MAINTENANCE HOLES & CATCH BASINS	06 Sep 2012	DC	1 thru 3
*33 11 16 (R0)	WATERMAINS	06 Sep 2012	DC	1 thru 7
*33 11 16.1 (R0)	IRRIGATION CONTROLLER	06 Sep 2012	RFB	1 Only
*33 41 00 (R0)	STORM SEWERS	06 Sep 2012	DC	1 thru 4
*33 44 16 (R0)	SPORTS TRENCH DRAIN SYSTEM	06 Sep 2012	RFB	1 thru 3
*33 65 73 (R0)	CONCRETE ENCASED DUCT BANKS AND MANHOLES	06 Sep 2012	MBII	1 thru 5
*33 65 73 (R0)	Attachment: EXISTING MANHOLE DETAILS	06 Sep 2012	MBII	1 thru 4
*33 65 76 (R0)	DIRECT BURIED UNDERGROUND CABLE DUCTS	06 Sep 2012	MBII	1 and 2

SCHEDULE 3

COMPLETION DOCUMENTS

In this Schedule 3, “**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:

- (a) an original of this Project Agreement;
- (b) an original of the Lender’s Direct Agreement;
- (c) an original of the Construction Contract;
- (d) an original of the Guarantee of Construction Guarantors;
- (e) an original of the Assignable Subcontract Agreement for Construction Contract;
- (f) those Assignable Subcontract Agreements designated by HMQ (provided such Assignable Subcontract Agreements are delivered to HMQ as soon as practicable and in any event prior to the date which is 90 days following Financial Close);
- (g) an original of the Insurance and Bonding Trust Agreement;
- (h) an original of the acknowledgement and undertaking in the form attached as Appendix B to this Schedule 3;
- (i) the Lending Agreements;
- (j) a certificate of insurance with respect to the insurances required in accordance with this Project Agreement to be taken out by Project Co;
- (k) an original of the Bonds required in accordance with this Project Agreement or as HMQ may direct in accordance with the Insurance and Bonding Trust Agreement;
- (l) an Officer’s Certificate of Project Co attesting to the due authorization and execution of the Implementing Agreements to which it is a party, and to which is attached:
 - (i) a certified copy of the articles of incorporation or other organizational document of Project Co;

- (ii) a certificate of incumbency setting out the names and titles of the authorized signing officers of Project Co; and
- (iii) a certified copy of any governmental filing required to establish the legal status of Project Co including, with respect to a corporation, a certificate of status,

in each case, dated within 3 Business Days prior to the date of Financial Close;

- (m) such other documents as the parties may agree, each acting reasonably;
- (n) Project Co's public announcement release(s), to be approved by HMQ, TO2015 and each of the Sponsors; and
- (o) an original of the opinion from counsel to Project Co, Limited Partner, General Partner, Contractor and Construction Guarantor each in the form attached as Appendix C to this Schedule 3.

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:

- (a) an original of this Project Agreement;
- (b) an original of the Lender's Direct Agreement;
- (c) an original of the Assignable Subcontract Agreement for Construction Contract;
- (d) an original of the Insurance and Bonding Trust Agreement;
- (e) the Building Permit;
- (f) a certificate of insurance with respect to the insurances required in accordance with this Project Agreement to be taken out by HMQ;
- (g) 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 3; and
- (h) such other documents as the parties may agree, each acting reasonably.

**APPENDIX B
FORM OF UNDERTAKING AND ACKNOWLEDGEMENT**

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Infrastructure

AND TO: Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended (“**HMQ**”)

RE: Project Agreement (as amended, modified, restated, supplemented or replaced from time to time, the “**Project Agreement**”) dated ●, 2012 between 2338301 Ontario Inc. (“**Project Co**”) and HMQ

1. The undersigned acknowledges that:
 - (a) The Projects will proceed as an alternative financing and procurement project as part of the Toronto 2015 Pan and Parapan Games initiatives, and complies with the principles set out in the IPFP Framework.
 - (b) The IPFP Framework establishes five 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 the order or direction affects the Work.
3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

DATED this ____ day of _____, 2012.

2338301 ONTARIO INC.

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

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

I/We have authority to bind the corporation

APPENDIX C
FORM OF PROJECT CO/CONTRACTOR/CONSTRUCTION GUARANTOR OPINION

[INSERT DATE]

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

Gowling Lafleur Henderson LLP
1 First Canadian Place
100 King Street West
Suite 1600
Toronto, Ontario
M5X 1G5

Dear Sirs/Mesdames:

Re:

We have acted as Project Counsel to [•] (“**Project Co**”)/([•]“**Contractor**”)/([•]“**Construction Guarantor**”) [Note to Counsel: Please fill in applicable entity in the latter space and in similar spaces throughout this opinion as necessary. Please delete the inapplicable entities from such spaces.] in connection with the alternative financing and procurement transaction whereby HMQ and Project Co have agreed to enter into a build-finance agreement for the Pan Am Small Venues Project.

This opinion is being delivered to HMQ, Ontario Infrastructure and Lands Corporation and their respective counsel pursuant to Section 1(s) of Schedule 3 – Completion Documents to the Project Agreement made as of [•], 2012 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 Project Counsel to [**Project Co/Contractor/Construction Guarantor**], we have participated in the preparation and negotiation, and have examined an executed copy of each of the following documents (unless otherwise indicated, all such documents are dated as of [•]):

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):

[Note to Project Co's counsel: The following documents must be examined and included in your opinion:

- (a) **the Lender's Direct Agreement;**
- (b) **the Insurance and Bonding Trust Agreement;**
- (c) **the Construction Contract;**
- (d) **the Assignable Subcontract Agreement for Construction Contract; and**
- (e) **the Assignable Subcontract Agreements.]**

[Note to Contractor's counsel: The following documents must be examined and included in your opinion:

- (a) **the Construction Contract;**
- (b) **the Assignable Subcontract Agreement for Construction Contract;**
- (c) **the Assignable Subcontract Agreements;**
- (d) **the Performance Bond;**
- (e) **the Multiple Obligee Rider to the Performance Bond; and**
- (f) **the Performance Guarantee of Construction Guarantor.]**

[Note to Construction Guarantor's counsel: The following document must be examined and included in your opinion:

- (a) **the Guarantee of Construction 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**."

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/Contractor/Construction Guarantor]**, nor have we participated in the general maintenance of its 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 **[Project Co/Contractor/Construction Guarantor]** dated as of the date hereof (the "**Officer's Certificate**") as to certain factual matters or have caused to be delivered to you an opinion from the corporate counsel of **[Project Co/Contractor/Construction Guarantor]**.

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.” The Searches were conducted against the current name and all former names of [**Project Co/Contractor/Construction Guarantor**] (including 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 Certificate.

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

In connection with the opinion set forth in paragraph 1 below, under the heading “Opinions”, we have relied exclusively on a Certificate of Status issued by the [**Ministry of Government Services (Ontario)**] of even date, a copy of which is attached as Schedule “B.”

In connection with the opinions set forth in paragraphs 2, 3, 4 and 6, under the heading “Opinions”, as to factual matters, including the accuracy and completeness of the documents made available for review, we have relied exclusively on the Officer’s Certificate referred to above.

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/Contractor/Construction Guarantor**]) 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/Contractor/Construction Guarantor**]) 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 Certificate.
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/Contractor/Construction Guarantor]**) to **[Project Co/Contractor/Construction Guarantor]**.

Opinions

Based upon and subject to the foregoing, and subject 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/Contractor/Construction Guarantor]** is a **[corporation/partnership/limited partnership/joint venture]** **[incorporated/formed]** under the laws of **[the Province of [•]]** **[(Corporation number [•])]** and has not been dissolved.

Corporate Power and Capacity

2. **[Project Co/Contractor/Construction Guarantor]** 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.

Corporate Authorization

3. **[Project Co/Contractor/Construction Guarantor]** 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

4. **[Project Co/Contractor/Construction Guarantor]** has duly executed and delivered each of the Documents to which it is a party.

Enforceability

5. Each of the Documents to which **[Project Co/Contractor/Construction Guarantor]** is a party constitutes a legal, valid and binding obligation of **[Project Co/Contractor/Construction Guarantor]**, enforceable against it in accordance with its terms.

No Breach or Default

6. The execution and delivery by [Project Co/Contractor/Construction Guarantor] of the Documents to which it is a party does not, and the performance by [Project Co/Contractor/Construction Guarantor] 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/Contractor/Construction Guarantor] is subject.

Regulatory Approvals

7. 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/Contractor/Construction Guarantor] 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 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.
3. 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.
4. 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.
5. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
6. 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/Contractor/Construction Guarantor]** notwithstanding any agreement to the contrary.
7. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.

8. 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.
9. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
10. 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.
11. 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.
12. 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.
13. Any award of costs is in the discretion of a Court of competent jurisdiction.
14. 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 **[Project Co/Contractor/Construction Guarantor]** for which it would be contrary to public policy to require **[Project Co/Contractor/Construction Guarantor]** to indemnify **[Project Co/Contractor/Construction Guarantor]** or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
15. 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.

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]

**SCHEDULE A TO FORM OF PROJECT CO/CONTRACTOR/CONSTRUCTION
GUARANTOR OPINION**

SEARCHES

[Note to Draft: Please Insert Searches.]

**SCHEDULE B TO FORM OF PROJECT CO/CONTRACTOR/CONSTRUCTION
GUARANTOR OPINION**

**CERTIFICATE OF STATUS OF [PROJECT CO/CONTRACTOR/CONSTRUCTION
GUARANTOR]**

**[Note to Draft: Please Insert Certificate of Status of Project Co/Contractor /Construction
Guarantor.]**

SCHEDULE C TO PROJECT CO/CONTRACTOR/CONSTRUCTION GUARANTOR
OPINION

**OFFICER'S CERTIFICATE OF [PROJECT CO/CONTRACTOR/CONSTRUCTION
GUARANTOR]**

**[Note to Draft: Please Insert Officer's Certificate of Project Co/Contractor /Construction
Guarantor.]**

**APPENDIX D
FORM OF CERTIFICATE OF AN OFFICER OF
ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**

(the “Corporation”)

TO: 2338301 ONTARIO INC.

AND TO: OSLER HOSKIN & HARCOURT LLP

AND TO: BANK OF MONTREAL

AND TO: MCCARTHY TÉTRAULT LLP

RE: Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [●]day of September, 2012 between the Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended, and 2338301 Ontario Inc. (“**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 is 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 Markham Pan Am Centre, the Etobicoke Olympium, and the Pan Am Field Hockey Centre (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 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 Contract Documents (as such a term is defined in the Execution Resolutions referenced in Item 1(i) above) relating to the Markham Pan Am Centre, the Etobicoke Olympium, and the Pan Am Field Hockey Centre, 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 _____, 2012.

Name: [●]

Title: Secretary

APPENDIX E
FORM OF DECLARATION OF MANAGEMENT
ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

(the “Corporation”)

DECLARATION OF MANAGEMENT

WHEREAS Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended, and 2338301 Ontario Inc. propose to enter into a Project Agreement relating to the Markham Pan Am Centre, the Etobicoke Olympium, and the Pan Am Field Hockey Centre (the “**Project**”);

AND WHEREAS the Corporation will from time to time enter into agreements for the building and finance of the Markham Pan Am Centre, the Etobicoke Olympium, and the Pan Am Field Hockey Centre Projects 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 Markham Pan Am Centre, the Etobicoke Olympium, and the Pan Am Field Hockey Centre (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
3. the Contract Documents to be executed and delivered by the Corporation in connection with the Markham Pan Am Centre, the Etobicoke Olympium, and the Pan Am Field Hockey Centre 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 Markham Pan Am Centre, the Etobicoke Olympium, and the Pan Am Field Hockey Centre.

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 _____, 2012.

Name: [●]

Title: Secretary

**SCHEDULE 4
PROJECT CO INFORMATION**

Project Co represents and warrants that the following information is true and correct as of the date of this Project Agreement:

Project Co

1. Name: 2338301 Ontario Inc.
2. Date of Incorporation: August 9, 2012
3. Corporation Number: **[REDACTED]**

4. Directors:

Name	Address
[REDACTED]	[REDACTED]

5. Officers:

Name	Address	Office
[REDACTED]	[REDACTED]	[REDACTED]

6. Subsidiaries: None

7. Authorized and issued share capital:

<u>Name and address of registered holder</u>	<u>Number and class of shares held</u>	<u>Amount paid up</u>
[REDACTED]	[REDACTED]	[REDACTED]

8. Loans:

<u>Name and address of registered holder</u>	<u>Nominal value of loan</u>
None.	N/A

9. Other outstanding securities (including description of type of securities, name and address of holder and amount):

None.

10. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co:

None.

**SCHEDULE 5
FORM OF LENDER'S DIRECT AGREEMENT**

THIS LENDER'S 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*, S.O. 2011, c.9, Schedule 32, as amended.

("HMQ")

AND:

BANK OF MONTREAL, acting as agent for and on behalf of Lender

("Agent")

AND:

2338301 ONTARIO INC., a corporation incorporated under the laws of Ontario

("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 Lender 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. Agent has agreed to enter into this Lender's 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 the HMQ is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lender's Agent and the Lender commits 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 Lender's Direct Agreement, all capitalized terms not otherwise defined in this Lender's 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) Agent, Lender 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 Agent or Lender; 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 Lender's Direct Agreement.
- (d) **"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 25 therein.
- (h) **"Lender"** means Bank of Montreal, National Bank of Canada and Laurentian Bank of Canada.
- (i) **[INTENTIONALLY DELETED]**.

- (j) **“Lender’s Direct Agreement”** means this lender’s direct agreement.
- (k) **“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 of the Projects by Lender and includes but is not limited to:

[REDACTED]
- (l) **“Lien”** means the lien provided for under Section 14(1) of the *Construction Lien Act* (Ontario).
- (m) **“Notice Period”** means the period starting on the date of delivery of a Project Co Default Notice and ending 120 days later.
- (n) **“Party”** means any of HMQ, Project Co or Agent, and **“Parties”** means all of HMQ, Project Co and Agent.
- (o) **“Pre-Qualified Proponent”** means an entity listed in Appendix A to this Lender’s Direct Agreement.
- (p) **“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).
- (q) **“Project Co Default Notice”** has the meaning given to it in Section 6.1.
- (r) **“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.
- (s) **“Proposal Submission”** means the proposal submitted by Project Co in accordance with the Request for Proposals.
- (t) **“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, Markham, HMQ or any HMQ Party, or the Pan/Para Pan American Games, so as to affect public confidence in the Pan/Para Pan American Games.

- (u) **“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.

- (v) **“Rectification Obligations”** has the meaning given in Section 7.3(c).
- (w) **“Replacement Construction Contract”** has the meaning given to it in Section 7.3(c).
- (x) **“Replacement Contractor”** means a replacement contractor under a Construction Contract Assignment or a Replacement 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, and Infrastructure Ontario, acting reasonably.
- (y) **“Replacement Project Agreement”** has the meaning given to it in Section 7.3.
- (z) **“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 under the Replacement Project Agreement) or (ii) a Project Company that is acceptable to HMQ, and Infrastructure Ontario, acting reasonably.
- (aa) **“Response Period”** has the meaning given to it in Section 4.1(c).
- (bb) **“Step-In Date”** means the date on which HMQ receives a Step-In Notice from Agent.
- (cc) **“Step-In Notice”** means the notice given by Agent to HMQ pursuant to Section 7.1 stating that Agent is exercising its step-in rights under this Lender’s Direct Agreement.
- (dd) **“Step-In Period”** means the period from the Step-In Date up to and including the Step-Out Date.
- (ee) **“Step-Out Amount”** has the meaning given to it in Section 8.3.

