

**APPENDIX 2A**  
**INDEPENDENT CERTIFIER AGREEMENT**

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**APPENDIX 2A**

**INDEPENDENT CERTIFIER AGREEMENT**

**THIS AGREEMENT** is made as of the 13 day of June, 2011

**AMONG:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, AS  
REPRESENTED BY THE MINISTER OF LABOUR, CITIZENS' SERVICES AND OPEN GOVERNMENT**

(the "**Authority**")

**AND:**

**BROOKFIELD INFRASTRUCTURE PARTNERSHIPS SURREY**

(the "**Project Co**")

**AND:**

**ALTUS GROUP LIMITED**, a corporation incorporated under the laws  
of Ontario

(the "**Independent Certifier**")

**WHEREAS:**

- A. the Authority and Project Co have entered into the Project Agreement;
- B. the Authority and Project Co wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement; and
- C. the Authority, Project Co and the Independent Certifier wish to enter into this Agreement (the "**IC Agreement**") in order to record the terms by which the Independent Certifier will perform such services.

**NOW THEREFORE** in consideration of the mutual promises and agreements of the Authority, Project Co and the Independent Certifier herein expressed and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Authority, Project Co and the Independent Certifier covenant and agree as follows:

## 1. DEFINITIONS

### 1.1 Definitions

In this IC Agreement including the recitals and Schedules, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this IC Agreement) will have meanings given to them in the Project Agreement and the following terms will have the following meanings:

- (a) **"Fee"** means the fees payable by the PA Parties to the Independent Certifier for the Functions, as such fees are specified and made payable in Schedule 2 [Fee], but excluding any fees, expenses or other compensation payable to the Independent Certifier in his or her role as Lenders' Technical Advisor;
- (b) **"Functions"** means:
  - (1) all of the functions and obligations conferred on the Independent Certifier under the Project Agreement;
  - (2) all of the functions and obligations conferred on the Independent Certifier under this IC Agreement, including the functions described in Schedule 1 [Functions] to this IC Agreement; and
  - (3) all other things or tasks which the Independent Certifier is required to do to comply with its obligations under this IC Agreement;
- (c) **"Functions Variation"** means any change to the Functions;
- (d) **"Intellectual Property"** means any or all of the following and all rights, arising out of or associated therewith:
  - (1) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
  - (2) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, confidential information, trade or business names, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
  - (3) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
  - (4) industrial designs, integrated circuit topography rights and any registrations and applications therefor throughout the world;
  - (5) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
  - (6) data bases and data collections and all rights therein throughout the world;

- (7) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (8) any similar or equivalent rights to any of the foregoing anywhere in the world;
- (e) **"PA Parties"** means, collectively, the Authority and Project Co;
- (f) **"Project Agreement"** means that certain agreement entitled "Project Agreement" and made between the Authority and Project Co as of the 13<sup>th</sup> day of June, 2011 with respect to the design, construction, financing, maintenance and life cycle rehabilitation for the Facility, as the same may be amended, supplemented or replaced from time to time; and
- (g) **"Project Material"** means all material:
  - (1) provided to the Independent Certifier or created by or required to be created by any PA Party pursuant to this IC Agreement; and
  - (2) provided by or created by or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Functions,
 including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
- (h) **"Security Sensitive Work"** means any Functions or other obligations of the Independent Certifier which: (i) the Authority designates as "Security Sensitive Work" by giving not less than 15 Business Days advance notice or in response to an SSW Request; or (ii) requires or permits any individual engaged by the Independent Certifier to:
  - (1) access all or a material part of the design of the New Infrastructure, the Upgraded Infrastructure or the Existing Facility;
  - (2) access all or a material part of the design of the ESC or the ESC Data Network;
  - (3) access, control or modify any part of the ESC or the ESC Data Network;
  - (4) access an area of the Facility which is located, or will once the Facility is completed be located, in a non-public space; or
  - (5) have direct contact with, communicate directly or indirectly with, or pass contraband directly or indirectly to, an Inmate.
- (i) **"SSW Request"** has the meaning ascribed to it in Section 11.10 [Security Sensitive Work].