(ff) **“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.

(gg) **“Step-Out Notice”** has the meaning given to it in Section 8.1.

1.2 Interpretation

(a) The provisions of Sections 2.1 - 2.27, 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 **“Lender’s Direct Agreement”**.

(b) This Lender’s 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 Lender’s 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 Lender’s Direct Agreement and the Project Agreement, this Lender’s Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of HMQ set out in this Lender’s 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 Implementing Agreement, including Section 2.5(a)(iv) of the Project Agreement, 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 Lender’s 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 Lender’s Direct Agreement shall terminate automatically on the date on which all obligations that may be or become owing by Project Co to Agent or Lender under the Lending Agreements have been satisfied in full.

3.2 Promptly, and in no event more than 30 days following its occurrence, Agent shall provide notice to HMQ of the date referred to in Section 3.1.

3.3 HMQ hereby provides to Lender, Agent and Project Co and agrees to provide to Replacement Project Co, a non-exclusive license to have access to and to use the Sites on the same terms and conditions as set out in Section 9.1 of the Project Agreement.

4. AGREEMENTS AND SECURITY

4.1 (a) Project Co and 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 Implementing Agreements to which Project Co or HMQ are parties, without the prior written consent of Agent, not to be unreasonably withheld or delayed, which consent (subject to Section 6.4 of this Lender's Direct Agreement) shall not be withheld if the relevant amendment or modification does not:

- (i) adversely affect the ability of Agent or Lender 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 Agent, Lender or Project Co under the relevant agreement.

Agent shall respond to any request for consent under this Section 4.1(b) within 15 days of receipt thereof, failing which 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 Agent proceed to execute or implement any Change Order and HMQ acknowledges and agrees that it will not issue any Change Directive, which, in either case, is in respect of a discretionary expansion of the construction scope of the Work initiated by HMQ and which would:

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

provided the Parties further acknowledge and agree that where such Change Order or Change Directive (A) costs less than \$[REDACTED], or (B) when aggregated with all

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

- 4.2 Project Co acknowledges and consents to the arrangements set out in this Lender's Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lender's Direct Agreement.
- 4.3 Agent acknowledges having received a copy of each of the Implementing Agreements.
- 4.4 HMQ acknowledges having received a copy of each of the Lending Agreements and consents to the granting of security by Project Co over the Project Agreement and Implementing Agreements contained in the Lending Agreements.
- 4.5 Project Co and Agent acknowledge that, subject to the provisions of the *Construction Lien Act* (Ontario) none of Project Co, Agent or Lender shall, under the Project Agreement or any of the Implementing Agreements, acquire any interest in the Site or the Projects (other than the licence to access the Sites or the Facilities provided in Section 3.3 of this Lender's Direct Agreement or in Section 9.1(a) of the Project Agreement) notwithstanding any provision therein to the contrary and that the applicable Sponsor shall at all times retain the fee simple interest in and freehold title to the Sites and the Projects to be constructed on the Sites under the Project Agreement.
- 4.6 Without limitation of any of their respective rights and remedies under the Implementing Agreements, Project Co and the Agent acknowledge that nothing in this Lender's Direct Agreement or any of the Implementing Agreements, including the 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 Infrastructure Ontario 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 and Bonding Trust Agreement contemporaneously with the execution of this Lender's Direct Agreement.

5. ENFORCEMENT OF SECURITY BY AGENT

- 5.1** 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 Agent to Project Co to accelerate the maturity of any amounts owing by Project Co to Agent or Lender under the Lending Agreements or any notice from Agent to Project Co to demand repayment thereof.
- 5.2** Agent shall appoint Lender's Consultant who shall be responsible to advise Agent and Lender 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). Agent shall cause the Lender's Consultant to provide Infrastructure Ontario with a copy of any written assessment or report prepared by the Lender's Consultant in relation to the status or progress of the Work under the Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Agent. The Agent acknowledges and agrees that this Section 5.2 shall constitute sufficient authority for the Lender's Consultant to provide, without delay, a copy of any and all of its written assessments and reports to HMQ and to Infrastructure Ontario.
- 5.3** HMQ may conduct a subsearch of the Site at any time and from time to time and notify Agent and Project Co if any Lien has been registered against the Site arising from performance of the Work (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 11.8(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. Agent acknowledges and agrees with HMQ that neither Agent nor Lender 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 Agent hereunder, for information only.
- 5.4** 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 Work (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 11.8(c) of the Project Agreement, and provided in such case that Project Co has not assumed responsibility for payment of such contractors), 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 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 Agent in this Article 6, HMQ shall serve notice to 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 Agent hereunder and without prejudice to Agent’s right to enforce the Lending Agreements against Project Co, upon the occurrence of a Project Co Event of Default, 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 Contractor of its obligations under the 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 or recover under the Performance Bond, exercise any other rights or remedies for a Project Co Event of Default unless:

- (a) HMQ delivers to 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 25.1(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 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 25.1(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 25.1(a)(i) of the Project Agreement), or

- (ii) capable of being cured in the determination of 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 Work thereunder is to be completed on or before the date falling 180 days after the Longstop Date.

- 6.4** Agent will not take or consent to any action, including any action contemplated in Section 7.3 of this Lender's Direct Agreement, or any other action otherwise permitted or contemplated in this Lender's Direct Agreement, if such action would compromise the enforceability of the Security or HMQ's entitlement to claim or recover under the Security, unless Agent first obtains the prior approval of HMQ which may be given or withheld in HMQ's Sole Discretion. Agent hereby indemnifies and saves HMQ Indemnified Parties 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 Agent of the provisions of this Section 6.4, arising from the wilful misconduct or gross negligence of Agent.

7. LENDER'S STEP-IN RIGHTS

- 7.1** Subject to Sections 6.2(b) and 7.2 and without prejudice to Agent's rights to enforce the Lending Agreements against Project Co, 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 Agent delivers a Step-In Notice, 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 Implementing Agreements (excluding the Bonds) 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 Implementing Agreements; 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 Contractor's interest in the Construction Contract to a Replacement Contractor (the "**Construction Contract Assignment**") subject to the agreement by the Replacement Contractor to assume the terms and conditions of the Construction Contract; or (ii) terminate the Construction Contract and to enter into a replacement construction contract with a Replacement Contractor (the "**Replacement Construction Contract**") on terms substantially similar to the 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 Work, 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 4.6 of Schedule 12 to the Project Agreement – Compensation on Termination, shall be deemed to apply as if compensation had been paid by HMQ pursuant to Section 2.1 of Schedule 12 to the Project Agreement, 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 Agent shall be required to cause the Replacement Project Co to enter into a construction contract, on terms substantially similar to the Construction Contract and an assignable subcontract agreement, on terms substantially similar to the form of the Assignable Subcontract Agreement for 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 Implementing Agreements.

- 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, Agent acknowledges and agrees that its rights as Obligee 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 Agent's obligation as an Obligee to pay the Balance of the Contract Price. If 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 Contractor under the Construction Contract, Agent shall pay to HMQ an amount equal to the amount of the proceeds received by Agent from the Surety and not applied toward obtaining the completion of the unperformed obligations of the Contractor under the Construction Contract. For the purposes of this Section 7.6, the terms "Obligee", "Surety", and "Balance of the 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 Section 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 or as Project Co may direct, 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 2.1 of Schedule 12 to the Project Agreement – 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(iii);

- (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 Agent, Lender, Appointed Representative or Project Co on the achievement of Substantial Completion of the Work;
- (c) Agent shall permit HMQ thereupon to have the full benefit and entitlement to the Bonds, the Assignable Subcontract Agreement for Construction Contract and the Assignable Subcontract Agreements without regard to any interest therein of Agent, Lender or Project Co, and Agent agrees that HMQ may thereafter proceed to enforce all of its rights under the Bonds, the Assignable Subcontract Agreement for Construction Contract and/or the Assignable Subcontract Agreements without regard to any rights in favour of Agent, Lender or Project Co and Agent shall notify the Surety under the Performance Bond that HMQ is entitled to exercise all rights and take all benefits of the Obligee;
- (d) the provisions of Section 4.6(a) of Schedule 12 to the Project Agreement – Compensation on Termination 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 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 Contractor under the Construction Contract or the rights of the Surety under the Performance Bond.

- 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 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 following a termination of the Project Agreement in accordance with its terms. 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 Agent and/or the Appointed Representative that, upon the exercise of any Step-Out Rights pursuant to Section 8, 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 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 Agent that it shall, upon written request of Agent and as Agent and/or the Appointed Representative may direct, in respect of each subcontract which is the subject of any Assignable Subcontractor Agreement (an “ASA”), issue (i) 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 the Section 3(c)), Agent, the Appointed Representative or as Agent or the Appointed Representative may otherwise direct, or (ii) a Direct Assignment Notice (in accordance with and as defined in Section 3(e) of the ASA) to the subcontractor party thereto indicating therein as GC Assignee (as defined in Section 3(d) of the ASA) any Replacement Contractor.

9. PAYMENT DIRECTION OF SUBSTANTIAL COMPLETION PAYMENT, THE FIRST INTERIM PAYMENT, THE SECOND INTERIM PAYMENT, THE HMQ HOLDBACK

9.1 HMQ acknowledges the assignment by Project Co of the Substantial Completion Payment, the First Interim Payment, the Second Interim Payment, the HMQ Holdback, the Warranty Letter of Credit Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount to Agent under the security granted to 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 HMQ Holdback, the Warranty Letter of Credit Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount which becomes payable to Project Co in accordance with the Project Agreement, to Agent or as Agent may direct. HMQ acknowledges such direction and agrees to pay the Substantial Completion Payment, the First Interim Payment, the Second Interim Payment, the HMQ Holdback, the Warranty Letter of Credit Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount to 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 HMQ Holdback, the Warranty Letter of Credit Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount in accordance with this Section 9.1 to Agent or as Agent may direct, constitutes payment by HMQ to Project Co in satisfaction of HMQ’s obligation to pay the Substantial Completion Payment, the First Interim Payment, the Second Interim Payment, the HMQ Holdback, the Warranty Letter of Credit Holdback, any Compensation Payment, the Certified Cost to Complete and 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 Lender’s 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 Lender's Direct Agreement to any person to whom HMQ assigns or otherwise disposes of its interest in the Project Agreement and the other Implementing Agreements pursuant to Section 38.2 of the Project Agreement, and shall provide written notice to Project Co and Agent of such assignment or disposition. Such assignee shall assume the obligations and acquire the rights of HMQ under this Lender's 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 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** Agent may only assign or otherwise dispose of any interest in this Lender's 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. Agent shall cause the assignee to enter into an assumption agreement of this Lender's Direct Agreement in form and substance reasonably satisfactory to HMQ with Project Co and HMQ. Project Co and HMQ shall, at 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 Lender's 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 10 Business Days before any proposed Qualifying Bank Transaction undertaken by such Lender. On the tenth 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 Lender's Direct Agreement unless HMQ has, during such 10 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,

11.3 Change of Address

Any Party to this Lender's 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 Lender's 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 Lender's Direct Agreement.

12.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Lender's 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 Lender's Direct Agreement is not intended to and does not create or establish between the Parties or between any of the Parties and the Province, including Infrastructure Ontario, 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, including Infrastructure Ontario, and any Affiliate, representative or employee of Project Co or Agent.

12.4 Entire Agreement

Except where provided otherwise in this Lender's Direct Agreement, this Lender's 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 Lender's Direct Agreement.

12.5 No Reliance

- (a) Each of the Parties acknowledges that:
 - (i) it has not entered into this Lender's 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 Lender's Direct Agreement or not, except those expressly made, given or repeated in this Lender's 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 Lender's 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 Lender's 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 Lender's 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 Lender's Direct Agreement. If any such provision of this Lender's 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 Lender's Direct Agreement as near as possible to its original intent and effect.

12.7 Enurement

This Lender's 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 Lender's 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 Lender's 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 Lender's Direct Agreement, the rights, powers and remedies of each Party set forth in this Lender's 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 Lender's 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 Lender's 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 Lender's Direct Agreement.

12.12 Counterparts

This Lender's 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 Lender's Direct Agreement which was so transmitted.

12.13 Language of Agreement

Each Party acknowledges having requested and being satisfied that this Lender's 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

Agent shall comply with the obligations on the part of Project Co contained in Article 37 of the Project Agreement and this obligation shall survive the termination of this Lender's Direct Agreement.

12.15 Tombstone Marketing

For the purpose of "tombstone marketing", and in the case of HMQ, other promotional purposes, each of HMQ, Agent, Lender 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.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Lender's 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, S.O. 2011,
c.9, Schedule 32, as amended.***

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

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

I/We have authority to bind the corporation

Execution Version

BANK OF MONTREAL, as Agent

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

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

I/We have authority to bind the corporation

Execution Version

2338301 ONTARIO INC.

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

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

I/We have authority to bind the corporation

**SCHEDULE 6
FORM OF CONSTRUCTION CONTRACT**

THIS CONSTRUCTION CONTRACT is made as of the [●] day of [●], 2012

B E T W E E N :

2338301 ONTARIO INC.

(“**Project Co**”)

- and -

BONDFIELD CONSTRUCTION COMPANY LIMITED

(“**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 Construction Work.

B. Pursuant to the Project Agreement, Project Co has agreed to enter into this Construction Contract with Contractor, pursuant to which Contractor has agreed to perform the 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 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 Construction Work (as set out in the definition of “Construction Work”) are incorporated by reference *mutatis mutandis* into this Construction Contract. In the event of any conflict or inconsistency between the provisions of this Construction Contract and the Project Agreement, the provisions of this Construction Contract shall govern and

prevail. For greater certainty, the provisions of this 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, Contractor covenants and agrees to comply with the provisions of Section 6.1 of the Project Agreement (provided the term “Project Documents”, as used in Section 6.1, shall not include the Lending Agreements, Schedule 5 – Form of Lender’s Direct Agreement or Schedule 22 – Form of Performance Guarantee of Construction Guarantor) and Section 6.2 of the Project Agreement (provided that the term “Implementing Agreements”, as used in Section 6.2, shall be read as “sub-subcontracts”). For further certainty, Section 9.4(a), Article 18, Article 28, Article 36, Sections 38.3(a) and (b), Section 38.4 and Schedule 14 – Dispute Resolution Procedure of the Project Agreement and such provisions are hereby incorporated by reference *mutatis mutandis* into this Construction Contract. Provided further that the term “Implementing Agreements” in Section 25.1(a)(xiii) shall be read as “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 Implementing Agreement (other than this Construction Contract), to the contrary, the following provisions of the Project Agreement shall not apply to this Construction Contract and 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 4.11
 - (iv) Sections 6.3 and 6.4
 - (v) Article 7
 - (vi) Section 25.1(a)(iii)
 - (vii) Sections 38.3(c) and (d)
 - (viii) Article 41
 - (ix) Schedule 3 – Completion Documents
 - (x) Schedule 4 – Project Co Information
 - (xi) Schedule 5- Form of Lender’s Direct Agreement
 - (xii) Schedule 8 – **[REDACTED]**

- (xiii) Schedule 15 – Bid Bond
 - (xiv) Schedule 18 – Payments and Holdbacks
 - (xv) Schedule 22 – Form of Performance Guarantee of Construction Guarantor
 - (xvi) Schedule 23 – Form of Assignable Subcontract Agreement for Construction Contract.
- (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 Section 42.1 of the Project Agreement, in respect of which, the term “HMQ” shall remain “HMQ”;
 - (ii) Project Co with Contractor; and
 - (iii) the Project Agreement with the Construction Contract.

2. CONSTRUCTION WORK

2.1 Construction Work

- (a) Subject to the provisions of Article 1 and the provisions of this Construction Contract, Contractor shall perform all of the Construction Work in compliance with this 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 Construction Work.
- (b) For greater certainty, Contractor shall not be obligated by this 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 6.4(a) of the Project Agreement, each of which are hereby expressly excluded from the scope of this 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 [REDACTED] to the Project Agreement.

- (b) The Guaranteed Price hereunder will not be subject to adjustment despite changes in the Construction Work, unless such changes in the Construction Work constitute a Change in the Scope of the Construction Work. The parties further agree that the Guaranteed Price hereunder will only be adjusted where this 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 Construction Contract will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price hereunder must be provided for in a Change Order under Schedule 11 – Change Procedure, of the Project Agreement, which Schedule has been incorporated herein pursuant to Section 1.1(b) hereof.
- (c) The provisions of Section 3.2 of the Project Agreement shall apply *mutatis mutandis* and without duplication to this Construction Contract, with the intent that only the cash allowances permitted under the Project Agreement (including expenditures, excesses, deficits and surpluses) shall be permitted hereunder.

4. PAYMENTS

4.1 Payments to the Contractor

All payments required to be made by Project Co to Contractor hereunder, including Base Progress Payments, the certified cost to complete, the Substantial Completion Payment, the First Interim Payment, the Second Interim Payment, the HMQ Holdback and any Legislative Holdbacks with respect thereto shall be paid by Project Co to Contractor, together with applicable HST, in accordance with the provisions of Appendix 1 to this 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 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 Contractor under this Construction Contract.

4.2 HST

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

4.3 No Other Entitlement

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

5. CHANGES

The Construction Work and Guaranteed Price hereunder, as such terms are applied and interpreted for the purposes of this Construction Contract, are subject to change,

adjustment or variation only in accordance with the provisions of the Project Agreement. For greater certainty, Contractor shall not be entitled to any adjustment or variation to the Construction Work, the Guaranteed Price hereunder or the Scheduled Substantial Completion Date except if and to the extent allowed to Project Co pursuant to the provisions of the Project Agreement.

6. CONSULTANT

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

7. CROSS DEFAULT

A Project Co Construction Event of Default shall constitute a default by Contractor under the Construction Contract, provided that, for greater certainty, if the Contractor has received a copy of the notice of default provided to Project Co in accordance with Article 41 of the Project Agreement, 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 34 of the Project Agreement shall apply *mutatis mutandis* to this Construction Contract, provided that when the term “Work” is used in Section 34.2(a)(i)(A) of the Project Agreement the term “Construction Work” shall be substituted therefor.

9. BONDS

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, 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 Construction Contract shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Construction Contract) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Contractor: [REDACTED]
Fax No.: [REDACTED]
Attn.: [REDACTED]

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

10.2 Notice to Consultant

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

B+H Architects
[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 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 Construction Contract *mutatis mutandis*, as aforesaid, this Construction Contract is to be governed and interpreted on a basis consistent with the provisions of Article 42 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 Construction Contract (and without limiting the foregoing, 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 Construction Contract); and
- (b) this 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

Contractor acknowledges and agrees that there will be no cost associated with the cancellation of this Construction Contract for the purposes of the calculation of the Default Termination Payment and the Non-Default Termination Sum under the provisions of Schedule 12 – Compensation on Termination, of the Project Agreement, other than cancellation charges and other costs associated with the termination of any commitments relating to the Construction Work under this Construction Contract that Contractor makes, enters into or incurs in respect of any such work and that are otherwise payable pursuant to the provisions of Schedule 12 – Compensation on Termination, of the Project Agreement.

[SIGNATURE PAGES IMMEDIATELY TO FOLLOW]

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

2338301 ONTARIO INC.

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

BONDFIELD CONSTRUCTION COMPANY LIMITED

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

**APPENDIX 1 TO SCHEDULE 6
PAYMENTS AND HOLDBACKS**

1. APPLICATIONS FOR PAYMENT

- 1.1** Applications for payment on account may be made monthly as the Construction Work progress.
- 1.2** Project Co and Contractor agree that for the purpose of calculating payment hereunder and for the amount of any Legislative Holdback under the Construction Contract such determination shall be based only upon the Cost of the Work.
- 1.3** Application for payment by 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 Work, of the Construction Work performed forming part of the Cost of the Work including Products delivered to the Sites at that date. The application for payment shall also include and separately state the value of the Construction Work performed with respect to Change Orders or Change 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 Consultant and to the Lender's Consultant at the same time. The Lender's Consultant shall be responsible for verifying the application for payment to the Lender.
- 1.4** Contractor shall submit to the Consultant and the Lender's Consultant, at least 14 days before the first application for payment, a schedule of values for the parts of the 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 Consultant and the Lender's Consultant may reasonably direct and when accepted by the Consultant and the Lender's 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 a Site but not yet incorporated into the Construction Work shall be supported by such evidence as the Consultant may reasonably require to establish the value and delivery of the Products.
- 1.6** Contractor shall submit to Project Co, the Consultant and the Lender's Consultant a statement based on the schedule of values, a Workplace Safety & Insurance Board Certificate of Clearance, the update of the Construction Schedule prepared in accordance with Section 12.1 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, Contractor shall submit a Statutory Declaration on CCDC Form 9A.

2. PROGRESS PAYMENTS

- 2.1** The Consultant will issue to Project Co, no later than 10 Business Days after the receipt of an application for payment from Contractor submitted in accordance with Section 1 of this Appendix 1, a certificate addressed to HMQ of the progress of the Construction Work in relation to the schedule of values, a copy of which shall be provided to Project Co, Contractor and the Lender's Consultant. Contemporaneously, the Consultant 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 Contractor in the amount applied for or in such other amount as the Consultant determines to be properly due. If the Consultant requires amendments to the application, the Consultant will promptly notify Contractor in writing giving reasons for the amendment. The Lender's Consultant will be responsible, no later than 5 Business Days from receipt of the certificate of the progress of the Construction Work in relation to the schedule of values from the Consultant, for issuing certificates for payment to Lender and Contractor respecting Base Progress Payments. Project Co and the Consultant 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 Lender's Consultant and/or the Lender.
- 2.2** Payment to 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 Lender's Consultant or the Consultant, as the case may be.
- 2.3** Applications for progress payments will continue to be provided to the Lender's Consultant so long as any amount that has been held back by Project Co pursuant to the Construction Contract for the 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 Consultant or the Lender's 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 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 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 a Site arising from the performance of the Construction Work, and unless 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 Construction Work, Project Co shall be entitled to withhold such portion of any payment otherwise due to 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 Construction Work is received by Project Co, and unless Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ acting reasonably, 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 Construction Work is registered against the Site, and unless 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, 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, Contractor shall, if requested, undertake Project Co's defence of any subsequent action commenced in respect of the lien at Contractor's expense.
- .4 If Contractor fails or refuses to vacate or discharge a construction lien or written notice of lien arising from the performance of the Construction Work within the time prescribed above, and unless 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 Contractor, and Project Co may deduct such amounts from the amounts otherwise due or owing to Contractor.
- .5 Without limiting any of the foregoing, Contractor shall satisfy all judgments and pay all costs resulting from any construction liens arising from the performance of the 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 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 Contractor which are claimed as a result of any default of Project Co to make payments to Contractor in accordance with the terms of the 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 Projects.

3. PAYMENT OF HOLDBACK UPON SUBSTANTIAL COMPLETION

3.1 After the issuance by the Consultant of the certificate of substantial performance of the Construction Work under Section 16.1(c) of the Project Agreement and the certificate of Substantial Completion of the Construction Work under Section 16.1(d) of the Project Agreement, 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 Construction Work have been received by it;
- .3 submit a Statutory Declaration CCDC 9A; and
- .4 submit an original Workplace Safety & Insurance Board 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 Consultant shall issue a certificate for payment of the holdback amount.

3.3 Prior to the date of the release of the holdback, 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 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 Contractor shall provide As-Built Drawings and Specifications, Record Documents, 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, 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 of the Construction Work 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 When Contractor considers that the Construction Work is completed, Contractor shall submit an application for final payment. Contractor's application for final payment and release of finishing construction lien holdback, shall include the following documentation:

- .1 Contractor's written request for release of holdback, including a declaration that no written notices of lien arising from the performance of the Construction Work have been received by it;
- .2 Contractor's Statutory Declaration CCDC 9A;
- .3 Contractor's Workplace Safety and Insurance Board Certificate of Clearance; and
- .4 a written statement that the Construction Work has been performed to the requirements of the Contract Documents, itemizing approved changes in the Construction Work, the Consultant's written instructions, and modifications required by Governmental Authorities.

5.2 The Consultant will, no later than 10 days after the receipt of an application from Contractor for final payment, complete its review of the Construction Work to verify the validity of the application, and no later than the 3rd Business Day after completing the review, will notify Contractor whether the application is valid or give reasons why it is not valid.

5.3 When the Consultant finds Contractor's application for final payment valid, the Consultant will issue a final certificate for payment.

5.4 Subject to the other requirements of this Construction Contract, the unpaid balance of the Guaranteed Price hereunder shall become payable to 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 issuance of the Consultant's final certificate for payment,

subject to Project Co's right under the 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 Construction Work.

6. WITHHOLDING OF PAYMENT

6.1 If because of climatic or other conditions reasonably beyond the control of Contractor, there are items of work that cannot be performed, payment in full for that portion of the Construction Work which has been performed, as certified by the Consultant, shall not be

withheld or delayed by Project Co on account thereof, but Project Co may withhold, until the remaining portion of the Construction Work is finished, only such amount that the Consultant determines is sufficient and reasonable to cover the cost of performing such remaining Construction Work.

7. NON-CONFORMING WORKS

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

**SCHEDULE 7
KEY PERSONNEL**

[REDACTED]

**SCHEDULE 8
[REDACTED]**

**SCHEDULE 9
COMMISSIONING PROGRAM**

- 1.1** Project Co acknowledges that Commissioning of the Work as required under the Contract Documents is an integral and important part of the Work and undertakes to provide HMQ with any assistance deemed necessary by HMQ, the Consultant and the Commissioning Agent, if any is appointed by HMQ, in respect of the Commissioning for the Projects, including ensuring that the Project Co Parties provide whatever assistance HMQ, the Consultant and the Commissioning Agent may reasonably require. Project Co shall be responsible for including in the Construction Schedule the schedule for all Commissioning as it relates to the Substantial Completion Date. A portion of the Commissioning may, as set out in the Specifications in the Contract Documents, be completed prior to Substantial Completion of the Work and completion of Commissioning shall be required prior to Final Completion, except to the extent expressly provided in the Contract Documents to occur following Final Completion.
- 1.2** HMQ, the Consultant and the Commissioning Agent will attend, in accordance with the schedule for Commissioning set out in the Construction Schedule, performance tests and demonstrations carried out by Project Co, the Project Co Parties, manufacturers, and other agents, in accordance with the Contract Documents and as is mutually satisfactory to both parties.
- 1.3** Project Co and the Project Co Parties will submit copies of all As-Built Drawings, records, manufacturer's written performance equipment data and specification sheets and shop drawings to HMQ and the Consultant, and as HMQ and the Consultant may reasonably request, and cooperate, and make reasonable efforts to ensure systems designated for Commissioning are complete and pre-tested as fully operational prior to scheduling tests and demonstrations with HMQ, the Consultant and the Commissioning Agent.

**SCHEDULE 10
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 15 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 11
CHANGE PROCEDURE

1. GENERAL

- 1.1** HMQ, through the Consultant, without invalidating this Project Agreement, may make Changes in the Scope of the Work consisting of additions, deletions, or other revisions to the Work by Change Order or Change Directive.
- 1.2** Project Co shall not perform a Change in the Scope of the Work without a Change Order or a Change Directive. This requirement is of the essence and it is the express intention of the parties that any claims by Project Co for a change in the Guaranteed Price and/or Contract Time shall be barred unless there has been strict compliance with the requirements of this Schedule. No course of conduct or dealing between the parties, no express or implied acceptance of alteration or additions to the Work and no claims that HMQ has been unjustly enriched by any alteration or addition to the Work, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for additional payment under this Contract or a claim for any extension of the Contract Time.
- 1.3** Supplemental Instructions are subject to the provisions of the Contract Documents and will not result in a Change Order or a Change Directive. Any actions taken by Project Co in response to such instructions are at Project Co's risk and included in the Guaranteed Price and in the Contract Time.
- 1.4** The Consultant shall copy Lender and Lender's Consultant on all Change Orders, Change Directives and Supplemental Instructions.

2. CHANGE ORDER

- 2.1** When a Change in the Scope of the Work is proposed or required, the Consultant shall provide a Contemplated Change Notice to Project Co. Any adjustment to the Guaranteed Price or to the Contract Time as a result of the proposed Change in the Scope of the Work, shall be recorded in a Change Order in accordance with Section 2.2 of this Schedule 11. If the proposed Change in the Scope of the Work is anticipated by Project Co to result in an adjustment of the Guaranteed Price, Project Co shall provide to HMQ and the Consultant a written explanation and details of the adjustment. Any adjustment to the Contract Time shall only be to the extent that the critical path of the Construction Schedule is affected by the change to the Work and Project Co shall not be entitled to claim any ownership of the Schedule Cushion.
- 2.2** When HMQ and Project Co agree to the adjustments in the Overhead and Profit Fee, Guaranteed Price and Contract Time or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a Change Order, signed by HMQ and Project Co. The value of the Work performed as a result of a Change Order shall be included in applications for progress payments as Additional HMQ Payments.

2.3 The value of Changes in the Scope of the Work shall be determined by one of the following methods as selected by HMQ:

- .1 A lump sum amount (but excluding any amount on account of an increase to the Cost of the Financing) substantiated by an itemized cost breakdown acceptable to the Consultant and HMQ which lump sum shall be reasonable and consistent with market rates in the local market, if available, and if not available, in accordance with competitive market rates for such a project otherwise available at the time such Work is performed, and which will include an Overhead and Profit Fee applied in accordance with Section 2.4 of this Schedule 11.
- .2 The aggregate of the Cost, as defined herein, and the Overhead and Profit Fee, as determined in accordance with Section 2.4 of this Schedule 11, all substantiated by an itemized cost breakdown acceptable to HMQ and the Consultant, and which may be initiated with a maximum change order amount at the option of HMQ. “Cost” shall be actual net cost to Project Co, excluding its overhead and profit, as agreed to by HMQ and Project Co, and as determined pursuant to the Cost of the Work provisions applicable to Changes in the Scope of the Work set out in Sections 2.5, 2.6, 2.7 and 2.8 of this Schedule 11, provided that all such actual costs must be reasonable, consistent with market rates in the local market, if available, and if not available, in accordance with competitive market rates for such a project otherwise available at the time such Work is performed and substantiated in full detail to the satisfaction of the Consultant and HMQ. Such Costs shall be subject to full and complete audit at all reasonable times by the representatives of the Consultant and HMQ. This method of determining the value of a change in the Work shall extend to the Project Co Parties as applicable. Labour rates, labour productivity rates and discounts of Project Co Parties, and all material and trade rates and discounts applicable to changes, shall be submitted to HMQ and shall be subject to HMQ’s approval prior to the execution of the applicable contracts with Project Co Parties. The pricing of all materials and Products involved in changes shall be at the actual cost, including discounts, and not at manufacturer’s list or suggested retail prices.
- .3 Unit prices as set out in Appendix A to this Schedule 11 or subsequently agreed upon, which shall include overhead, profit and other reasonable charges of Project Co, which shall be the total cost to HMQ. Where applicable, adjustment to the Guaranteed Price shall be based on net quantity difference from original quantity.