## 2. INTERPRETATION

### 2.1 Interpretation

The division of this IC Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this IC Agreement and will not be used to affect the construction or interpretation of this IC Agreement. The word "including" will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this IC Agreement to "**Section**" and "**Schedule**" is to a Section of, and a Schedule to, this IC Agreement;
- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Vancouver, British Columbia;
- (e) all references to amounts of money mean lawful currency of Canada; and
- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied.

## **2.2 Obligations and Exercise of Rights by the PA Parties**

- (a) The obligations of the PA Parties under this IC Agreement will be several.
- (b) Except as specifically provided for in this IC Agreement, the rights of the PA Parties under this IC Agreement will be jointly exercised by each of the PA Parties.

## **3. ROLE OF THE INDEPENDENT CERTIFIER**

### **3.1 Engagement**

The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Functions in accordance with this IC Agreement. The Independent Certifier will perform the Functions in accordance with this IC Agreement.

### **3.2 Acknowledgement by Independent Certifier**

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

### **3.3 Standard of Care**

The Independent Certifier will exercise the standard and skill, care and diligence in the performance of the Functions that would be expected of an expert professional experienced in providing services in the nature of the Functions for projects similar to the Project.

### **3.4 Duty of Independent Judgment**

In exercising the Functions, the Independent Certifier will act:

- (a) impartially, honestly and independently;
- (b) reasonably and professionally; and
- (c) in a timely manner:

- (1) in accordance with the times prescribed in this IC Agreement or the Project Agreement, as applicable; or
- (2) where no times are prescribed, within five Business Days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement.

Although the Independent Certifier should take account of any opinions or representations made by the PA Parties, the Independent Certifier will not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.

The Independent Certifier acknowledges that, as set out under the Project Agreement, the Independent Certifier's certifications will be final and binding on the PA Parties in respect of the issuance of the Certificate of Service Commencement, and that the Independent Certifier will use its best skill and judgment in providing the Functions and making any certifications.

### **3.5 Authority to Act**

The Independent Certifier:

- (a) is an independent consultant and is not, and will not purport to be, a partner, joint venturer or agent of any PA Party, although the PA Parties acknowledge and agree that the Independent Certifier may also act as the Lenders' Technical Advisor;
- (b) other than as may be expressly set out in the Project Agreement, has no authority to give any directions to a PA Party or its officers, employees, contractors, consultants or agents; and
- (c) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a PA Party from any of its obligations under the Project Agreement unless jointly agreed in writing by the PA Parties.

### **3.6 Knowledge of the PA Parties' Requirements**

The Independent Certifier warrants that:

- (a) it has and will be deemed to have informed itself fully of the requirements of the Project Agreement;
- (b) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Functions;
- (c) without limiting Sections 3.6(a) [Knowledge of the PA Parties' Requirements] or 3.6(b) [Knowledge of the PA Parties' Requirements], it has and will be deemed to have informed itself fully of all time limits and other requirements for any Function which the Independent Certifier carries out under the Project Agreement and this IC Agreement;
- (d) it has and will be deemed to have informed itself fully of the nature of the work necessary for the performance of the Functions and the means of access to and facilities at the Facility and Site including restrictions on any such access or protocols that are required; and



- (e) it has satisfied itself as to the correctness and sufficiency of its proposal for the Functions and that the Fee covers the cost of complying with all of the obligations under this IC Agreement and of all matters and things necessary for the due and proper performance and completion of the Functions.

### **3.7 Co-ordination by Independent Certifier**

The Independent Certifier will:

- (a) fully co-operate with the PA Parties;
- (b) carefully co-ordinate the Functions with the work and services performed by the PA Parties;
- (c) without limiting its obligations under Sections 3.4 [Duty of Independent Judgment] and 3.7(b) [Co-ordination by Independent Certifier], perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties;
- (d) provide copies to all PA Parties of all reports, communications, certificates and other documentation that it provides to any PA Party pursuant to this IC Agreement; and
- (e) provide copies to all PA Parties of all instructions or directions received from any PA Party pursuant to this IC Agreement.

### **3.8 Conflict of Interest**

The Independent Certifier warrants that:

- (a) at the date of signing this IC Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this IC Agreement; and
- (b) if, during the term of this IC Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by each of the PA Parties to avoid or mitigate that conflict or risk.