2.4 “Overhead and Profit Fee”, as that term is referred to in Sections 2.3.1 and 2.3.2 of this Schedule 11, shall be a percentage of the Cost, as defined in Section 2.3.2 of this Schedule 11, and as listed below, and shall include Project Co’s, the Contractor’s and the other Subcontractors’ overhead and profit, as applicable; provided that as between Project Co and the Contractor, only one aggregate Overhead and Profit Fee may be charged. “Overhead” means any cost incurred for maintaining a viable business, including:

- .1 licensing required for conducting business in a jurisdiction;

- .2 salaries, wages, benefits for office personnel, general management, warehouse personnel, maintenance workers and other employees engaged in daily operations at the place of business;
- .3 general office expenses not related to an individual project, including rent, leases, mortgages, financing costs including holdback, utilities, disposal charges and related services, telephone, light, power, water, utilities and heat;
- .4 leased or rented equipment, furniture and facilities not used on the Site;
- .5 office supplies, including stationery, postage and other office supplies, equipment, computer hardware and software;
- .6 Projects related office expenses, including permits and/or licenses required by authorities having jurisdiction, phone, fax, internet, printing, courier charges, office equipment rentals, lodging and travel;
- .7 Projects related Site expenses, including site/trailer office(s) and sheds, including cost of telephone, light, power, utilities, water and heat used therein, Projects safety (hoarding, signage, bump lines, etc.), Site security, fire prevention, snow removal, winter conditions, surveying, coordination of service disruption, Projects signage, sanitary facilities, water, power, heat, temporary protection of areas adjacent to the Work, As-Built Drawings and maintenance manuals;
- .8 salaries, wages, benefits for Project Co's project manager, foreman and supervisor, Projects superintendent, mechanical and electrical coordinator;
- .9 licenses, permits, certificates, fees and deposits except when these are special for a particular item of Work; and
- .10 printing charges for proposed changes, Change Orders and Drawings for use in the Work by Project Co and the Project Co Parties. (the Consultant will provide one (1) copy of change notice documentation and in the event of re-issue of full size Drawings, will provide one (1) reproducible and one (1) print).

At Project Co's option, if the Contract Time is extended as a result of a Change Order, then the expenses referred to in Sections 2.4.6, 2.4.7 and 2.4.8 of this Schedule 11 for the extended period that are specifically related to the Change Order, may be excluded from the Overhead and Profit Fee and included in the Cost of the Work in accordance with Section 2.6 of this Schedule 11, and the applicable Project Co's and Contractor's Overhead and Profit Fee referred to in Section 2.5 of this Schedule 11, shall be reduced by [REDACTED]% and applied to the entire scope of the Change Order.

In addition, at Project Co's option, if an extension of the Contract Time would have occurred but for the utilization of additional resources by Project Co which may include premium time and overtime, then the expenses referred to Sections 2.4.6, 2.4.7 and 2.4.8 of this Schedule 11 that are specifically related to additional resources utilized by Project Co, may be excluded from the Overhead and Profit Fee and included in the Cost of the Work in accordance with Section 2.6 of

this Schedule 11, and the applicable Project Co's and Contractor's Overhead and Profit Fee referred to in Section 2.5 of this Schedule 11 shall be reduced by [REDACTED]% and applied to the entire scope of the Change Order. The determination of whether the utilization of additional resources by Project Co did avoid an extension of the Contract Time shall, subject to the provisions of Schedule 14 – Dispute Resolution Procedure, be determined by the Consultant based on the impact of such utilization of additional resources on the critical path of the Construction Schedule.

2.5 In determining the value of Scope Changes, HMQ will be permitted to aggregate only the value of Changes in the Scope of the Work that arise out of HMQ initiated Change Orders which relate to the same category, location or component of Work.

On Scope Changes having a value of \$[REDACTED]or less:

The aggregate of Project Co's and the Contractor's Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

- .1 Within the scope of Project Co's and/or the Contractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by Project Co's or the Contractor's own workforce.
- .2 Project Co's or the Contractor's total Overhead and Profit Fee for the work performed by a Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor.

The Subcontractor's (excluding the Contractor) Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

- .3 Within the scope of the Subcontractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor's own workforce.
- .4 The Subcontractor's total Overhead and Profit Fee for the work performed by a Sub-Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Sub-Subcontractor.
- .5 No Overhead and Profit Fee on credits will be permitted.

On Scope Changes having a value of \$[REDACTED]to \$[REDACTED]:

The aggregate of Project Co's and the Contractor's Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

- .6 Within the scope of Project Co's and/or the Contractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by Project Co's and/or the Contractor's own workforce.

- .7 Project Co's and/or the Contractor's total Overhead and Profit Fee for the work performed by a Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor.

The Subcontractor's (excluding the Contractor) Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

- .8 Within the scope of the Subcontractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor's own workforce.
- .9 The Subcontractor's total Overhead and Profit Fee for the work performed by a Sub-Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Sub-Subcontractor.
- .10 No Overhead and Profit Fee on credits will be permitted.

On Scope Changes having a value of \$[REDACTED] to \$[REDACTED]:

The aggregate of Project Co's and the Contractor's Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

- .11 Within the scope of Project Co's and/or the Contractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by Project Co's and/or the Contractor's own workforce.
- .12 Project Co's and/or the Contractor's total Overhead and Profit Fee for the work performed by a Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor.

The Subcontractor's (excluding the Contractor) Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

- .13 Within the scope of the Subcontractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor's own workforce.
- .14 The Subcontractor's total Overhead and Profit Fee for the work performed by a Sub-Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Sub-Subcontractor.
- .15 No Overhead and Profit Fee on credits will be permitted.

On Scope Changes having a value of \$[REDACTED] and over:

The aggregate of Project Co's and the Contractor's Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

- .16 Within the scope of Project Co's and/or the Contractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by Project Co's and/or the Contractor's own workforce.
- .17 Project Co's and/or the Contractor's total Overhead and Profit Fee for the work performed by a Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor.

The Subcontractor's (excluding the Contractor) Overhead and Profit Fee on Scope Changes will be permitted as follows:

- .18 Within the scope of the Subcontractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor's own workforce.
- .19 The Subcontractor's total Overhead and Profit Fee for the work performed by a Sub-Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Sub-Subcontractor.
- .20 No Overhead and Profit Fee on credits will be permitted.

2.6 For the purposes only of determining the value of Changes in the Scope of the Work under Section 2.3.2 of this Schedule 11, the Cost of the Work, which excludes HST, shall mean the actual cost, without mark-up or Project Co assessments as necessarily incurred by Project Co in the performance of a Change in the Scope of the Work, and shall be restricted to the following:

- .1 wages and benefits paid for labour in the direct employ of Project Co under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by HMQ and Project Co;
- .2 salaries, wages and benefits of Project Co's personnel, when stationed at the field office, in whatever capacity employed; or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment excluding the costs identified in Sections 2.4.2 and 2.4.8 of this Schedule 11;
- .3 contributions, assessments or taxes incurred for items such as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of Project Co and included in the Cost of the Work, as provided in Sections 2.6.1 and 2.6.2 of this Schedule 11;
- .4 the cost of all Products, including cost of transportation thereof;
- .5 the cost of materials, supplies, equipment, temporary services and facilities and hand tools not owned by Project Co or any Project Co Party, including transportation and maintenance thereof, which are consumed in the performance of the Work that is the subject of the Change Order, and cost less salvage value on

such items used but not consumed, which remain the property of Project Co or any Project Co Party;

- .6 the cost of all tools, machinery and equipment used in the performance of the Work that is the subject of the Change Order, exclusive of hand tools, whether rented from or provided by Project Co or any Project Co Party, including the installation, minor repairs and replacements, dismantling, removal, transportation and delivery cost thereof;
- .7 the net amounts of all payments paid to Subcontractors and Suppliers in accordance with agreed to charge out rates after deduction of any back-charges, set offs or other similar charges but excluding costs to Project Co that result from the insolvency or failure to perform of any Project Co Party;
- .8 the cost of quality assurance, such as independent inspection and testing services, except for any such cost excluded under Section 2.8.19 of this Schedule 11;
- .9 charges levied by authorities having jurisdiction at the Site;
- .10 royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefor, subject always to Project Co's obligations to indemnify HMQ as provided in Sections 32.1 and 36.2(a) of the Project Agreement;
- .11 changes to premiums, if any, for all bonds and insurance in relation to the performance of the Work resulting directly from the Changes in the Scope of the Work;
- .12 all taxes, other than HST, and duties for which Project Co is liable in relation to the performance of the Work;
- .13 charges for long distance telephone and facsimile communications, courier services, expressage, photocopying, reproduction of Contract Documents, and petty cash items incurred in relation to the performance of the Work;
- .14 the cost of removal and disposal of waste products and debris;
- .15 costs incurred due to Emergencies affecting the safety of persons or property;
- .16 the cost of removal or containment of Hazardous Substances;
- .17 where there is a reduction in the construction scope of the Work, demobilization costs and costs incurred for cancellation or reduction of contracts entered into with a Project Co Party, on an arm's length basis; and
- .18 any other cost to Project Co expressly or properly inferable from any provision of this Project Agreement.

- 2.7** All cash discounts shall accrue to Project Co unless HMQ deposits funds with Project Co with which to make payments, or where HMQ pays the costs of financing the Work, in which case the cash discounts shall accrue to HMQ. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment applicable to the Work shall accrue to HMQ, and Project Co shall make provisions so that they can be secured.
- 2.8** The following costs shall not be reimbursed or otherwise included in the Cost of the Work in connection with any Change Order or Change Directive and are deemed to be included in the Overhead and Profit Fee:
- .1 any cost not specifically and expressly described in Section 2.6 of this Schedule 11, unless otherwise approved by HMQ;
 - .2 overhead, profit and general expenses;
 - .3 Project Co's capital expenses, including interest on Project Co's capital employed in the Work;
 - .4 costs due to the fault or negligence of Project Co, any Project Co Party or anyone for whose acts any of them may be liable, including costs for the correction of damaged, defective or non-conforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and Making Good damage to property not forming part of the Work;
 - .5 losses or costs chargeable to any Project Co Party pursuant to its Subcontract;
 - .6 fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal due, in whole or in part, to the action or inaction of Project Co, any Project Co Party or any person for whom they are responsible in law;
 - .7 costs associated with Project Co's failure to obtain any and all Project Co Permits, Licenses and Approvals in a timely manner, including the costs of any delays resulting therefrom, unless such failure is due to the failure of the Drawings and Specifications to conform with Applicable Law or unless such failure is directly and solely attributable to the delay of HMQ;
 - .8 costs of accelerating the Work in accordance with Section 22.2(d) of the Project Agreement;
 - .9 costs resulting from the failure of Project Co or any Project Co Party to procure and maintain insurance as required by the Contract Documents;
 - .10 overtime and premium time required under Section 22.2(d) of the Project Agreement;
 - .11 Projects incentive bonuses except as approved in advance in writing by HMQ;

- .12 costs (including legal fees and expenses) of bonding, securing or removing liens or defending claims filed by a Project Co Party arising directly from a default by Project Co in properly making any payment in connection with the Work, unless such default by Project Co is due to the wrongful failure by HMQ to make a progress payment to Project Co;
 - .13 any fines levied against Project Co or HMQ due to Project Co's (or any Project Co Party's) violations of any Applicable Law, which fines shall be paid by Project Co;
 - .14 losses or expenses for which Project Co is compensated by insurance;
 - .15 salaries or other compensation (including salaries of Project Co's officers and employee's benefits) of any employee of Project Co (or related companies) not working on matters relating to the Projects, except as agreed to in writing by HMQ;
 - .16 expenses of Project Co's head and district offices other than the field office, except as agreed to in writing by HMQ;
 - .17 salaries and other compensation of Project Co's personnel stationed at Project Co's principal office or offices other than the field office;
 - .18 cost of all deductibles arising out of the misconduct, fault, negligent act or omissions of Project Co or any Project Co Party or anyone for whose act any of them may be liable;
 - .19 costs for re inspections and re-testing of non conforming Work not carried out in accordance with the Contract Documents;
 - .20 legal costs, incurred by Project Co, in relation to the performance of the Work; and
 - .21 all taxes on income, capital or real property of Project Co.
- 2.9** For greater certainty, any charges or back charges as collected and if collected by Project Co from the Project Co Parties, including for equipment rentals, hoisting, clean up costs or any other expenses for which Project Co is otherwise entitled to reimbursement pursuant to Section 2.6 of this Schedule 11, shall be credited to and thereby reduce the Cost of the Work in connection with any Change Order or Change Directive.
- 2.10** If there is an increase or a decrease in the Cost of the Financing as a result of a Change Order, 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 Lender verifying such calculation. Where the increase in the Cost of the Financing includes breakage costs, but the impact of the Change Order 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 Lender 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 Lender, select its preferred option by providing written notice to Project Co and Lender. 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 Lender's standard banking practices and 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. HMQ may, in its Sole Discretion, elect to apply any portion of the Schedule Cushion to any extension of the Contract Time otherwise determined under a Change Order, with the result that such extension of the Contract Time shall be reduced or eliminated, as the case may be, by the number of days of the Schedule Cushion that HMQ has elected to apply, and the determination of the increase in the Cost of the Financing associated with such Change Order shall be recalculated based on the remaining extension of the Contract Time, if any, under such Change Order after such application by HMQ of the Schedule Cushion. If a Change Order 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.

- 2.11** For greater certainty, subject to Section 2.10 of this Schedule 11 and notwithstanding Section 23.2(b) of the Project Agreement, where HMQ elects to apply all or any portion of the number of days of the Schedule Cushion, Project Co shall only be entitled to compensation valued pursuant to Sections 2.3.2 and 2.5 of this Schedule 11 provided, however, the Overhead and Profit Fee shall be reduced by **[REDACTED]**% and applied to the entire scope of the applicable Change Order.

3. CHANGE DIRECTIVE

- 3.1** If HMQ requires Project Co to proceed with a Change in the Scope of the Work prior to HMQ and Project Co agreeing upon the adjustment in the Guaranteed Price and in the Contract Time, HMQ, through the Consultant, shall issue a Change Directive.
- 3.2** A Change Directive can only be used by HMQ to direct a Change in the Scope of the Work which is within the general scope of the Contract Documents.
- 3.3** Upon receipt of a Change Directive, Project Co shall proceed promptly with the Change in the Scope of the Work, in which case, any adjustment to the Guaranteed Price shall be determined on the basis set forth in Section 2.3.2 of this Schedule 11 having regard to Sections 2.4 and 2.10 of this Schedule 11.
- 3.4** Pending determination of the Overhead and Profit Fee, the adjustment to the Guaranteed Price and to the Contract Time required as a result of a Change Directive, the Cost of the Work incurred (determined on the basis of the "Cost" as set out in Section 2.3.2 of this Schedule 11 having regard to Sections 2.4 and 2.10 of this Schedule 11) as a result of a Change Directive, is eligible to be included in the Additional HMQ Payments, notwithstanding the limit imposed by the Guaranteed Price. Costs to complete the Work

authorized by the Change Directive, including all labour and materials, shall be authorized by HMQ daily or every other day.

- 3.5** If HMQ and Project Co do not reach agreement on the Overhead and Profit Fee, the proposed adjustment in the Guaranteed Price, the adjustment in the Contract Time, or in the method of determining them, the adjustment shall be referred to the Consultant for determination on the same basis as a Change Order and shall be recorded in a Change Order.
- 3.6** If at any time after the commencement of the Work directed by a Change Directive, HMQ and Project Co reach agreement on the Overhead and Profit Fee, the adjustment to the Guaranteed Price and the adjustment to the Contract Time, this agreement shall be recorded in a Change Order signed by HMQ and Project Co.
- 3.7** Following the commencement of the Work directed by a Change Directive, Project Co will maintain, in accordance with industry standards, records to support the Cost of the Work under Section 2.6 of this Schedule 11, in respect of the Work undertaken in accordance with the Change Directive.

APPENDIX A TO SCHEDULE 11

UNIT PRICES

[REDACTED]

SCHEDULE 12
COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

- (a) All capitalized terms not otherwise defined in this Schedule shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:
- (b) **“Debt Amount”** means all accrued and unpaid interest and any “make whole” payments or breakage fees (less any breakage benefits) which Project Co is obligated to pay to Agent pursuant to the Lending Agreements, together with the outstanding principal amount of debt funded under the Lending Agreements.
- (c) **“Default Termination Payment”** has the meaning given in Section 2.1(b) of this Schedule 12.
- (d) **“Demobilization Costs”** means all reasonable costs of Project Co associated with the demobilization of the Work as a result of the termination of the Project Agreement.
- (e) **“Invoice Date”** means the date that is the later of:
 - (i) the date on which HMQ receives an invoice from Project Co for the Non-Default Termination Sum; and
 - (ii) the date on which HMQ receives the supporting evidence required pursuant to Section 4.1(a) of this Schedule 12.
- (f) **“Non-Default Termination Sum”** has the meaning given in Section 3.1(b) of this Schedule 12.
- (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 Work and the Termination Date, and the denominator of which is the period between the date of commencement of the Work and the Scheduled Substantial Completion Date.
- (h) **“Termination Date”** means the date the Project Agreement is terminated pursuant to Sections 25.3(a)(i), 26.2(a)(ii), 27.2(a), 27.2(b) or 27.3(a) of the Project Agreement.
- (i) **“Work”** has the meaning given in the Project Agreement.

2. COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT

2.1 Compensation

- (a) If HMQ terminates the Project Agreement pursuant to Section 25.3(a)(i) of the Project Agreement, HMQ shall pay the Default Termination Payment to Project Co.
- (b) The “**Default Termination Payment**” shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) all Additional HMQ Payments and Interim Payments paid by HMQ on or before the Termination Date;
 - (ii) HMQ’s estimate of the cost to complete the Work, including the cost to remedy any defective or deficient Work determined on a reasonable basis in consultation with the Consultant and other consultants and including all reasonable and proper costs incurred by HMQ in re-tendering the Work 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 the Project Agreement and out of the termination together with all costs of entering into a new construction contract to complete the Work, including any warranty obligations for the Work in place and to be performed, on substantially the same terms and conditions as the Project Agreement;
 - (iv) the HMQ Holdback as at the time the Default Termination Payment is required to be made; and
 - (v) the Legislative Holdback required to be maintained by HMQ as at the time the Default Termination Payment is required to be made, which amount will be paid by HMQ in accordance with the *Construction Lien Act* (Ontario).
- (c) To the extent that any amounts that HMQ has estimated or determined pursuant to Sections 2.1(b)(ii), 2.1(b)(iii) or 2.1(b)(iv) above, are in excess of what is required by HMQ to complete the Work 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 Default Termination Payment in accordance with Article 4 of this Schedule 12.

3. COMPENSATION ON NON-DEFAULT TERMINATION

3.1 Compensation

- (a) If Project Co terminates the Project Agreement pursuant to Sections 26.2(a)(ii) or 27.2(b) of the Project Agreement or if HMQ terminates the Project Agreement pursuant to Sections 27.2(a) or 27.3(a) of the Project Agreement, HMQ shall, in each case, pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate, without duplication, of:
- (i) all Interim Payments and Additional HMQ Payments properly due and payable under the Construction Contract and the Project Agreement to and including the Termination Date and any Cost of the Financing directly related to such Interim Payments, to the extent not funded under the Lending Agreements as part of the Debt Amount;
 - (ii) all Demobilization Costs;
 - (iii) the Debt Amount calculated as at the date of payment of the Non-Default Termination Sum to Project Co;
 - (iv) the Project Co Amount calculated as at the date of payment of the Non-Default Termination Sum to Project Co; and
 - (v) all other Direct Losses suffered, sustained or incurred by Project Co and the Contractor as a result of, or arising out of, the event or events which have resulted in the termination of the Project Agreement and out of the termination
- less the aggregate of (A) and (B) of this Section 3.1(b):
- (A) the HMQ Holdback as at the time the Non-Default Termination Sum is required to be made; and
 - (B) any Legislative Holdback required to be maintained by HMQ at the time the Non-Default Termination Sum is required to be made.
- (c) To the extent that any amounts that HMQ has determined pursuant to Section 3.1(b)(A) or (B) above are in excess of what is required by HMQ to holdback under the Project Agreement or maintain as Legislative Holdback, as applicable, HMQ shall promptly return such excess amounts to Project Co.
- (d) HMQ shall pay the Non-Default Termination Sum in accordance with Article 4 of this Schedule 12.

4. GENERAL

4.1 Payment

- (a) In the event of a termination referred to in Section 3.1(a) of this Schedule 12, as soon as practicable, and in any event, within 60 days, after the Termination Date, Project Co shall give to HMQ an invoice for the Non-Default Termination Sum (reasonably estimated if not then known) and sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount of the Non-Default Termination Sum, including a detailed breakdown of each of the individual items comprising such sum. To the extent the Non-Default Termination Sum is based on estimates of cost, the Parties will readjust as soon as such estimated costs can be determined.
- (b) HMQ shall pay to Project Co the Non-Default Termination Sum within 60 days after the Invoice Date and so long as all demobilization of the Work has been completed.
- (c) In the event of a termination referred to in Section 2.1(a) of this Schedule 12, as soon as practicable, and in any event, within 120 days after the Termination Date, HMQ shall calculate and notify Project Co of the Default Termination Payment under Section 2.1(b) of this Schedule 12, and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (d) HMQ shall pay to Project Co the Default Termination Payment as soon as reasonably practicable, and in any event within 30 days after delivering the notice described in Section 4.1(c) of this Schedule 12.
- (e) HMQ shall indemnify Project Co as provided in Section 32.2(d) of this Project Agreement in respect of damages suffered or incurred as the result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
 - (i) in an amount equivalent to the No-Default Payment Compensation Amount for the period from (but excluding) the Termination Date (and including) the date which is 60 days after the invoice date; and
 - (ii) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (f) Notwithstanding anything to the contrary contained herein, in no event will the Default Termination Payment be greater than the Non-Default Termination Sum.

4.2 Costs

The costs and expenses to be taken into account in the calculation of the Non-Default Termination Sum due pursuant to this Schedule 12 shall only be such costs and expenses that are

reasonable and proper in quantum and that have been or will be reasonably and properly incurred.

4.3 Undisputed Amounts

Either HMQ or Project Co may dispute the calculation of any Compensation Payment and in the event of a dispute, any undisputed amount shall be paid in accordance with this Schedule 12 and the disputed amount shall be dealt with in accordance with Appendix A to this Schedule 12 – Dispute Resolution Procedure. Notwithstanding the foregoing, in the event any disputed amount exceeds \$[REDACTED], either party may proceed to court for the resolution of such dispute.

4.4 Outstanding Debt Amount

- (a) Subject to Section 4.3 of this Schedule 12, HMQ shall be entitled to rely on a certificate of Agent as conclusive evidence as to the Debt Amount outstanding at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Debt Amount, 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.

4.5 Set-off

HMQ shall be entitled to set off against the Non-Default Termination Sum or the Default Termination Payment, such amounts not already taken into account in calculating the relevant Compensation Payment that HMQ is entitled to set off or withhold pursuant to the Project Agreement, provided that the amount paid to Project Co on account of the Non-Default Termination Sum shall never be less than the Debt Amount.

4.6 Full and Final Settlement

- (a) Except as otherwise provided in Section 4.6(b) of this Schedule 12, any compensation paid pursuant to Section 2.1 or Section 3.1 of this Schedule 12 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 the termination of the Project Agreement and the circumstances leading to such breach or termination, and Project Co and HMQ shall be excluded from 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 4.6(a) of this Schedule 12 shall be without prejudice to any liability, whether arising before, on or after the Termination Date, of either Party to the other, including under the indemnities contained in the Project Agreement that arose with respect to acts or omissions on or prior to the Termination Date (but not from termination itself or the events leading to such termination), to the extent

such liability has not already been taken into account in calculating the relevant Compensation Payment to Section 4.5 of this Schedule 12.

- (c) Project Co acknowledges that under the provisions of Section 4.11 of the Project Agreement, HMQ shall pay the Compensation Payment to Project Co and Project Co has irrevocably directed HMQ to make the Compensation Payment to Agent or as Agent may direct, as security for the Financing. HMQ acknowledges such direction and agrees to pay the Compensation Payment to Agent or as Agent may direct in accordance with such direction. Project Co acknowledges and agrees that payment by HMQ of the Compensation Payment in accordance with any such direction constitutes payment by HMQ to Project Co in satisfaction of HMQ's obligation to make:
- (i) the Compensation Payment under the Project Agreement; and
 - (ii) any payment to Project Co under the Project Agreement, to the extent made in relation to the Guaranteed Price,

as the case may be, and in satisfaction of any trust obligation of HMQ in respect of such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

APPENDIX A TO SCHEDULE 12
DISPUTE RESOLUTION PROCEDURE

1 GENERAL

- 1.1** All disputes, controversies, or claims arising out of or relating to the calculation of any Compensation Payment under Section 4.3 of Schedule 12 to the Project Agreement (collectively and individually, a “**Dispute**”) shall, subject to the last sentence of Section 4.3 of Schedule 12, be resolved in accordance with the provisions of this Appendix A.

2 REFERRAL OF DISPUTES TO ARBITRATION

- 2.1** Either Party may, by written notice, require that the Dispute be resolved by arbitration pursuant to Article 3 of this Appendix A. Such notice will not be effective unless it indicates it is a notice to arbitrate and is delivered to the other Party and provided further that such notice expressly identifies the specific Dispute that is to be the subject of the arbitration.

3 RESOLUTION BY ARBITRATION

- 3.1** If a Dispute is referred to arbitration pursuant to Section 2.1 of this Appendix A, the Dispute shall be resolved by arbitration in accordance with the *Arbitration Act*, 1991 (Ontario).
- 3.2** 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 2.1 of this Appendix A has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a 3 person arbitration tribunal, in which case that particular Dispute shall be resolved by a 3 person arbitration tribunal.
- 3.3** 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 10 days after delivery of the notice to arbitrate pursuant to Section 2.1 of this Appendix A; and
 - (b) if the Parties fail to agree or jointly appoint the arbitrator within such 10 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 from the lists of potential arbitrators submitted to the court by the Parties, or 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 and absolute discretion, to appoint anyone who meets the requirements set out in this Appendix A for the qualifications and experience of the arbitrator.

3.4 If the arbitration tribunal is comprised of 3 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 requiring a 3 person arbitration panel pursuant to Section 2.1 of this Appendix A;
 - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice requiring a 3 person arbitration panel, 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 3.3(b) of this Appendix A;
 - (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 2 arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other 2 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 3.3(b) of this Appendix A; 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.

3.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.

3.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way financially interested in the Projects or in the business affairs of HMQ, Project Co, Contractor, Lender, Agent or any consultant, subconsultant or subcontractor of any of them.

3.7 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 or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award; and
- (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.

3.8 The place of arbitration shall, at the option of HMQ, be the municipality in which HMQ is located or Toronto, Ontario. The language of the arbitration shall be English.

3.9 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.

3.10 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.

3.11 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.

3.12 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 45 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 3 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.

3.13 This Appendix A constitutes an agreement to arbitrate that shall be specifically enforceable.

**SCHEDULE 13
INSURANCE AND PERFORMANCE SECURITY**

**INSURANCE AND PERFORMANCE
SECURITY REQUIREMENTS**

1. WORKS PHASE INSURANCE COVERAGE

1.1 Subject to Section 6, 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 Infrastructure Ontario Construction Insurance Program (“IOCIP”) the following insurances as further described in Appendix A to this Schedule 13:

- (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 6, 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 13:

- (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.

2. NO LIMIT ON RECOVERY

2.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 13 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.

3. ADDITIONAL COVER

3.1 Without prejudice to the other provisions of this Schedule 13, 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.

3.2 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, 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.

4. RESPONSIBILITY FOR DEDUCTIBLES

4.1 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 13. 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.

5. COOPERATION WITH INSURER'S CONSULTANT

5.1 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).

6. UNINSURABLE RISKS

6.1 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 13 and for which, at any time after the date of this Project Agreement, either:

- (a) the insurance required pursuant to this Schedule 13 (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.

6.2 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.

6.3 Project Co and HMQ shall, as soon as possible following the provision of the notice referred to in Section 6.2, 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.

6.4 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 6.2, 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 installments 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 as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 24.5 following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 12 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

6.5 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 24.5 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 12 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

6.6 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 6.6(a), Project Co shall be relieved of its obligation to maintain insurance in respect of the Uninsurable Risk.

6.7 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 13 in respect of the risk and the provisions of this Section 6 shall no longer apply to such risk.

6.8 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 13, and may make mutually agreed changes thereto.

7. TOTAL OR SUBSTANTIAL DESTRUCTION

7.1 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 Work, all in accordance with the terms of the Insurance and Bonding Trust Agreement.

8. SUBCONTRACTORS

8.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 13, 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.

8.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 13 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 Work 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 13, 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.

9. RENEWAL

9.1 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 13, evidence of the renewal of each such policy satisfactory to HMQ, acting reasonably.

10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION

10.1 All insurance provided by Project Co, shall:

- (a) include Project Co, HMQ, Infrastructure Ontario, TO2015, Markham, City, UofT, the Lenders and the Agent as Named Insureds to the extent specified in Appendix A of this Schedule 13;
- (b) include HMQ, Infrastructure Ontario, TO2015, Markham, City, UofT, the Lenders and the 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 13;
- (c) except with respect to the Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 13, contain a waiver of subrogation as against HMQ, HMQ Parties, Infrastructure Ontario, TO2015, Markham, City and UofT 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, Infrastructure Ontario, TO2015, Markham, City or UofT without any right of contribution of any insurance carried by HMQ, Infrastructure Ontario, TO2015, Markham, City or UofT.