The PA Parties acknowledge and agree that the Independent Certifier may also act as the Lenders' Technical Advisor and that this role does not give rise to a conflict of interest under this Section.

### **3.9 Independent Certifier Personnel**

- (a) Subject to Section 3.9(b) [Independent Certifier Personnel], the Independent Certifier will use the partners, directors, officers, employees, servants or agents described in Schedule 3 [Independent Certifier Personnel] hereto in connection with the performance of the Functions and such persons' services will, subject to Section 3.9(b) [Independent Certifier Personnel], be available for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Functions. Such persons will have full authority to act on behalf of the Independent Certifier for all purposes in connection with this IC Agreement.
- (b) None of the persons listed in Schedule 3 [Independent Certifier Personnel] will be removed or replaced unless he/she ceases to work as a partner in or director, officer, employee, servant or agent of the Independent Certifier or he/she is unable to work

because of death or illness. The Independent Certifier will notify the PA Parties of any such circumstances and will be responsible for finding a replacement with equivalent qualifications, experience and expertise and obtaining the PA Parties prior written approval to such replacement.

#### **4. ROLE OF THE PA PARTIES**

##### **4.1 Assistance**

The PA Parties agree to co-operate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this IC Agreement.

##### **4.2 Instructions in Writing**

All instructions to the Independent Certifier by the PA Parties will be given in writing.

##### **4.3 Information and Services**

The PA Parties will each make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Functions, including such information, documents and particulars required in order for the Independent Certifier to determine whether the criteria for Service Commencement have been achieved, and will provide copies of all such information, documents and particulars to the other PA Party.

##### **4.4 Additional Information**

If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Functions and have not been provided by Project Co or the Authority, as the case may be, then:

- (a) the Independent Certifier will give notice in writing to Project Co's Design and Construction Representative or the Authority's Design and Construction Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
- (b) Project Co or the Authority, as the case may be, will arrange the provision of the required information, documents or particulars.

##### **4.5 Right to Enter and Inspect**

Upon giving reasonable notice to Project Co's Design and Construction Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, Facility and work in progress at any reasonable time in connection with the exercise or proposed exercise of rights under this IC Agreement, subject to:

- (a) observance of the reasonable rules of Project Co as to safety and security for the Site, Facility and work in progress;
- (b) not causing unreasonable delay to the carrying out of the Construction by reason of its presence at the Site or Facility; and

- (c) not causing any damage to the Site, Facility or work in progress.

#### **4.6 PA Parties Not Relieved**

Neither PA Party will be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

#### **4.7 PA Parties not Liable**

On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this IC Agreement or otherwise, provided that any such act or omission will not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

### **5. SUSPENSION**

#### **5.1 Notice**

The Functions (or any part) may be suspended at any time by the PA Parties:

- (a) if the Independent Certifier fails to comply with its obligations under this IC Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
- (b) in any other case, by the PA Parties giving seven days joint notice in writing to the Independent Certifier.

#### **5.2 Costs of Suspension**

The Independent Certifier will:

- (a) subject to the Independent Certifier complying with Section 8 [Functions Variations], be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 5.1(b) [Notice] valued as a Functions Variation under Section 8 [Functions Variations]; and
- (b) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 5.1(a) [Notice].

#### **5.3 Recommencement**

The Independent Certifier will immediately recommence the carrying out of the Functions (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

### **6. INSURANCE AND LIABILITY**

#### **6.1 Independent Certifier's Professional Indemnity Insurance**

- (a) The Independent Certifier will, at its cost, have in place:
  - (1) professional errors and omissions insurance:

- (i) in the amount of [REDACTED] per claim and in the aggregate, a deductible of not more than [REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties;
  - (ii) with a term and extended reporting period from the date of this IC Agreement until the expiration of [REDACTED] from the cessation of the Functions; and
  - (iii) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations or any breach owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this IC Agreement or the provision of the Functions; and
- (2) at all times during the term of this IC Agreement, comprehensive general liability insurance in the amount of [REDACTED] per claim and in the aggregate [REDACTED] [REDACTED] for personal injury or bodily injury, a deductible of not more than [REDACTED] per occurrence for property damage, naming the Authority as an additional insured and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier will:
- (1) ensure that each of the insurance policies described in Section 6.1(a) [Independent Certifier's Professional Indemnity Insurance]:
    - (i) bears an endorsement to the effect that, or otherwise provides that, the insurer will not effect any cancellation of the policy without first giving at least 30 days prior written notice by registered mail to the Authority; and
    - (ii) is obtained and maintained with reputable and Qualified Insurers licensed in British Columbia; and
  - (2) provide copies of each of the insurance policies described in Section 6.1(a) [Independent Certifier's Professional Indemnity Insurance] to each of the PA Parties upon request.