11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

11.1 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 have been obtained and are in full force and effect.

11.2 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. FAILURE TO MEET INSURANCE REQUIREMENTS

12.1 If Project Co fails to obtain or maintain the insurance required by this Schedule 13, fails to furnish to HMQ a certified copy of each policy required to be obtained by this Schedule 13 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.

12.2 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.

13. MODIFICATION OR CANCELLATION OF POLICIES

13.1 Except as noted in Appendix A to this Schedule 13, 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, TO2015, Markham, City, UofT, the Agent and Infrastructure Ontario. 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.

13.2 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, TO2015, Markham, City, UofT, the Agent and Infrastructure Ontario.

13.3 With respect to insurances described in Section 1.1 (a), (b) and (c) and Section 1.2 (d), 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, TO2015, Markham, City, UofT, Infrastructure Ontario, the Agent or any other Insured, but only to the extent that such breach is not known to these parties.

14. INSURERS

14.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 13 shall be issued by financially sound Insurers acceptable to HMQ and Agent, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.

14.2 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 Agent, acting reasonably, with respect to the insurances required by this Schedule 13.

15. POLICY TERMS AND CONDITIONS

15.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 13 shall be in form and substance satisfactory to HMQ, its insurance advisors and the Agent, acting reasonably.

15.2 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.

16. FAILURE TO COMPLY

16.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 13 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

17. PERFORMANCE SECURITY REQUIREMENTS

17.1 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 13 on the Financial Close Target Date, each in an amount equal to **[REDACTED]**% of the Cost of the Works under the Project Agreement. 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.

17.2 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.

17.3 For greater certainty, the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Financing or Cost of the Financing, and it is agreed that the Parties intend to benefit the Surety by this Section 17.3 and that the Surety may rely upon and enforce the provisions of this Section 17.3. Furthermore, the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Warranty Period, and instead, warranty obligations will be secured by the Warranty Letter of Credit or Warranty Letter of Credit Holdback and the Performance Guarantee of the Construction Guarantor.

18. INSURANCE AND BONDING TRUST AGREEMENT

18.1 All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion which, in each case, relate to Equipment purchased by HMQ, TO2015, Markham, City and UofT shall be payable solely to HMQ and shall not be payable to the Account Trustee or distributed pursuant to the Insurance and Bonding Trust Agreement.

**APPENDIX A TO SCHEDULE 13
INSURANCE REQUIREMENTS**

[REDACTED]

**APPENDIX B TO SCHEDULE 13
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 Construction Contract with [*Insert Project Co*] dated [*Insert Date*] for the Markham Pan Am Centre, Etobicoke Olympium and Pan Am Field Hockey Centre 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 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 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 Construction Contract, 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 Construction Contract (a "**Contractor Event of Default**"), the Obligee having performed the Obligee's obligations under the Construction Contract, the Surety shall promptly select and carry out one of the four following options:

1. remedy any default, or;
2. complete the Construction Contract in accordance with its terms and conditions, or;
3. obtain a bid or bids for submission to the Obligee for completing the 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 Construction Contract, less the Balance of the 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 Construction Work under the Construction Contract, but not exceeding the Bond Amount. The Balance of the Construction Contract Price is the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract; or

4. pay the Obligee the lesser of (1) the Bond Amount or (2) the Obligee's proposed cost to complete the Construction Contract in accordance with its terms and conditions less the Balance of the 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 Construction Contract, by the exercise by the Obligee of any of the rights or powers reserved to it under the 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 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 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 25.1 (a)(x) 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 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 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.
1. Capitalized terms used in this Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the Bond and the Construction Contract.
2. If there is an event of default by Contractor under the 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 Construction Contract the Balance of the Construction Contract Price.
3. All of the terms, conditions and provisions of the Bond are hereby incorporated herein by reference as if fully set forth herein.
4. No alteration or material change in the 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.
5. The Obligee, 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 Obligee(s) performance pursuant to one of the four numbered options in the Bond.

6. 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 Obligee Rider.
7. In the event of any ambiguity, conflict or inconsistency, the Bond and this Multiple Obligee Rider shall prevail over the Project Agreement and the other Project Documents.
8. 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

[REDACTED]

By

Signature

Name of person signing

[REDACTED]

By:

Signature

Name of person signing

[REDACTED]

By

Signature

Name of person signing

APPENDIX C TO SCHEDULE 13

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 Construction Contract with [*Insert Project Co*] dated [*Insert Date*] for the Markham Pan Am Centre, Etobicoke Olympium and Pan Am Field Hockey Centre 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 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 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 Construction Contract, 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 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 Construction Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the 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 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 Construction Contract.

2. The Principal and the Surety hereby jointly and severally agree with the Oblige, 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 Oblige 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 Oblige or by joining the Oblige 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 Oblige against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Oblige 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 Oblige 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 Oblige, 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 Oblige, 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 Oblige, 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 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 Construction Contract, including work performed under the guarantees provided in the 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 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 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 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 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 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 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

[REDACTED]

By:

Signature

Name of person signing

[REDACTED]

By:

Signature

Name of person signing

**SCHEDULE 14
DISPUTE RESOLUTION PROCEDURE**

1. AUTHORITY OF THE CONSULTANT

- 1.1** Subject to the limitation set out in Section 8.2(s) of the Project Agreement, differences between the Parties as to the interpretation, application or administration of the Project Agreement or any other disagreement between the Parties including any disagreement as to any decision, finding or determination by the Consultant (herein collectively called “disputes”) which are not resolved to the mutual satisfaction of the Parties in the first instance by findings of the Consultant subject to and as provided in Section 8.2 of the Project Agreement, shall be settled in accordance with the requirements of this Schedule 14.
- 1.2** If the matter in dispute is not resolved promptly, the Consultant will give such instructions as in the Consultant’s opinion are necessary for the proper performance of the Work. The Parties shall act immediately according to such instructions, subject to Section 1.3 of this Schedule 14, it being understood that by so doing neither Party will jeopardize any claim they may have. If it is subsequently determined that such instructions were in error or at variance with the Contract Documents, Project Co shall be entitled to payment for carrying out such instructions in accordance with the Change Order procedures pursuant to Schedule 11 of the Project Agreement – Change Procedure.
- 1.3** As time is of the essence, it is essential that performance of the Work continue notwithstanding any dispute. In the event the dispute is referred to an adjudicator pursuant to Section 2.4 of this Schedule 14, the Parties shall, in accordance with Section 2.4(f) of this Schedule 14 and notwithstanding Section 1.2 of this Schedule 14, comply with any decision of the adjudicator including the payment of any amounts the adjudicator determines are owing. For greater certainty the Parties will comply with the decision of the adjudicator notwithstanding any referral of the dispute to arbitration or to the courts in accordance with Section 2.5 of this Schedule 14, until a final determination of the matter is made by any arbitrator or a court, as the case may be.

2. NEGOTIATION, ADJUDICATION AND ARBITRATION

- 2.1** A Party shall give written notice of a dispute to the other Party, no later than 5 Business Days after the receipt of the Consultant’s decision, finding or determination in the case of a dispute as to a decision, finding or determination made by the Consultant, given under Section 8.2 of the Project Agreement. Such notice shall set forth particulars of the matters in dispute, the probable extent and value of the damage and the relevant provisions of the Contract Documents. Such notice shall be copied to Infrastructure Ontario at the address set out in Section 41.1 of the Project Agreement, for information purposes only. The other Party shall reply to such notice no later than 5 Business Days after it receives or is considered to have received it, setting out in such reply its grounds and other relevant provisions of the Contract Documents.

- 2.2** The Parties shall first make good faith efforts to promptly resolve their disputes by amicable negotiations conducted by the senior representatives of HMQ and Project Co at the Site. If, following good faith negotiations between them, resolution of a dispute has not been reached within 10 Business Days of the request for negotiations, then upon the written request of either Party, senior executive officers of each Party shall attempt to resolve the dispute. If the dispute is resolved, such resolution shall be evidenced by an instrument in writing.
- 2.3** If a dispute has not been resolved within 10 Business Days of a Party's written request for senior executive officer negotiation, then upon the written request of either Party, the dispute shall be submitted to adjudication in accordance with Section 2.4 of this Schedule 14. If the Parties do not agree to submit the dispute to adjudication within such 10 Business Day period, either Party may then refer the dispute to arbitration pursuant to Section 2.5 of this Schedule 14.
- 2.4** Adjudication shall be conducted in accordance with the following:
- (a) If the Parties are unable to agree upon an adjudicator within the prescribed time, then either Party may request that a judge of the Superior Court for the Province of Ontario appoint the adjudicator.
 - (b) The Parties may refer a dispute to the adjudicator by providing written notice of the intention to the adjudicator at least 3 Business Days prior to making the referral.
 - (c) Once a dispute has been referred to the adjudicator, the adjudicator is required to make a decision within 28 days of the referral, or such longer period as agreed to by the Parties after the dispute has been referred, and such decision shall be in writing.
 - (d) The adjudicator is required to act impartially in fulfilling his/her duties and the adjudicator may take whatever initiative he/she deems necessary in order to resolve the dispute, including requiring the Parties to submit whatever documents, statements of position or other information the adjudicator requires.
 - (e) The adjudicator may decide that any of the Parties to the dispute is liable to make a payment under the Project Agreement and when that payment is due.
 - (f) In the absence of any directions by the adjudicator relating to the time for performance of his/her decision, and notwithstanding any instruction received from the Consultant in accordance with Section 1 hereof, the Parties shall be required to comply with any decision of the Adjudicator immediately on delivery of the decision to the Parties in accordance with this Section 2.4.
 - (g) If requested by one or both of the Parties to the dispute, the adjudicator shall provide reasons for his/her decision.

- (h) The adjudicator shall be entitled to the payment of such reasonable amount as he/she may determine by way of fees and expenses reasonably incurred by him/her which the adjudicator may apportion between the Parties as he/she considers appropriate. Notwithstanding the foregoing, the Parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how payment shall be apportioned, such that if the adjudicator is unable to recover his/her fees and expenses from one Party, he/she may recover from the other.
- (i) The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his/her functions as adjudicator unless the act or omission is in bad faith.

2.5 By giving notice in writing to the other Party, at any time after receipt of the decision of the adjudicator, and subject to the Parties' obligation to comply with the adjudicator's decision in accordance with Section 1.3 of this Schedule 14, or if the parties do not agree to submit the dispute to adjudication within the timeframe set out in Section 2.3 hereof, either Party may (i) elect by written notice to the other Party, to refer the dispute to be finally resolved by arbitration under the latest edition of the Rules for Arbitration of Construction Disputes as provided in CCDC 40, or (ii) elect by written notice to the other Party (and regardless of whether the other Party has given a notice under clause (i) above electing to refer the dispute to be finally resolved by arbitration) 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, provided if the actual or potential total value or amount at issue in the dispute (as determined by adding all claims and counterclaims) is less than \$[REDACTED], taking into account recurrence over time if the dispute involves a recurring matter, the Party which has not referred the dispute to be resolved by litigation may elect, by written notice given to the other Party within 10 Business Days after receipt of the notice requiring that the dispute be resolved by litigation, to refer the dispute to be finally resolved by arbitration. Such notice of arbitration shall be copied to Infrastructure Ontario at the addresses set out in Section 41.1 of the Project Agreement, for information purposes only. Notwithstanding that a notice of arbitration has been delivered, if the actual or potential total value or amount at issue (as determined by adding all claims and counterclaims) is \$[REDACTED] or more, taking into account recurrence over time if the dispute involves a recurring matter, then either Party may elect, by written notice to the other Party, 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.

2.6 Except as otherwise provided in the Contract Documents, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other individual or entity who is not a Party to the Project Agreement unless:

- (a) the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already Parties to the arbitration;

- (b) such other individual or entity is substantially involved in a question of law or fact which is common to those who are already Parties to the arbitration and which will arise in such proceedings; and
- (c) the written consent of the other individual or entity sought to be included and of HMQ and Project Co has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any Party not specifically identified in such consent.

Notwithstanding the preceding paragraph, if a claim, dispute or other matter in question between HMQ and Project Co involves the work of a Subcontractor or Supplier either HMQ or Project Co may join such entity as a Party to the arbitration between HMQ and Project Co hereunder. Project Co shall include in all subcontracts a specific provision whereby the Subcontractor consents to being joined in an arbitration between HMQ and Project Co involving the Work of such Subcontractor, in accordance with this Schedule 14, including, this Section 2.6. Nothing in this paragraph or in the provision of such Subcontract consenting to joinder shall create any claim, right or cause of action in favour of the Subcontractor or the Supplier against HMQ.

2.7 Project Co agrees that any claims made by it against any other contractors or HMQ, based (in whole or in part) as a result of any acts or omissions of other contractor(s) shall, in the first instance, be submitted to HMQ. HMQ shall then, with the assistance of Project Co, present the claim to the other contractor(s) for resolution under the terms of the applicable contract(s). Project Co has the full responsibility for the preparation of such claims and Project Co shall bear the complete expense of preparing and presenting its claim, including legal fees. Project Co agrees that it will not pursue or will stay any legal proceeding relating to the claim(s) with the exception of initiating legal proceedings to assert any statutory right to a lien under the *Construction Lien Act* (Ontario) for a reasonable period of time to allow HMQ to reach a resolution acceptable to Project Co under the terms of the applicable contract. If such resolution has not been achieved within a reasonable period of time, Project Co may then proceed with any legal proceeding against the other contractor of HMQ. Project Co shall proceed diligently with its Work under the Project Agreement pending resolution of any such claim or dispute when directed to do so by HMQ.

3. RETENTION OF RIGHTS

3.1 It is agreed that no act by either Party shall be construed as a renunciation or waiver of any rights or recourses, provided the Party has given the notices required under this Schedule 14 and has carried out the instructions as provided in paragraph 2.2 of this Schedule 14.

3.2 Nothing in this Schedule 14 shall be construed in any way to limit a Party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the Site and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that Party may have under paragraph 2.5 to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

4. INDEMNITY RE AMOUNTS DUE

4.1 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 pursuant to Article 1 or Sections 2.1 or 2.2 of this Schedule 14 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 in Section 32.2(d) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayments 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 31.2(d) 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.