## 6.2 Workers' Compensation Insurance

The Independent Certifier will, at its own cost and at all times during the term of this IC Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its partners, directors, officers, employees, servants or agents engaged in the Functions.

## 7. PAYMENT FOR SERVICES

### 7.1 Fee

- (a) In consideration of the Independent Certifier performing the Functions in accordance with this IC Agreement, the PA Parties will pay the Independent Certifier the Fee.

- (b) The Fee includes all taxes (except for Goods and Services Tax), disbursements and expenses (including accommodation, car rental, equipment and travel expenses), overheads and profit to perform the Functions.

## **7.2 Payment of Fee**

- (a) The PA Parties will each pay half the Fee to the Independent Certifier in accordance with the payment schedule specified in Schedule 2 [Fee]. The obligation on Project Co and the Authority to each pay half of the Fee to the Independent Certifier is not subject to joint and several liability and neither the Authority nor Project Co will have any liability whatsoever for the non payment by the other of any fees or costs payable by such other party under this IC Agreement.
- (b) Project Co acknowledges and agrees that if any amount due and payable by Project Co to the Independent Certifier is outstanding, the Independent Certifier will not have any obligation to Project Co to make any certification under the Project Agreement.

## **8. FUNCTIONS VARIATIONS**

### **8.1 Notice of Functions Variation**

- (a) If the Independent Certifier believes, other than a “Functions Variation Order” under Section 8.3 [Functions Variation Procedure], that any direction by the PA Parties constitutes or involves a Functions Variation it will:
  - (1) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers that the direction constitutes or involves a Functions Variation; and
  - (2) within 21 days after giving the notice under Section 8.1(a)(1) [Notice of Functions Variation], submit a written claim to each of the Authority’s Design and Construction Representative and Project Co’s Design and Construction Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Functions Variation, the Independent Certifier will continue to perform the Functions in accordance with this IC Agreement and all directions, including any direction in respect of which notice has been given under this Section.

### **8.2 No Adjustment**

If the Independent Certifier fails to comply with Section 8.1 [Notice of Functions Variation], the Fee will not be adjusted as a result of the relevant direction.

### **8.3 Functions Variation Procedure**

- (a) The Authority’s and Project Co’s Design and Construction Representatives may jointly issue a document titled “Functions Variation Price Request” to the Independent Certifier which will set out details of a proposed Functions Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Functions Variation Price Request”, the Independent Certifier will provide each of the Authority’s and Project Co’s Design and Construction

Representatives with a written notice in which the Independent Certifier sets out the effect which the proposed Functions Variation will have on the Fee.

- (c) Each of the Authority's and Project Co's Design and Construction Representatives may then jointly direct the Independent Certifier to carry out a Functions Variation by written document titled "Functions Variation Order" which will state either that:
  - (1) the Fee is adjusted as set out in the Independent Certifier's notice; or
  - (2) the adjustment (if any) to the Fee will be determined under Section 8.4 [Cost of Functions Variation].

#### **8.4 Cost of Functions Variation**

- (a) Subject to Section 8.2 [No Adjustment], the Fee will be adjusted for all Functions Variations or suspensions under Section 5.1(b) [Notice] carried out by the Independent Certifier by:
  - (1) the amount (if any) stated in the "Functions Variation Order" in accordance with Section 8.3(c) [Functions Variation Procedure];
  - (2) if Section 8.4(a)(1) [Cost of Functions Variation] is not applicable, an amount determined pursuant to the fee schedule for Functions Variations in Schedule 2 [Fee]; or
  - (3) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Authority's and Project Co's Design and Construction Representatives jointly, acting reasonably.
- (b) Any reductions in the Fee will be calculated on the same basis as any increases.

### **9. TERM AND TERMINATION**

#### **9.1 Term**

Subject to earlier termination, this IC Agreement will commence on the Effective Date and continue in full force until:

- (a) 60 days after the Service Commencement Date; or
- (b) such later date as may be mutually agreed between the PA Parties and the Independent Certifier.

#### **9.2 Notice of Breach**

If the Independent Certifier commits a breach of this IC Agreement, the PA Parties may give written notice to the Independent Certifier:

- (a) specifying the breach; and
- (b) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

### **9.3 Termination for Breach**

If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 9.2 [Notice of Breach], the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this IC Agreement.

### **9.4 Termination for Financial Difficulty**

The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this IC Agreement immediately if:

- (a) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in insolvency or the control of the Independent Certifier passing to another body or corporation; or
- (b) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

### **9.5 Termination for Convenience**

Notwithstanding anything to the contrary in this IC Agreement, the PA Parties may at any time terminate this IC Agreement upon 30 days written notice to the Independent Certifier.

### **9.6 Independent Certifier's Rights upon Termination for Convenience**

Upon a termination under Section 9.5 [Termination for Convenience], the Independent Certifier will:

- (a) be entitled to be reimbursed by the PA Parties for the value of the Functions performed by it to the date of termination; and
- (b) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
  - (1) the lost opportunity to earn a profit in respect of the Functions not performed at the date of termination; and
  - (2) any lost opportunity to recover overheads from the turnover which would have been generated under this IC Agreement but for it being terminated.

### **9.7 Procedure upon Termination**

Upon completion of the Independent Certifier's engagement under this IC Agreement or earlier termination of this IC Agreement (whether under Sections 9.3 [Termination for Breach], 9.4 [Termination for Financial Difficulty] or 9.5 [Termination for Convenience] or otherwise) the Independent Certifier will:

- (a) co-operate with the PA Parties;
- (b) hand to the PA Parties all Project Material and all other information concerning the Project held or prepared by the Independent Certifier; and

- (c) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Functions.

## **9.8 Effect of Termination**

Except as otherwise expressly provided in this IC Agreement, termination of this IC Agreement will be without prejudice to any accrued rights and obligations under this IC Agreement as at the date of termination (including the right of Project Co and the Authority to recover damages from the Independent Certifier).

## **9.9 Survival**

Termination of this IC Agreement will not affect the continuing rights and obligations of Project Co or the Authority and the Independent Certifier under Sections 6 [Insurance and Liability], 7 [Payment for Services], 9.6 [Independent Certifier's Rights upon Termination for Convenience], 9.7 [Procedure upon Termination], 9.8 [Effect of Termination], 10 [Indemnity], 11.7 [Confidentiality], 11.8 [Project Material] and 11.9 [Personal Information] and this Section or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## **10. INDEMNITY**

### **10.1 Indemnity**

The Independent Certifier will indemnify and save harmless the PA Parties, and each of them, and their respective employees, agents, officers and directors from and against any and all losses incurred or suffered by any of them by reason of, resulting from, in connection with, or arising out of:

- (a) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Certifier set out in or arising under this IC Agreement or the Project Agreement; or
- (b) any act or omission of the Independent Certifier in connection with the subject matters of this IC Agreement.

## **11. GENERAL**

### **11.1 Entire Agreement**

This IC Agreement and the Project Agreement constitute the entire agreement between the PA Parties and the Independent Certifier and supersede all communications, arrangements and agreements, either oral, written, made or entered into prior to the date of this IC Agreement between the PA Parties and the Independent Certifier with respect to the subject matter of this IC Agreement. The PA Parties acknowledge and agree that the Independent Certifier may also act as the Lenders' Technical Advisor and in that role will enter into an agreement with Project Co.



**11.2 Negation of Employment**

- (a) The Independent Certifier, its partners, directors, officers, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Functions will not by virtue of this IC Agreement or the performance of the Functions become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such partners, directors, officers, employees, servants and agents and other persons who are engaged by the Independent Certifier.

**11.3 Waiver**

Failure by any PA Party or the Independent Certifier to enforce a provision of this IC Agreement will not be construed as a waiver by that PA Party or the Independent Certifier of any right in respect of that provision, or any other provisions of this IC Agreement.

**11.4 Notices**

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

if to the Authority:

BC Corrections Project Management Office  
2<sup>nd</sup> Floor, 541 Superior Street  
Victoria, BC V8V 1T7

Attention: [REDACTED]

Fax number: [REDACTED]

E-mail: [REDACTED]

if to Project Co:

Brookfield Infrastructure Partnerships Surrey  
Brookfield Place  
181 Bay Street, Suite 300  
Toronto, ON M5J 2T3

Attention: [REDACTED]

Fax number: [REDACTED]

E-mail: [REDACTED]

if to the Independent Certifier:

Altus Group Limited  
33 Yonge Street, Suite 500  
Toronto, ON M5E 1G4

Attention: [REDACTED]

Fax number: [REDACTED]

E-mail: [REDACTED]

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

- (a) if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;
- (b) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon the sender receiving confirmation of the transmission, and if not transmitted during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and
- (c) if sent by electronic transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day, provided that:
  - (1) the receiving party has, by electronic transmission, by hand delivery or by facsimile transmission, acknowledged to the notifying party that it has received such notice; or
  - (2) within 24 hours after sending the notice, the notifying party has also sent a copy of such notice to the receiving party by hand delivery or facsimile transmission.

## 11.5 Transfer and Assignment

- (a) The Independent Certifier:
  - (1) will not assign, transfer, mortgage, charge or encumber any right or obligation under this IC Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
  - (2) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this IC Agreement.
- (b) For the purposes of this Section, an assignment will be deemed to have occurred where there is a Change In Control of the Independent Certifier after the date of this IC Agreement.

- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this IC Agreement in accordance with the terms of the Project Agreement.

### **11.6 Governing Laws and Attornment**

This IC Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein without regard to conflicts of law principles that would apply a different body of law, and the Authority, Project Co and the Independent Certifier hereby irrevocably submit and attorn to the exclusive jurisdiction of the courts of that Province and all courts competent to hear appeals therefrom with respect to any action, suit, proceeding or dispute in connection with this IC Agreement.

### **11.7 Confidentiality**

- (a) The Independent Certifier will ensure that:
  - (1) neither it nor any of its partners, directors, officers, employees, servants and agents disclose, or otherwise make public, any Project Material or any other information or material acquired in connection with or during the performance of the Functions without prior written approval of the PA Parties; and
  - (2) no Project Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Functions under this IC Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its partners, directors, officers, employees, servants and agents engaged in the performance of the Functions to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier will promptly arrange for such agreements to be executed and delivered.

### **11.8 Project Material**

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Project Material provided to the Independent Certifier or created or required to be created by any PA Party.
- (b) All title and ownership, including all Intellectual Property, in and to the Project Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Functions, is hereby assigned jointly to the Authority and Project Co on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Project Material, it will be assigned to the Authority and Project Co on creation. In addition, to the extent that copyright may subsist in such Project Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier will ensure that any partners, directors, officers, employees, servants and agents of Independent Certifier will have waived all such moral rights.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the

assignment of Intellectual Property in the Project Material referred to in Section 11.8(b) [Project Material].

### **11.9 Personal Information**

The Independent Certifier will, and will require its partners, directors, officers, employees, servants and agents to, only collect, hold, process, use, store and disclose Personal Information:

- (a) with the prior written consent of the PA Parties; and
- (b) only to the extent necessary to perform the Independent Certifier's obligations under this IC Agreement and in circumstances where the PA Parties themselves, could collect, hold, process, use, store and disclose Personal Information if the PA Parties themselves performed the Functions,

in accordance with applicable Laws, including the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c.165, as if the provisions of such Laws applied directly to the Independent Certifier and its partners, directors, officers, employees, servants and agents.

The Independent Certifier will allow the PA Parties on reasonable notice to inspect the measures of the Independent Certifier and its partners, directors, officers, employees, servants and agents to protect Personal Information.

### **11.10 Security Sensitive Work**

The Independent Certifier will ensure that each of its partners, directors, officers, employees, servants and agents engaged in the performance of Security Sensitive Work, has, not more than 30 days prior to first performing Security Sensitive Work, successfully completed a Canadian Police Information Centre (CPIC) check.

For the purpose of this Section 11.10 [Security Sensitive Work], successful completion of a CPIC check means that in respect of an individual the search returns no criminal conviction history or returns a history of criminal convictions which the Authority, in its discretion, determines do not pose a material risk to the Project.

The Independent Certifier will not permit any individual to perform any Security Sensitive Work unless such individual has successfully completed a CPIC check. Throughout the term of this IC Agreement, the Independent Certifier shall ensure that a CPIC check is repeated for each individual engaged by the Independent Certifier in the performance of Security Sensitive Work from time to time so as to ensure that the results obtained in respect of any such individual are not more than 1 year old at any given time or if any information is received by the Independent Certifier that suggests that the risk in respect of any individual has materially changed. The Independent Certifier will prevent any individual from performing any Security Sensitive Work who does not successfully complete the annual CPIC check. The Independent Certifier will not permit any individual who has previously failed a CPIC check under this IC Agreement to perform Security Sensitive Work, without the prior written consent of the Authority.

All CPIC checks during the Construction Period will be administered and performed by the Authority at no cost to the Independent Certifier. In order to obtain a CPIC check in respect of an individual, the Independent Certifier shall:

- (a) provide the following information to the Contact Person at least 10 Business Days before the date on which the applicable CPIC check is required:
  - (1) the name(s) of the individual(s) to be screened;
  - (2) all consents required in relation to the performance of CPIC checks in accordance with Section 11.9 [Personal Information];
  - (3) the Authority's form of "Criminal History Consent Form for Security Clearance of Contractors and Volunteers at Provincial Correctional Centers", completed and signed by each individual to be screened; and
  - (4) a legible colour copy of a piece of government issued photo identification for each individual to be screened; and
- (b) ensure an orderly flow of CPIC check requests, taking into account both the resources available to the Authority to conduct such checks and the requirements of the Project Schedule.

The Authority shall be required to advise the Independent Certifier whether individuals who have been the subject of CPIC checks have either successfully or unsuccessfully completed the CPIC check and the Independent Certifier is entitled to rely on such advice from the Authority.

Where the Independent Certifier is uncertain whether certain Functions, or other obligations of the Independent Certifier constitute Security Sensitive Work, the Independent Certifier may submit a written request for a determination (an "**SSW Request**") to the Contact Person at least 15 Business Days prior to the date on which such Functions or other obligations are scheduled to commence. Each SSW Request shall include:

- (x) a detailed description of the nature of the work or services to be performed, including the primary location at which the work or services will be performed;
- (y) the date on which the work or services are scheduled to commence; and
- (z) such other information as the Authority may reasonably request.

The Authority will review each SSW Request and shall provide a written response confirming whether the work or services described in the SSW Request are Security Sensitive Work within 3 Business Days after receipt of the complete SSW Request. The Authority's determination with respect to an SSW Request shall be final and binding and shall not be subject to review.

#### **11.11 Time of the Essence**

Time will be of the essence of this IC Agreement and of the transactions contemplated by this IC Agreement.

#### **11.12 Amendment**

No change or modification of this IC Agreement will be valid unless it is in writing and signed by each Party to this IC Agreement.

**11.13 Severability**

If any provision of this IC Agreement will be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability or legality of the remaining provisions of this IC Agreement.

**11.14 Enurement**

Subject to the restrictions on transfer contained in this IC Agreement, this IC Agreement will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

**11.15 Counterparts**

This IC Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

**IN WITNESS WHEREOF** the Authority, Project Co and the Independent Certifier have executed this IC Agreement.

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA, AS REPRESENTED BY THE MINISTER OF  
LABOUR, CITIZENS' SERVICES AND OPEN GOVERNMENT**

Per: \_\_\_\_\_

**BROOKFIELD INFRASTRUCTURE PARTNERSHIPS SURREY,  
BY ALL OF ITS PARTNERS, BROOKFIELD INFRASTRUCTURE  
SURREY HOLDINGS LIMITED, BROOKFIELD  
INFRASTRUCTURE SURREY HOLDINGS (SUBCO) LIMITED AND  
FEP SURREY LIMITED PARTNERSHIP**

**BROOKFIELD INFRASTRUCTURE SURREY HOLDINGS LIMITED**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I have authority to bind the corporation.

**BROOKFIELD INFRASTRUCTURE SURREY HOLDINGS  
(SUBCO) LIMITED**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I have authority to bind the corporation.

**FEP SURREY LIMITED PARTNERSHIP, by its general partner,  
FEP SURREY GP INC.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I have authority to bind the corporation.



**ALTUS GROUP LIMITED**

Per: \_\_\_\_\_

Name:

Title:

## **SCHEDULE 1 FUNCTIONS**

The Independent Certifier will, subject to the provisions of the Project Agreement, provide the services as set out below. In the event of a conflict between any provision of this IC Agreement, including this Schedule 1 [Functions], and a provision of the Project Agreement, the Project Agreement will prevail.

- (a) The Independent Certifier will:
- (i) consult with the Design-Builder and others involved in the Design; and
  - (ii) conduct inspections of the Construction,  
  
as the Independent Certifier determines is required to be satisfied that the Design and Construction are proceeding in accordance with the requirements of the Project Agreement, and will no later than the 10th Business Day of each month prepare and deliver to the Authority and Project Co a monthly written report containing a description of:
    - (iii) the Design and Construction completed in the previous calendar month;
    - (iv) the progress of the Design and Construction relative to the Updated Project Schedule, with an explanation and analysis of any variances; and
    - (v) any elements of the Facility that for any reason vary from the requirements of the Project Agreement, with particular reference to Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications] of the Project Agreement.
- (b) The Independent Certifier will, promptly after the end of each month in the Construction Period, and in any event on or before the fifth Business Day of the month, and promptly upon request by Project Co in relation to a payment under Section 2 [Calculation of Service Payments] of Appendix 8B [Construction Period Payments], prepare and deliver to the Authority and Project Co a certificate certifying the Cost to Date (which, for the avoidance of doubt, shall include any HST payable by Project Co on invoices issued by the Design-Builder or the Service Provider).
- (c) The Independent Certifier will, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative with respect to an application for a Certificate of Service Commencement, prepare a complete list of Service Commencement Deficiencies and deliver to Project Co and the Authority's Design and Construction Representative the list of Service Commencement Deficiencies.
- (d) No later than 5 Business Days after application by Project Co for a Certificate of Service Commencement, the Independent Certifier will, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative, make an inspection of the Facility, review the basis for Project Co's application for Service Commencement, and then within a further 5 Business Days:
  - (i) issue a Certificate of Service Commencement, together with a list of Deficiencies (if any);  
or

- (ii) provide Project Co and the Authority's Design and Construction Representative with a list of all incomplete Design and Construction that must be completed prior to Service Commencement.

**SCHEDULE 2  
FEE**

**1. Fees & Expenses**

Our fees, as detailed in our proposal dated February 8, 2011, are summarized as follows:

Summary of Fees		Monthly Fee
A.	Independent Certifier Services*	██████

\*Note: this scope of services and fees quoted are conditional on the completion of the LTA and Independent DB Certifier services by Altus.

The monthly fee will be shared equally between the Authority and Project Co. Breakdown of fee is as follows:

Authority	██████
Project Co	██████

The amounts will not change unless the scope of work changes as a direct result of express written instruction to ourselves, at which time an amount will be agreed to prior to commencement of the additional scope. Any work, that is not a part of the scope defined above, undertaken by Altus without prior written instruction will be done so at our own expense.

All disbursements and out-of-pocket expenses are included within the capped fee arrangements.

**2. Payment of Fees & Expenses**

- a) Payment will be made within 30 days from receipt of an approved invoice.
- b) All payments will be denominated in Canadian dollars.
- c) The fee quoted above does not include HST or any other applicable sales taxes, and all reasonable and necessary expenses as detailed above.

### 3. Hourly Rates

Our current hourly rates are as follows:

2011 HOURLY RATE	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

**SCHEDULE 3  
INDEPENDENT CERTIFIER PERSONNEL**

[REDACTED] Director Infrastructure [REDACTED]

[REDACTED] Senior Cost Consultant [REDACTED]

[REDACTED] Senior Cost Consultant, [REDACTED]

[REDACTED] Senior Cost Consultant