5. NOTICES

5.1 The Parties agree to copy the Consultant on all notices given hereunder.

SCHEDULE 15

[INTENTIONALLY DELETED]

**SCHEDULE 16
RISK ASSESSMENT GUIDELINES**

The following chart illustrates the expected treatment of a number of possible changes in the Work:

RISK ASSESSMENT GUIDELINE:

A = Project Co’s Design Contingency (PDC)

B = Unforeseen (HMQ’s cost)

D = Core design functionality (HMQ’s cost)

C = Scope Change (HMQ’s cost)

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
1. At main level, add 3 fire dampers. Fire rated partition shown on drawings.	✓			
2. 2-hour fire separation required for stairwell. One wall does not show proper Fire Resistance Rating (rated door, hardware, fire damper also required).	✓			
3. Add starter for mechanical systems not identified in drawings or specification documentation..	✓			
4. Cost for preparation of interference drawings.	✓			
5. Structural design insufficient to accommodate loading requirements of the specified equipment in penthouse.				✓
6. Provide 4 sinks complete with taps, wastes and fittings.			✓	
7. Furred out space in existing construction not sufficient for ducts shown, existing conditions did not conform to the Consultant’s assumptions.		✓		
8. Final equipment selection requires modifications to services/space outside the tolerances specified.			✓	
9. Reinforcing to install wall mounted equipment not shown, but is required by manufacturer.	✓			
10. As per industry standards, maintain or reroute existing services running through existing spaces.	✓			
11. Testing and removal of abandoned fire alarm system in existing facility, not identified or readily inferable on the documents.		✓		
12. Existing duct riser is removed and resulting opening needs to be firestopped.	✓			
13. Existing duct to remain in existing building, firestopping around floor opening to be upgraded to meet <i>Building Code</i>		✓		

RISK ASSESSMENT GUIDELINE:

A = Project Co's Design Contingency (PDC)

B = Unforeseen (HMQ's cost)

D = Core design functionality (HMQ's cost)

C = Scope Change (HMQ's cost)

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
requirements.				
14. Upgrade fire separation of existing stairwell: building inspector rules that existing conditions do not meet <i>Building Code</i> with extensive renovations proposed.		✓		
15. Emergency voice communications speakers volume meets specification, but not sufficient when tested by building inspector. Relocation or additional speakers required.		✓		
16. Sprinkler layout does not comply with code requirements. (note: Project Co/Contractor provides sprinkler layout).	✓			
17. Re: exit requirements, building inspector rules that travel distance is exceeded (different method of measuring) Additional measures to be implemented.		✓		
18. Building inspector and Fire Marshall have different interpretations of whether standpipe enclosure to be fire rated. Additional cost incurred.		✓		
19. Bulkhead impedes visibility of exit sign. Modifications to exit sign placement required.	✓			
20. Headroom does not meet <i>Building Code</i> or design requirements due to lack of design coordination and Contractor, Subcontractor coordination.	✓			
21. Headroom does not meet <i>Building Code</i> or design requirements due to initial design fundamentally unable to meet headroom requirements.				✓
22. Barrier free washrooms do not achieve turning radius due to Project Co-initiated change to toilet size.	✓			
23. Barrier free washrooms do not achieve turning radius due to design/construction coordination issues.	✓			
24. Barrier free washrooms do not achieve turning radius due to initial design fundamentally unable to provide required turning radius.				✓
25. Providing additional electrical connections (not on the drawings) to supply fans (on the drawings) required additional capacity in the electrical panel.	✓			

(a) Electrical connections: PDC

RISK ASSESSMENT GUIDELINE:

A = Project Co's Design Contingency (PDC)

B = Unforeseen (HMQ's cost)

D = Core design functionality (HMQ's cost)

C = Scope Change (HMQ's cost)

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
(b) Capacity of panel: HMQ				
26. Interference drawings and on-site conditions require additional lengths of ductwork/insulation. ✓				
27. Floor layout requires a total of 20,000 cfm air supply but unit is sized at 10,000 cfm. ✓				
28. Drains required for refrigerator shown on equipment schedule but not on drawings. Requires larger main drain. ✓				
(a) Drains: PDC				
(b) Main drain size increase: HMQ				
29. New structural openings required (not shown on Drawings) in existing or new construction due to new duct risers (shown on Drawings). ✓				
30. Infilling of existing structural openings found after demolition (not on existing documentation nor properly inferable, readily apparent or readily discoverable from such existing documentation) ✓				
31. Shower specified would not fit through door in existing facility. ✓				
32. Shower specified would not fit through door in new facility. (Project Co/Contractor can install prior to installing door). ✓				
33. Sump pit shown on Drawings but sump pit cover missing from specification. ✓				
34. Millwork schedule for facility shows nothing, but plans show millwork for clothing storage in facility. ✓				
35. Fan shown on mechanical drawing but not connected on electrical drawings. Connection of fan to closest Motor Control Centre. ✓				
36. Same as 35 above but the feeder to Motor Control Centre needs to be modified to suit additional increase in Load. ✓				
37. Five fire shutters shown, one additional fire shutter required on 6th opening adjacent to other five. ✓				

RISK ASSESSMENT GUIDELINE:

A = Project Co's Design Contingency (PDC)

B = Unforeseen (HMQ's cost)

D = Core design functionality (HMQ's cost)

C = Scope Change (HMQ's cost)

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
38. Mechanical specifications heat wheels as equipment in the Projects, but they do not appear on the drawings so quantity and location not known.				✓

Note 1: Project Co shall be responsible to meet all codes, regulations, bylaws and standards to the same extent as per industry standard on similar projects in Ontario.

Note 2: These examples are illustrative examples of the types of Design Issues which may be encountered, and the findings the Consultant might reasonably make as to whether the issues are properly characterized as Project Co Design issues. These examples are not intended to be definitive or complete.

Note 3: It is the intent that the Project Co Parties should also be aware of the Project Co Design Contingency, as defined in the Project Agreement.

SCHEDULE 17
FORM OF INSURANCE AND BONDING TRUST AGREEMENT

THIS AGREEMENT is made as of the ____ day of September, 2012

AMONG:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended.

(“**HMQ**”)

AND:

BANK OF MONTREAL, acting as agent for and on behalf of Lender

(the “**Agent**”)

AND:

2338301 ONTARIO INC.

(“**Project Co**”)

AND:

[●], 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, Agent and Project Co have entered into the Lender’s Direct Agreement.
- C. HMQ, 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 and Bonding 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 and Bonding Trust Agreement.
- D. HMQ, 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 and Bonding 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 and Bonding 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 and Bonding Trust Agreement, unless the context otherwise requires:

- (a) “**Account Trustee**” has the meaning given in the introductory paragraph of this Insurance and Bonding Trust Agreement.
- (b) “**Appointed Representative**” has the meaning given in the Lender’s Direct Agreement.
- (c) “**Bank**” means Bank of Montreal located at 100 King Street West, Toronto, Ontario.
- (d) “**Bonds**” means has the meaning given in the Project Agreement.
- (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 and Bonding Trust Agreement.
- (g) “**Change of Authorization Notice**” has the meaning given in Section 9(b)(ii) of this Insurance and Bonding Trust Agreement.
- (h) “**Default Notice**” means a written notice given by 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 Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (j) “**Facility**” has the meaning given in the Project Agreement.
- (k) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (l) “**Insurance and Bonding Trust Agreement**” means this insurance and bonding trust agreement.
- (m) “**Insurance Policies**” has the meaning given in Section 4 of this Insurance and Bonding Trust Agreement.
- (n) “**Insurance Proceeds**” has the meaning given in Section 6(a) of this Insurance and Bonding Trust Agreement.

- (o) **“Insurance Trust Account”** means account [REDACTED] at transit [REDACTED]at [REDACTED].
- (p) **“Lender”** has the meaning given in the Project Agreement.
- (q) **“Agent”** has the meaning given in the introductory paragraph of this Insurance and Bonding Trust Agreement.
- (r) **“Lender’s Direct Agreement”** means the Lender’s Direct Agreement made on or about the date hereof between HMQ, Project Co and Agent.
- (s) **“Lending Agreements”** has the meaning given in the Project Agreement.
- (t) **“Multiple Obligee Rider(s)”** means the multiple obligee rider(s) applicable to the Bonds pursuant to which Project Co, HMQ and Agent are multiple obligees under the Bonds.
- (u) **“Multiple Obligees”** means a multiple obligee under the applicable Bond.
- (v) **“Notice Period”** has the meaning given in the Lender’s Direct Agreement.
- (w) **“Order”** has the meaning given in Section 8(k) of this Insurance and Bonding Trust Agreement.
- (x) **“Party”** means any of HMQ, Project Co, Agent or the Account Trustee, and **“Parties”** means all of HMQ, Project Co, 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 and Bonding 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 Lender’s Direct Agreement.
- (dd) **“Replacement Project Co”** has the meaning given in the Lender’s Direct Agreement.
- (ee) **“Step-In Notice”** has the meaning given in the Lender’s Direct Agreement.
- (ff) **“Step-In Period”** has the meaning given in the Lender’s Direct Agreement.
- (gg) **“Trust Property”** means all of the property held in trust by the Account Trustee pursuant to this Insurance and Bonding 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 and Bonding Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance and Bonding Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance and Bonding Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance and Bonding 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 and Bonding Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance and Bonding 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 and Bonding 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 and Bonding 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 and Bonding 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 and Bonding 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 and Bonding 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 and Bonding 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 and Bonding 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 Agent and Lender, 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 and Bonding Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance and Bonding Trust Agreement, Agent, HMQ, and Project Co agree that (x) if Project Co or Agent receives the original copy of the Bonds, the Bonds will be enforced for the purpose of completion of the Projects, 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 Work in respect of which such Insurance Proceeds have been paid;
 - (ii) the completion of the Projects; 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 or soft costs may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Work.

- (d) Notwithstanding anything in this Insurance Trust and Bonding 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 3(c)(i) or (ii) of this Insurance Trust and Bonding 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 in accordance with the provisions of this Insurance and Bonding Trust Agreement.

5. BONDS

- (a) If the Account Trustee and HMQ have received a Default Notice, and if Agent presents to the Account Trustee (and the other parties to this Insurance and Bonding Trust Agreement) a declaration that it or any person 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 Agent's right to receive the original copy of the Bonds, the Account Trustee shall provide the original copy of the Bonds to 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 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, 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 and Bonding 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) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, 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 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 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 all other insurance, to 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) All losses under all risks course of construction (builders' risk) including boiler and machinery insurance carried by Project Co prior to Substantial Completion which is related to equipment purchased by HMQ, if any, shall be payable solely to HMQ and shall not be payable to the Account Trustee or distributed pursuant to the Insurance and Bonding Trust Agreement.
 - (c) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 6(a) have been made, including 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 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.

- (d) Each of Project Co, 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 and Bonding Trust Agreement.
- (e) 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 Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance and Bonding Trust Agreement.

7. ACCOUNT AGREEMENT

The Account Trustee hereby agrees to promptly provide to 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 Agent may from time to time request in writing.

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 and Bonding Trust Agreement. The Account Trustee shall carry out all written directions given by Agent, HMQ or Project Co, as applicable, in accordance with this Insurance and Bonding Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance and Bonding 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 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 and Bonding 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 and Bonding Trust Agreement to Agent, Lender, 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 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 and Bonding 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 and Bonding 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 Agent on behalf of Lender 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 and Bonding 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 and Bonding 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 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 Agent, Lender or HMQ for any claim for indemnification which may arise under this Insurance and Bonding 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 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 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 and Bonding Trust Agreement by 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 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 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 Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance and Bonding Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from 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 and Bonding Trust

Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from HMQ.

- (o) Each of 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 Agent or HMQ, as applicable. The Account Trustee shall refuse to act upon any instruction given by Agent or HMQ which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by 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, and act upon, on 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 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 7(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. AGENT AND HMQ RIGHTS TO DIRECT

- (a) Until the first to occur of:
 - (i) the expiry of the Notice Period under the Lender's Direct Agreement where no Step-In Notice has been delivered thereunder;
 - (ii) the expiry of the Step-In Period under the Lender's Direct Agreement where none of the following has occurred:

- (A) an assignment to a Replacement Project Co;
- (B) a Replacement Project Agreement has been entered into; or
- (C) the Appointed Representative has cured the Project Co Event of Default,

(each, a “**Change of Authorization Event**”), Agent shall, subject to Sections 3 and 4 of this Insurance and Bonding Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the original copy of the Bonds, the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

- (b) Upon the occurrence of a Change of Authorization Event:
 - (i) Agent shall cease to be entitled, and HMQ shall thenceforth be entitled, to direct the Account Trustee with respect to the original copy of the Bonds, the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
 - (ii) 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 Bonds, the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

10. TERMINATION

- (a) Subject to the provisions of Section 10(b), this Insurance and Bonding 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 Agent and Lender under the Lending Agreements have been paid and performed in full and Lender 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 and Bonding Trust Agreement at any time upon 60 days prior written notice to the other parties hereto, provided that no termination of this Insurance and Bonding Trust Agreement by the Account Trustee shall be effective until such time as Agent, HMQ, and Project Co have entered into a replacement Insurance and Bonding Trust Agreement on the same terms and conditions as this Insurance and Bonding Trust Agreement with a replacement account trustee satisfactory to Agent, Lender and HMQ.

- (c) Any Party to this Insurance and Bonding 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 and Bonding 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 and Bonding Trust Agreement.

14. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Insurance and Bonding 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 and Bonding 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 and Bonding Trust Agreement, of principal and agent.

16. ENTIRE AGREEMENT

Except where provided otherwise in this Insurance and Bonding Trust Agreement, this Insurance and Bonding 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 and Bonding Trust Agreement.

17. SEVERABILITY

Each provision of this Insurance and Bonding Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance and Bonding 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 and Bonding Trust Agreement. If any such provision of this Insurance and Bonding 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 and Bonding Trust Agreement as near as possible to its original intent and effect.

18. ENUREMENT

This Insurance and Bonding 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 and Bonding 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 and

Bonding Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

- (c) Nothing in this Insurance and Bonding 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 and Bonding Trust Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Insurance and Bonding 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 declare satisfaite.

22. COUNTERPARTS

This Insurance and Bonding 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 and Bonding Trust Agreement which was so faxed.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Insurance and Bonding 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*, S.O. 2011, c.9, Schedule 32, as amended.

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

BANK OF MONTREAL, as Agent

Per:

Name: [REDACTED]

Title: [REDACTED]

Per:

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the Bank.

2338301 ONTARIO INC.

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[Account Trustee]

Per:

Name: **[REDACTED]**
Title: **[REDACTED]**

Per:

Name: **[REDACTED]**
Title: **[REDACTED]**

I/We have authority to bind the corporation.

SCHEDULE 18

PAYMENTS AND HOLDBACKS

1. APPLICATIONS FOR PAYMENT

- 1.1 The provisions of Sections 1 and 2 apply to progress payments on account of Additional HMQ Payments and to progress payments to be made by HMQ in respect of the period following the Substantial Completion Date, including the Certified Cost to Complete.
- 1.2 Applications for payment on account may be made monthly as the Work progress.
- 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:
- .1 with respect to the Certified Cost to Complete, based on the value, proportionate to the Cost of the Work, of the Work performed, including Products delivered to the Sites at that date, and
 - .2 with respect to Change Orders or Change Directives, the payment of which HMQ is responsible for and which are included within Additional HMQ Payments, the value of such additional Work performed, including Products delivered to the Sites at that date.
- 1.4 Claims for Products delivered to a Site but not yet incorporated into the Work shall be supported by such evidence as the Consultant may reasonably require to establish the value and delivery of the Products.
- 1.5 Project Co shall submit to HMQ and the Consultant a Workplace Safety & Insurance Board Certificate of Clearance, an updated Construction Schedule in accordance with Section 12.1 of the Project Agreement and an updated cash flow with each application for payment.

2. PROGRESS PAYMENTS

- 2.1 The Consultant 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 18, a certificate addressed to HMQ of the progress of the Work. The Consultant 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 Consultant determines to be properly due. If the Consultant requires amendments to the application, the Consultant 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, or progress payments for the period following the Substantial Completion Date in respect of the Certified Cost to Complete, shall be made

no later than 10 Business Days after the date of a certificate for payment issued by the Consultant.

- 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 Work 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 18 will be provided to Lender's Consultant.
- 2.4** Notwithstanding the time periods provided regarding the approval and certification of payment by the Consultant in Section 2.1 of this Schedule 18, and for payment in Section 2.2 of this Schedule 18, 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 18 – Payments and Holdbacks, in the event a claim for a construction lien is registered against a Site arising from the performance of the Work, 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 Work, 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 *Construction Lien Act* (Ontario), 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 Work 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 Work.
- 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 Projects.

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 Legislative Holdback, Project Co shall submit a Statutory Declaration on CCDC Form 9A.

4. PAYMENT OF LEGISLATIVE HOLDBACK

4.1 After the issuance by the Consultant of the certificate of substantial performance of the Work under Section 16.1(c) of the Project Agreement and the certificate of Substantial Completion of the Work under Section 16.1(d) 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 Legislative Holdback including a declaration that no written notices of lien arising from the performance of the Work have been received by it;
- .3 submit a Statutory Declaration CCDC 9A; and
- .4 submit an original Workplace Safety & Insurance Board Certificate of Clearance.

4.2 After the later of (i) the receipt of the documents set out in Section 4.1 of this Schedule 18, 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 Consultant shall issue a certificate for payment of the Legislative Holdback amount.

4.3 Prior to the date of the release of the Legislative Holdback, Project Co shall have removed from the Sites 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 18 and the removal of claims for lien preserved or perfected pursuant to the *Construction Lien Act* (Ontario) arising from the performance of the Work, 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 18.

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. FINAL PAYMENT

- 6.1** When Project Co considers that the Work is completed, Project Co shall submit an application for final payment. Project Co's application for final payment and release of finishing construction lien Legislative Holdback, shall include the following documentation:
- .1 Project Co's written request for release of Legislative Holdback, including a declaration that no written notices of lien arising from the performance of the Work have been received by it;
 - .2 Project Co's Statutory Declaration CCDC 9A;
 - .3 Project Co's Workplace Safety and Insurance Board Certificate of Clearance; and
 - .4 a written statement that the Work has been performed to the requirements of the Contract Documents, itemizing approved changes in the Work, the Consultant's written instructions, and modifications required by Governmental Authorities.
- 6.2** The Consultant will, no later than 10 days after the receipt of an application from Project Co for final payment, complete its review of the Work to verify the validity of the application, and no later than the 3rd Business Day after completing the review, will notify Project Co whether the application is valid or give reasons why it is not valid.
- 6.3** When the Consultant finds Project Co's application for final payment valid, the Consultant will issue a final certificate for payment.
- 6.4** Subject to the other requirements of this Project Agreement, the unpaid balance of the Guaranteed Price shall become payable to Project Co 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 issuance of the Consultant's final certificate for payment,

subject to HMQ's right under the Project Agreement to withhold payment from the unpaid balance of the Guaranteed Price, including for any amounts required pursuant to Section 6 of this Schedule 18, and any sums required to satisfy any lien or trust claims arising from the Work.

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 Work which has been performed, as certified by the Consultant, shall not be withheld or delayed by HMQ on account thereof, but HMQ may withhold, until the remaining portion of the Work is finished, only such amount that the Consultant determines is sufficient and reasonable to cover the cost of performing such remaining Work.

8. NON-CONFORMING WORKS

- 8.1** No payment by HMQ under the Project Agreement nor partial or entire use or occupancy of the Work by HMQ shall constitute an acceptance of any portion of the Work or Products which are not in accordance with the requirements of the Contract Documents.

SCHEDULE 19

LIST OF PROJECT CO PARTIES

Type of Trade	Name of Project Co Party
[REDACTED]	[REDACTED]

SCHEDULE 20

FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT

The following is the form of the Assignable Subcontract Agreement referred to in Section 11.8(d) of the Project Agreement:

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

2338301 ONTARIO INC.

(hereinafter called “**Project Co**”)

OF THE FIRST PART,

- and -

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**

(hereinafter called “**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,
S.O. 2011, c.9, Schedule 32, as amended.

(hereinafter called “**HMQ**”)

OF THE FOURTH 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 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 Projects as defined in the Project Agreement;

AND WHEREAS Project Co and Contractor entered into a construction contract dated the ____ day of _____, 2012 (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 Construction Work under the Construction Contract, Contractor and Subcontractor entered into a subcontract dated the ____ day of _____, 2012 (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 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 _____ given by Contractor in favour of HMQ (the “**Guarantee**”);

AND WHEREAS under the Project Agreement, Project Co has agreed to cause 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 Contractor under the Guarantee (the “**Obligations**”), 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 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 Lender’s Direct Agreement dated the ____ day of _____ between HMQ, Bank of Montreal in its capacity as administrative agent, for and on behalf of the lenders to Project Co (the “**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 subsections 3(c), 3(d) or 3(e) below, 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 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 Agent prompt written notice of any default by the 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 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 Agent, and (ii) the date that the 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 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 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 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 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 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 Work 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, Agent or 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 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 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 Contractor in the Subcontract;

- (d) agrees that the Assignee may, at any time after the giving of the Assignment Notice in subsection 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 Projects (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 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 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 Contractor in the Subcontract;
 - (e) agrees that, notwithstanding subsections 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 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 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 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 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 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 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 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 Agreement 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 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 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 Agent has made a proper payment to Project Co or the Contractor on account of Construction Work performed by the Subcontractor and the 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 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 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 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 Agent as security for the obligations of Project Co and/or Contractor to Agent and that Agent may, upon written notification being given to the Subcontractor by Agent, that Agent is entitled to do so, exercise all of the rights of Contractor under the Subcontract to the same extent as if Agent had been originally named in the place of Contractor in the Subcontract, provided the Agent, except as limited herein, agrees to assume all of the obligations of the 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 Agent in curing or attempting to cure any default by Contractor under the Subcontract, 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 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 and Contractor:

Project Co: [REDACTED]

Fax No.: [REDACTED]
 Attn.: [REDACTED]

Contractor: [REDACTED]

Fax No.: [REDACTED]
 Attn.: [REDACTED]

in the case of the Subcontractor:

[•]

Attention:
Facsimile No. [•] [•]

If to HMQ:

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

Attention: [REDACTED]
Fax: [REDACTED]

With a copy to:

Attention: [REDACTED]
Fax: [REDACTED]

with a copy to Agent:

Bank of Montreal
[REDACTED]

Attention: [REDACTED]
Facsimile No.: [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.

[SIGNATURE 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.

2338301 ONTARIO INC.

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

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

I/We have authority to bind the corporation

BONDFIELD CONSTRUCTION COMPANY LIMITED

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

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

I/We have authority to bind the corporation

[SUBCONTRACTOR]

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

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

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*, S.O. 2011, c.9, Schedule 32, as amended.

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

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

I/We have authority to bind the corporation

APPENDIX A

FORM OF ASSUMPTION AGREEMENT

_____, 20__

[Subcontractor]

Re. Assignable Subcontract Agreement dated _____, 20__ between 2338301 Ontario Inc., **[Name of Subcontractor]** and Her Majesty the Queen in Right of Ontario.

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 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 21 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 21.

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 9.3 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 Markham, 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 all Applicable Law including the *Public Transportation and Highway Improvement Act* (Ontario) and 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.

SCHEDULE 22
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*, S.O. 2011, c.9, Schedule 32, as amended.

(“**HMQ**”)

and

BONDFIELD CONSTRUCTION COMPANY LIMITED, a corporation incorporated under the laws of the Province of Ontario.

(“**Construction Guarantor**”)

WHEREAS:

- A. HMQ and 2338301 Ontario Inc. (“**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 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 “Construction Work” shall include the Project Co Representations and Warranties set out in Section 7.1(a) of the Project Agreement, except subsection 7.1(a)(xxii) of the Project Agreement, which subsection shall remain excluded from the definition of “Construction Work”, and shall include section 25.1(a)(iii) of the Project Agreement, and provided that, for the purposes only of this Guarantee:
 - (i) in subsection 7.1(a)(ix) 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 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 6.4(a) or with respect to Financing or any provision other than the 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 26.1(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 the 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 25.1(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 Lender 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 Work in the manner provided in the Project Agreement;
 - (x) the assignment by HMQ in accordance with the provisions of Section 38.2 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 13 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 jurisdiction of its organization, is in good standing with the Ministry of Government Services of Ontario 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 Implementing Agreements 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 Implementing Agreements 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 Implementing Agreements 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 Implementing Agreements 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 Implementing Agreements (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 Implementing Agreements 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 a wholly owned subsidiary of 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 Implementing Agreements 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]**
Attn.: **[REDACTED]**

If to HMQ:

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

Fax No.: **[REDACTED]**
Attention: **[REDACTED]**

With a copy to:

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 Implementing Agreements, 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, including the Request for Proposals.

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.
- (c) Nothing in this Guarantee affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

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 Implementing Agreements.

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.

[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, S.O. 2011, c.9, Schedule 32, as amended.*

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

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

I/We have authority to bind the corporation

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**

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

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

I/We have authority to bind the corporation

**SCHEDULE 23
FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT
FOR CONSTRUCTION CONTRACT**

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

2338301 ONTARIO INC.

(hereinafter called “**Project Co**”)

OF THE FIRST PART,

- and -

BONDFIELD CONSTRUCTION COMPANY LIMITED, a corporation incorporated under the laws of Ontario

(hereinafter called “**Contractor**”)

OF THE SECOND PART,

- and -

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended.

(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 Projects as defined in the Project Agreement;

AND WHEREAS Project Co and the Contractor entered into a 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 “**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 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 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 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 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 Construction Contract and to deal with, and be obligated to, Contractor in respect of the 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. 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 Construction Contract;
 - (b) agrees not to:
 - (i) terminate or agree to the termination of all or any part of the 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 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 Construction Contract;

- (iv) sell, assign, transfer, charge, subcontract, sub participate or otherwise dispose of any interest in the Construction Contract except as may be permitted under Section 38.1 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 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 Contractor shall not be entitled to exercise any right to terminate the Construction Contract that Contractor may have under the 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 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 Contractor with respect to the subject matter thereof and that Contractor is in compliance with and has performed its obligations contained in the Construction Contract which are required to be complied with and/or performed to date and that, as far as Contractor is aware, Project Co is in compliance with and has performed its obligations contained in the Construction Contract which are required to be complied with and/or performed to date;
- (e) agrees that, immediately upon receipt by Contractor of written notice (the "**Assignment Notice**") from HMQ that the Construction Contract is being assigned to HMQ, Lender (as hereinafter defined), or Lender's 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 Construction Contract, without Contractor's consent and without the payment of any penalty or other amount, and Contractor shall deal with the Assignee as if it had been originally named in place of Project Co in the 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 Contractor of a further assignment of the 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 Construction Contract without Contractor's consent and without the payment of any penalty or other amount and Contractor shall deal with the Project Co

Assignee as if it had been originally named in place of Project Co in the Construction Contract;

- (g) agrees that, notwithstanding subsections 3(e) and (f) herein contained, HMQ may give written notice (the “**Direct Assignment Notice**”) to Contractor of the assignment of the 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 Construction Contract without Contractor’s consent and without the payment of any penalty or other amount and the Contractor shall deal with the Project Co Assignee as if it had been originally named in place of Project Co in the 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 Lender 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 Construction Contract, unless and until HMQ has given the Assignment Notice to Contractor, the giving of which Assignment Notice the 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 Construction Contract, provided that from and after the date of the Successive Assignment Notice to Contractor, the Assignee shall have no liability whatsoever to the Contractor for any default or for any damages arising in respect of a matter or matters occurring under the Construction Contract from and after that date, and provided further, that if HMQ gives the Direct Assignment Notice, HMQ or Lender shall have no liability whatsoever to the Contractor for any default or for any damages arising in respect of a matter or matters occurring under the Construction Contract at any time.
5. Contractor acknowledges and agrees that all of the right, title and interest of Project Co in the Construction Contract has been, or may be, assigned by Project Co to the Bank of Montreal in its capacity as administrative agent, for and on behalf of the lenders to Project Co and such additional lender(s) as may participate from time to time (collectively, the “**Agent**”) as security for the obligations of Project Co to Agent (the “**Lender Assignment**”). The rights of HMQ hereunder to take or direct an assignment of the Construction Contract are expressly subject to the rights of the Agent under the Lender’s Direct Agreement (as defined in the Project Agreement) to exercise its rights under the Lender Assignment prior to the exercise by HMQ of its rights under this Agreement to take or direct an assignment of the Construction Contract, and if there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Lender’s Direct Agreement with respect to the exercise of rights under the Assignment herein, or the exercise of rights under the Lender Assignment, the

provisions of the Lender's 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 Agent in curing or attempting to cure any default by Project Co under the 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 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 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. Contractor acknowledges receipt of the Lender's 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]**
Facsimile No. **[REDACTED]**

- (b) in the case of HMQ:

Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario, M5G 2C8
Attention: **[REDACTED]**
Facsimile No. **[REDACTED]**

With a copy to:

Attention: **[REDACTED]**
Facsimile No. **[REDACTED]**

with a copy to Agent:

Bank of Montreal
[REDACTED]

Attention: **[REDACTED]**
Facsimile No.: **[REDACTED]**

(c) in the case of the Contractor:

[REDACTED]

Attention: **[REDACTED]**

Facsimile No.: **[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. 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.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the parties have executed this Assignable Subcontract Agreement for Construction Contract as of the date first above written.

2338301 ONTARIO INC.

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

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

I/We have authority to bind the corporation

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

Execution Version

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended.

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

APPENDIX A

[Attach Lender's Direct Agreement (Schedule 5) to execution copy of this Agreement.]

**SCHEDULE 24
INTENTIONALLY DELETED**

**SCHEDULE 25
LEGAL DESCRIPTION OF SITES**

Markham Pan Am Centre

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Town of Markham, in the Regional Municipality of York, being composed of Part of the East Half of Lot 8 and Part of Lot 9, Concession 5, designated as Parts 2, 4, 10 and 14, Plan 65R-33475 and Parts 1 and 2, Plan 65R-33570; Markham
Being composed of PINS 02988-0077, 02988-0078 and 02988-0423

Etobicoke Olympium

FIRSTLY: Part of PIN 07434- 0544 (LT)

Part of Lot 4 Expropriation Plan MX50, Part of Lot B on River Etobicoke,
Save & Except Parts 1 to 7 on reference Plan 66R-17099, (being Leasehold PIN 07434-0543(LT) City of Toronto (formerly Etobicoke)

SECONDLY: Part of PIN 07434- 0520 (LT)

Part Lots B and C, Concession River Etobicoke, as in EB335984,
Parts 4, 5 & 6, Expropriation Plan 7604, Etobicoke
City of Toronto (formerly Etobicoke)

Land Titles Division of the Toronto Registry Office (No.66)

Pan Am Field Hockey Centre

Part of Park Lot 13 Concession 1 from the Bay, City of Toronto, designated as Part 1 on [draft plan dated January 30, 2012 prepared by David Comery OLS] being part of PIN 21198-0050.

SCHEDULE 26

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 Markham Pan Am Centre, Etobicoke Olympium, and Pan Am Field Hockey Centre

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 [•] (\$[•]).[NTD: insert amount equal to [REDACTED]% of the Cost of the Works.]

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 27

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 Markham Pan Am Centre, Etobicoke Olympium, and Field Hockey Centre

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: