

**SCHEDULE 8**

**PAYMENTS**

**TABLE OF CONTENTS**

**1. INTERPRETATION ..... 1**

    1.1 Definitions ..... 1

**2. PAYMENTS..... 3**

    2.1 Construction Payments ..... 3

    2.2 Building Opening Payments ..... 3

    2.3 Adjustments to Building Opening Payments for Late or Earlier Building Opening..... 5

    2.4 Building Opening Payment Holdback ..... 5

    2.5 Adjustments for Partial Month ..... 6

    2.6 Service Payment ..... 6

**3. DEDUCTIONS FROM SERVICE PAYMENTS ..... 7**

    3.1 Entitlement to Make Deductions..... 7

    3.2 Classification of Event ..... 7

    3.3 Service Failure Becoming Unavailability Event ..... 7

    3.4 Total Unavailability ..... 8

    3.5 Deductions for Unavailability Events ..... 8

    3.6 Unavailable But Used ..... 8

    3.7 Deductions for Service Failures..... 8

    3.8 Response Time ..... 9

    3.9 Deduction Triggers ..... 9

    3.10 Multiple Events ..... 10

    3.11 Temporary Repairs ..... 10

    3.12 Compliance with Laws and Good Industry Practice ..... 11

    3.13 Deficiency Correction Period - Unavailability ..... 11

    3.14 Service Failure Related Solely to Unavailability ..... 11

    3.15 Transition Periods - Service Failures ..... 11

**4. TEMPORARY ALTERNATIVE ACCOMMODATION ..... 12**

    4.1 Project Co Option to Provide ..... 12

    4.2 Requirements ..... 12

    4.3 Notice Requirements ..... 12

    4.4 Acceptance by Authority ..... 13

    4.5 Effect of Acceptance..... 13

    4.6 Additional Authority Costs ..... 13

    4.7 Deduction..... 13

    4.8 Return to Functional Unit..... 14

    4.9 Failure to Complete Works ..... 14

    4.10 Long Stop Return Date ..... 14

**5. REVIEW OF FUNCTIONAL UNITS, DEDUCTIONS, ETC..... 14**

5.1 Initiation of Review ..... 14

5.2 Results of Review ..... 15

5.3 Effective Time of Adjustments ..... 15

**6. FAILURE BY PROJECT CO TO MONITOR OR REPORT ..... 15**

6.1 Performance Monitoring Report ..... 15

6.2 Failure to Monitor or Report..... 15

6.3 Misconduct..... 16

6.4 No Prejudice to Other Rights..... 16

**7. GENERAL PAYMENT PROVISIONS..... 16**

7.1 Invoicing and Payment Arrangements ..... 16

7.2 HST..... 18

**APPENDIX 8A FUNCTIONAL UNITS, UNIT DEDUCTION AMOUNTS, RECTIFICATION PERIODS**

**APPENDIX 8B CONSTRUCTION PAYMENTS**

**APPENDIX 8C LIFE CYCLE PAYMENT**

## SCHEDULE 8

### PAYMENTS

#### 1. INTERPRETATION

##### 1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 of this Agreement:

**“Availability Condition”** means, with respect to a Functional Unit, that the Functional Unit and normal access routes are in a state or condition that:

- (a) allows safe and convenient access to all persons who are entitled to enter, leave, occupy or use it, using normal access routes; and
- (b) is complete, operational, safe, functional and fit for its intended use (as contemplated in the Room Data Sheets), and meets all other requirements of this Agreement including with respect to power, BMS functions, utilities, light, sewerage, water temperature and humidity and information technology connectivity as set out in the Room Data Sheets, the Design and Construction Specifications or Schedule 4 [Services Protocols and Specifications];

and for Functional Units on floors other than the ground floor at least one elevator is functional and operating to manufacturer’s specifications;

**“Building Opening Payment”** means the payments described in Section 2.2 of this Schedule;

**“Building Opening Payment Holdback”** has the meaning given in Section 2.3 of this Schedule;

**“Capital Payment”** means the payments described as such in Section 2.2 and Section 2.6(a) of this Schedule;

**“Construction Payments”** has the meaning given in Section 2.1

**“Deduction”** means a deduction from a Service Payment, calculated in accordance with this Schedule;

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

**“Facility Maintenance Payment”** means the payment described in Section 2.6(c) of this Schedule;

**“Functional Unit”** means a room or space which is specified as such in Appendix 8A to this Schedule;

**“High Service Failure”** means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in this Schedule as a High Service Failure;

**“Life Cycle Payment”** means the payment described in Section 2.6(b) of this Schedule;

**“Linked Unit”** means, with respect to a Functional Unit, any other Functional Unit which is designated in Appendix 8A as being linked to the first Functional Unit;

**“Long Stop Return Date”** has the meaning set out in Section 4.10 of this Schedule;

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

**“Medium Service Failure”** means a Service Failure which has been designated in Schedule 4 [Services Protocols and Specifications] or in this Schedule as a Medium Service Failure;

**“New Service Provider Start Date”** means:

- (a) the Service Commencement Date; or
- (b) if any Service Provider is replaced by a new Service Provider, the date on which the Services begin to be provided by the replacement Service Provider or, if earlier, the date on which they were first due to be provided;

**“New Service Provider Transition Period”** has the meaning set out in Section 3.15 of this Schedule;

**“Payment Adjustment Report”** has the meaning set out in Section 7.1(f)(2) of this Schedule;

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

**“Permanent Repair”** means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 3.11 of this Schedule;

**“Permanent Repair Deadline”** has the meaning set out in Section 3.11(a)(4) of this Schedule;

**“Return Date”** has the meaning set out in Section 4.3(d) of this Schedule;

**“Service Failure”** means any failure by Project Co, other than an Unavailability Event, to provide the Services in accordance with this Agreement and in particular in accordance with Schedule 4 [Services Protocols and Specifications], and includes a failure to satisfy any Performance Indicator;

**“Service Failure Deduction”** means a Deduction which may be made in respect of a Service Failure;

**“Service Payment”** means the sum calculated in accordance with Section 2.6 of this Schedule;

**“Temporary Alternative Accommodation”** means accommodation offered to the Authority by Project Co as a substitute for any Unavailable Functional Unit pursuant to Section 4.1 of this Schedule;

**“Temporary Alternative Accommodation Notice”** has the meaning set out in Section 4.1 of this Schedule;

**“Temporary Availability Condition”** has the meaning set out in Section 3.11(a)(2) of this Schedule;

**“Temporary Repair”** means, in respect of the occurrence of an Unavailability Event, works of a temporary nature that do not constitute Rectification;

**“Temporary Repair Proposal”** has the meaning set out in Section 3.11(a) of this Schedule;

**“Total Unavailability”** in respect of a Building means:

- (a) all common kitchens, if any, in that Building are Unavailable for more than 7 consecutive days;
- (b) 60% or more at the Residential Rooms in that Building are Unavailable for more than 5 consecutive days;
- (c) the bed bug sauna in that Building is Unavailable for more than 10 consecutive days;
- (d) the common laundry facilities, if any, in that Building are Unavailable for more than 7 consecutive days;
- (e) the common non-disabled washroom or shower facilities, if any, in that Building are Unavailable for more than 5 consecutive days; or
- (f) the common disabled washroom or shower facilities, if any, in that Building are Unavailable for more than 3 consecutive days;

**“Transition”** means the tolerance level for the making of Deductions in respect of Service Failures as described in Section 3.15 of this Schedule;

**“Unavailable”** and **“Unavailability”** means, with respect to a Functional Unit, that such Functional Unit or an applicable Linked Unit is in a state or condition that does not comply with the Availability Condition;

**“Unavailability Deduction”** means a Deduction which may be made in respect of an Unavailability Event;

**“Unavailability Event”** means an incident or state of affairs which causes one or more Functional Units to be Unavailable; and

**“Unit Deduction Amounts”** means the amount of the Deduction specified in Appendix 8A per Functional Unit for an Unavailability Event, which amounts are Index Linked.

## **2. PAYMENTS**

### **2.1 Construction Payments**

The Authority will make construction related payments to Project Co during the Construction Period in accordance with Appendix 8B (the **“Construction Payments”**).

### **2.2 Building Opening Payments**

From and after the first Building Opening Date, the Authority will pay to Project Co a monthly Building Opening Payment calculated as follows:

- (a) [REDACTED] from and after the Building Opening Date for the Beacon until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED] plus [REDACTED]
- (b) [REDACTED] from and after the Building Opening Date for the Cordova Residence until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED] plus [REDACTED]
- (c) [REDACTED] from and after the Building Opening Date for the Dominion Hotel until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED]; plus [REDACTED]
- (d) [REDACTED] from and after the Building Opening Date for the Gastown Hotel until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED];
- (e) [REDACTED] from and after the Building Opening Date for the Hazelwood Hotel until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED] plus [REDACTED]
- (f) [REDACTED] from and after the Building Opening Date for the Marble Arch Hotel until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED]; plus [REDACTED]
- (g) [REDACTED] from and after the Building Opening Date for the Marr Hotel until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED];
- (h) [REDACTED] from and after the Building Opening Date for the Orange Hall until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED]; plus [REDACTED]
- (i) [REDACTED] from and after the Building Opening Date for the Rice Block until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED]; plus [REDACTED]
- (j) [REDACTED] from and after the Building Opening Date for the Molson's Bank Building until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED];
- (k) [REDACTED] from and after the Building Opening Date for the Sunrise Hotel until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED]; plus [REDACTED]
- (l) [REDACTED] from and after the Building Opening Date for the Tamura House until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED]; plus [REDACTED]

- (m) [REDACTED] from and after the Building Opening Date for the Washington Hotel until the Service Commencement Date, which amount includes a Capital Payment in amount equal to [REDACTED]; minus
- (n) the aggregate of any Deductions incurred during such month, subject to Section 3.1; minus
- (o) the Building Opening Payment Holdback,  
(each a “**Building Opening Payment**”).

### 2.3 Adjustments to Building Opening Payments for Late or Earlier Building Opening

Subject to Section 13.4 (Early Building Opening) of Schedule 2 [Design and Construction Protocols]:

- (a) if the Building Opening Date for a Building occurs earlier or later than the Target Building Opening Date for that Building (as set out in the initial Project Schedule):
  - (1) the Building Opening Payments payable by the Authority in respect of that Building will be recalculated such that the aggregate of the Capital Payments included in the Building Opening Payment for that Building will be re-amortized based on the actual number of months between the Building Opening Date for that Building and the Target Service Commencement Date (as set out in the initial Project Schedule);
  - (2) subject to Section 2.3(b) of this Schedule, the Building Opening Payments payable by the Authority until the Service Commencement Date in respect of that Building will be adjusted to reflect such recalculation
- (b) if Service Commencement is not achieved on or before the Target Service Commencement Date (as set out in the initial Project Schedule):
  - (1) each of the Building Opening Payments will be recalculated to include only the Senior Debt Service Amount, Life Cycle Payment and Facility Maintenance Payment included in the Building Opening Payment for each Building that has achieved Building Opening; and
  - (2) the Building Opening Payments payable by the Authority until the Service Commencement Date in respect of each such Building will be adjusted to reflect such recalculation .

### 2.4 Building Opening Payment Holdback

The Authority:

- (a) may hold back from each Building Opening Payment an amount equal to 5% of such Building Opening Payment (the “**Building Opening Payment Holdback**”); and

- (b) will pay to Project Co an amount equal to the Building Opening Payment Holdback within 10 Business Days of receiving an invoice from Project Co for such amount on or after the Service Commencement Date.

## 2.5 Adjustments for Partial Month

If the first period or last period during which a Building Opening Payment becomes payable is less than a full calendar month in respect of any Building, that portion of the Building Opening Payment in respect of such Building for that partial month will be reduced by the same proportion that such period is less than the total number of days in the calendar month in respect of which such payment became payable.

## 2.6 Service Payment

From and after the Service Commencement Date, the Authority will pay Project Co in respect of each Payment Period a Service Payment calculated as follows:

- (a) the Capital Payment for that Payment Period in an amount equal to [REDACTED] which amount will not be Index Linked; plus
- (b) the Life Cycle Payment for that Payment Period in the amount set out in Appendix 8C [Life Cycle Payment] which amount will be Index Linked; plus
- (c) the Facility Maintenance Payment for that Payment Period in an amount equal to [REDACTED] which amount will be Index Linked; minus
- (d) the aggregate of Deductions for that Payment Period, subject to Section 3.1,

provided that:

- (e) if the first Payment Period from and after the Service Commencement Date is less than a full calendar month, the Service Payment will be reduced by the same proportion that the first Payment Period is less than the total number of days in the calendar month in which Service Commencement occurs; and
- (f) if the last Payment Period of the Term is less than a full calendar month, the Service Payment will be reduced by the same proportion that the last Payment Period is less than the total number of days in the calendar month in which the final day of the Term occurs.

The Payment Periods identified in Appendix 8C [Life Cycle Payment] assume that Service Commencement will be achieved by the Target Service Commencement Date and the Payment Periods are expressed numerically in terms of the Payment Periods starting from the Target Service Commencement Date. If Service Commencement is achieved after the Target Service Commencement Date, then the first Service Payment will be for the relevant Payment Period, or prorated portion thereof, indicated for the time after the Target Service Commencement Date, and Project Co will not be entitled to any Service Payment for Payment Periods, or prorated portions thereof, between the Target Service Commencement Date and the Service Commencement Date.



### **3. DEDUCTIONS FROM SERVICE PAYMENTS**

#### **3.1 Entitlement to Make Deductions**

If at any time after:

- (a) the first Building Opening Date; or
- (b) the Service Commencement Date,

an Unavailability Event or a Service Failure occurs, the Authority will be entitled to make Deductions in accordance with this Schedule 8 (including Section 3.9 of this Schedule 8) in respect of that Unavailability Event or Service Failure (and, for greater certainty, in respect of all other Unavailability Events and Service Failures) from:

- (c) the Building Opening Payment for the relevant month, if prior to the Service Commencement Date; and
- (d) the Service Payment for the relevant Payment Period, if after the Service Commencement Date,

except that:

- (e) the aggregate of all Deductions that the Authority may make from a Building Opening Payment or a Service Payment, as the case may be, may not exceed the amount of the Building Opening Payment or the Service Payment in respect of the relevant Payment Period; and
- (f) to the extent that an Unavailability Event or a Service Failure is the result of an Excusing Event or a Compensation Event, the Authority will not be entitled to make Deductions.

#### **3.2 Classification of Event**

The classification of an Event as a Service Failure or an Unavailability Event, and the rank of an Unavailability Event, will be made at the time at which the occurrence of the Event is reported to the Help Desk or otherwise reported to Project Co. If an Event which results in an immediate Service Failure Deduction (because there is no applicable Response Time or Rectification Period) can properly be classified as both a Service Failure and an Unavailability Event at the time it is reported, it will be classified as the Event that has the highest potential Deduction applicable to it. An Event which is incorrectly classified may be re-classified only with the approval of the Authority, such approval not to be unreasonably withheld. If such an Event is re-classified, the appropriate Deduction (if applicable) will be made and any Deduction incorrectly applied will be withdrawn.

#### **3.3 Service Failure Becoming Unavailability Event**

A Service Failure may become or lead to an Unavailability Event if circumstances change or the Service Failure continues. In such a circumstance, when the Functional Unit becomes Unavailable, the Service Failure will have ended (without prejudice to the Service Failure Deductions that have accrued to that point) and an Unavailability Event will have occurred.

### 3.4 Total Unavailability

When Total Unavailability of a Building occurs:

- (a) there will be deemed to be an Unavailability Event for each Functional Unit in that Building that otherwise met the Availability Condition at that time;
- (b) all Functional Units in that Building will continue to be deemed to be Unavailable until Total Unavailability no longer occurs; and
- (c) the Authority will be entitled to make Deductions until Total Unavailability no longer occurs pursuant to Section 3.1 in an amount equal to the greater of:
  - (1) the aggregate of the Deductions arising as a result of Total Unavailability of the Building and calculated in accordance with this Schedule; and
  - (2) all Direct Costs incurred by the Authority or the Housing Operators to arrange for alternative accommodations for Tenants during the period of Total Unavailability, including rents, utility costs, moving expenses and increased operating costs.

### 3.5 Deductions for Unavailability Events

Subject to Sections 3.1, 3.9 and 3.12 of this Schedule, the Deduction in respect of each Unavailability Event will be the greater of:

- (a) \$50, Index Linked; and
- (b) subject to Section 3.6 of this Schedule, the aggregate of the Unit Deduction Amounts for all Functional Units made Unavailable as a result of the Unavailability Event.

### 3.6 Unavailable But Used

If any Functional Unit is Unavailable (including, for greater certainty, Functional Units that are deemed Unavailable under Section 3.4 of this Schedule) but the Authority continues to use it or a Linked Unit for the intended use or purpose of that Functional Unit or Linked Unit, for the purposes of Section 3.5(b) of this Schedule the Unit Deduction Amount applicable to an Unavailability Deduction for such Functional Unit and Linked Unit will be multiplied by 50%.

### 3.7 Deductions for Service Failures

Subject to Sections 3.1 and 3.15 of this Schedule, the amount of the Deduction in respect of a Service Failure will be as follows:

- (a) for a High Service Failure, the sum of \$300 (Index Linked);
- (b) for a Medium Service Failure, the sum of \$200 (Index Linked); and
- (c) for a Low Service Failure, the sum of \$100 (Index Linked).

### 3.8 Response Time

If an Event occurs and a Response Time is indicated in Schedule 4 [Services Protocols and Specifications], in addition to any other Deduction arising from such Event, if Project Co does not respond as required under this Agreement within the applicable Response Time:

- (a) a Low Service Failure will be deemed to have occurred; and
- (b) unless otherwise specified in Schedule 4 [Services Protocols and Specifications], a new Response Time will start and the provisions of this Section 3.8 will again apply and will continue to apply with repeated Low Service Failures until Project Co responds as required under this Agreement.

Nothing in this Section 3.8 will limit any other Deductions in respect of the same Event or the occurrence of, and Deductions in respect of, additional Events that occur within a Response Time period.

### 3.9 Deduction Triggers

If an Event occurs:

- (a) in the case of a Service Failure for which there is no Rectification Period, the Authority will make the applicable Service Failure Deduction;
- (b) in the case of an Unavailability Event, other than a deemed Unavailability Event due to Total Unavailability, if Project Co Rectifies the Unavailability Event within the Rectification Period, then no Deduction will be made for such Unavailability Event;
- (c) in the case of a deemed Unavailability Event due to Total Unavailability, the Authority will make the applicable Unavailability Deduction; and
- (d) in any case and in addition to the foregoing, if Project Co does not Rectify the Event (which in the case of deemed Unavailability Events due to Total Unavailability means that Total Unavailability no longer occurs) within the Rectification Period:
  - (1) the applicable Deduction will be made for the Event; and
  - (2) a new Event (which in the case of a Service Failure will be of the same category as the original Service Failure unless otherwise specified in Schedule 4 [Service Protocols and Specifications]) will be deemed to occur at the end of such Rectification Period and the provisions of this Section 3.9 will again apply and will continue to apply with repeated Deductions until Project Co Rectifies the Event.

Nothing in this Section 3.9 will limit any other Deductions in respect of the same Event or the occurrence of, and Deductions in respect of, additional Events that occur within a Rectification Period.

### 3.10 Multiple Events

If the root cause of a series of Events is substantially the same, whether or not Project Co Rectifies any or all of the Events within the applicable Rectification Period, there will be deemed to be a Medium Service Failure on the occurrence of any of the following:

- (a) the third such Event in a day and on the occurrence of each subsequent such Event in that day; and
- (b) the fourth such Event in a rolling consecutive seven day period and on the occurrence of each subsequent such Event in that seven day period.

### 3.11 Temporary Repairs

If Project Co is unable to Rectify an Unavailability Event within the applicable Rectification Period due to the need for specialized materials or personnel that are not required by this Agreement to be immediately available at the Building and are not, and cannot reasonably be expected to be, available at the Building, then:

- (a) Project Co may provide the Authority with a proposal (the “**Temporary Repair Proposal**”) for:
  - (1) a Temporary Repair;
  - (2) a temporary modification to the Availability Condition for the relevant Functional Unit until the Permanent Repair is completed (the “**Temporary Availability Condition**”);
  - (3) the Permanent Repair; and
  - (4) the period within which to complete the Permanent Repair (the “**Permanent Repair Deadline**”);
- (b) the Authority may in its discretion but without unreasonable delay, consider the Temporary Repair Proposal, and Project Co will not carry out the Temporary Repair until the Temporary Repair Proposal is accepted by the Authority;
- (c) if the Authority accepts the Temporary Repair Proposal, Project Co will carry out the Temporary Repair in accordance with the Temporary Repair Proposal;
- (d) if the Temporary Repair is completed in accordance with the Temporary Repair Proposal, the Availability Condition for the relevant Functional Unit will be modified to be the Temporary Availability Condition until the Permanent Repair Deadline;
- (e) if the Permanent Repair is not completed by the Permanent Repair Deadline:
  - (1) the Temporary Availability Condition will cease to be the Availability Condition and the Authority may make all applicable Unavailability Deductions with effect from the Permanent Repair Deadline; and

- (2) Project Co may revise the Temporary Repair Proposal and resubmit such proposal to the Authority for consideration as a new Temporary Repair Proposal pursuant to section 3.11(b) of this Schedule; and
- (f) except with respect to the applicable modification of the Availability Condition, nothing in this Section 3.11 will limit the Authority's entitlement to Deductions within the applicable Rectification Periods.

### **3.12 Compliance with Laws and Good Industry Practice**

When carrying out Rectification, or works of Temporary Repair pursuant to Section 3.11 of this Schedule, Project Co will at all times act in accordance with Laws and Good Industry Practice. If in doing so Project Co breaches Law, there will be deemed to be a new additional High Service Failure. If in doing so Project Co breaches Good Industry Practice, but does not also breach Laws, there will be deemed to be a new additional Low Service Failure.

### **3.13 Deficiency Correction Period - Unavailability**

During the 28 day period beginning on the Service Commencement Date, the amount of any Unavailability Deductions for Unavailability Events directly caused by Deficiencies will be reduced by 100%. This Section 3.13 does not give any relief in respect of any Service Failure Deductions.

### **3.14 Service Failure Related Solely to Unavailability**

No Service Failure Deduction will be made if the Service Failure to which it relates arises solely as a result of the Unavailability of the Functional Unit in which the Service was to be provided. If any Functional Unit is Unavailable but the Authority continues to use it for the intended use or purpose of that Functional Unit, the Authority will, subject to Section 3.3 of this Schedule, deduct the full amount of any Service Failure Deductions that apply to the Services in the applicable Functional Unit.

### **3.15 Transition Periods - Service Failures**

In respect of each Service, there will be a period of 90 days (the "**New Service Provider Transition Period**") for Transition beginning on each New Service Provider Start Date. During each New Service Provider Transition Period the following provisions will apply:

- (a) during the first 30 days of the New Service Provider Transition Period, the amount of any Service Failure Deductions will be reduced by 75%;
- (b) during the next 30 days of the New Service Provider Transition Period, the amount of any Service Failure Deductions will be reduced by 50%; and
- (c) during the final 30 days of the New Service Provider Transition Period, the amount of any Service Failure Deductions will be reduced by 25%.

This Section 3.15 will not give any relief during any period of Transition in respect of Unavailability Deductions.

## 4. TEMPORARY ALTERNATIVE ACCOMMODATION

### 4.1 Project Co Option to Provide

If an Unavailability Event occurs Project Co may offer the Authority Temporary Alternative Accommodation by notice (the “**Temporary Alternative Accommodation Notice**”) to the Authority within 5 Business Days from the commencement of the applicable Event.

### 4.2 Requirements

The Temporary Alternative Accommodation must:

- (a) comply with the Availability Condition for the Functional Units affected by the Unavailability Event for which Temporary Alternative Accommodation is offered;
- (b) be a temporary alternative having regard to the facts and the circumstances in existence;
- (c) be upon terms which are not materially different from the terms upon which the Authority occupied the affected Functional Unit;
- (d) unless the Authority otherwise agrees, be accommodation that Project Co is not already obligated to provide to the Authority;
- (e) be supplied with the Services to the standards set out in Schedule 4 [Services Protocols and Specifications] which Project Co would under normal circumstances be providing within the Unavailable Functional Unit;
- (f) not involve the Authority incurring any additional cost or charges in respect of the Temporary Alternative Accommodation including the reasonable costs of any relocation to and from the Temporary Alternative Accommodation; and
- (g) be in reasonable proximity to the Building, be reasonably accessible by public and private transport and have adequate parking.

### 4.3 Notice Requirements

The Temporary Alternative Accommodation Notice must:

- (a) describe the Temporary Alternative Accommodation;
- (b) invite the Authority to inspect the Temporary Alternative Accommodation and give the Authority reasonable notice of a time and a date when it may do so;
- (c) set out Project Co’s proposals regarding the timing and co-ordination of relocation to the Temporary Alternative Accommodation;
- (d) specify the date (which must be agreed by the Authority before the submission of the written notice) by which Project Co reasonably expects the Authority to be able to relocate back to the applicable Functional Unit (the “**Return Date**”); and

- (e) describe the terms upon which the Authority will be entitled to occupy such Temporary Alternative Accommodation including the proposed division of such accommodation into Functional Units and the weighting to be attributed to them for the purposes of the operation of this Schedule.

#### **4.4 Acceptance by Authority**

If it wishes to inspect the Temporary Alternative Accommodation the Authority will do so within 5 Business Days of receipt of the Temporary Alternative Accommodation Notice. The Authority will notify Project Co in writing of its acceptance or refusal of the proposed Temporary Alternative Accommodation within 24 hours of its inspection or, if the Authority has elected not to inspect, within 5 Business Days of receipt of the Temporary Alternative Accommodation Notice. The Authority may in its discretion refuse or accept any proposed Temporary Alternative Accommodation that does not meet the requirements of Section 4.2 of this Schedule and in all other cases will act reasonably when deciding to accept or refuse any proposed Temporary Alternative Accommodation.

#### **4.5 Effect of Acceptance**

If the Authority accepts the offer of Temporary Alternative Accommodation:

- (a) which is not within the Building then, without affecting the Authority's remedial rights under Section 11 of this Agreement, the Authority will not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which the Authority is entitled and able to return to and use the Functional Unit in accordance with the agreed program for return and re-commissioning referred to in Section 4.8 of this Schedule; and
- (b) which is within the Building and the Authority subsequently needs such Temporary Alternative Accommodation in connection with needs that were not anticipated at the time the Authority agreed to occupy the space, then the Authority will be entitled to vacate the Temporary Alternative Accommodation.

#### **4.6 Additional Authority Costs**

Project Co will pay for any additional reasonable and direct costs and expenses incurred by the Authority in respect of Temporary Alternative Accommodation, including reasonable relocation costs to and from the Temporary Alternative Accommodation.

#### **4.7 Deduction**

If the Authority accepts Project Co's offer of Temporary Alternative Accommodation, no further Deductions will be made in respect of a Functional Unit vacated by the Authority while the Temporary Alternative Accommodation replacing that Functional Unit is being used by the Authority. The Authority will be entitled to make Deductions in respect of any Service Failure or Unavailability Event which occurs in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Unit which it replaced and any Deduction in respect of an Unavailability Event will be calculated using the Unit Deduction Amounts attributed to such Functional Unit.

#### **4.8 Return to Functional Unit**

When Project Co has completed the required works to enable the Authority to return to the Functional Unit the Authority will, acting reasonably, confirm that the Availability Condition is met for the Functional Unit and the Authority and Project Co will agree to a relocation program to return to the Functional Unit and any necessary period for re-commissioning.

#### **4.9 Failure to Complete Works**

If the Authority has accepted the proposed Temporary Alternative Accommodation and Project Co fails to complete the works to enable the Authority to return to the relevant Functional Unit on the Return Date:

- (a) the Temporary Alternative Accommodation will be deemed to be Unavailable with effect from the Return Date until the date on which the Unavailability Event has been Rectified and the Authority is able to resume its use of the Functional Unit; and
- (b) the Authority may, in its absolute discretion, vacate the Temporary Alternative Accommodation at any time after the Return Date or remain in occupation, and in the latter circumstance a 50% reduction will apply with respect to the Unavailability Deduction.

#### **4.10 Long Stop Return Date**

The Authority will specify a date (the “**Long Stop Return Date**”), being a date no earlier than 30 days after the Return Date, by which the Rectification must be completed and if Project Co fails to complete the Rectification of the Functional Unit for which the Temporary Alternative Accommodation is a replacement by the Long Stop Return Date:

- (a) the Authority may (without prejudice to its rights under Section 12 (Project Co Events of Default) or any other express rights of the Authority under this Agreement) take such steps as it considers to be appropriate (either itself or by engaging others to take such steps) to restore the Functional Unit to a condition that satisfies in all respects the requirements of Schedule 4 [Services Protocols and Specifications]; and
- (b) Project Co will reimburse the Authority for all reasonable direct costs and expenses incurred by the Authority in relation to taking the steps, or engaging others to take the steps, referred to in Section 4.10(a) and the Authority will be entitled to deduct any such amount from any amounts payable to Project Co under this Agreement.

### **5. REVIEW OF FUNCTIONAL UNITS, DEDUCTIONS, ETC.**

#### **5.1 Initiation of Review**

The following will be reviewed by the Authority and Project Co at any time if requested by either party but in any event will be reviewed at least once in every Contract Year for the purposes of the following Contract Year:

- (a) the identification of Functional Units, Linked Units, Performance Indicators, Response Times, Rectification Periods, Unit Deduction Amounts; and



- (b) the amount of Deductions for each category of Service Failure and for Unavailability Events.

If so requested the Authority and Project Co will act reasonably and diligently in carrying out the review, which will not exceed 30 days without the agreement of both parties. For the avoidance of doubt, the parties intend that any changes made as a result of such a review will not alter the overall risk profile of the relevant Service or the likely magnitude of Deductions. If proposed changes would result in any such alteration, the matter will be deemed to be a Change subject to the provisions of Schedule 6 [Changes, Minor Works and Innovation Proposals].

## **5.2 Results of Review**

The Authority and Project Co may, in respect of each matter that is the subject of the review, either:

- (a) agree that the status of the relevant matter will continue to apply unchanged for the relevant Contract Year; or
- (b) agree to adjustments to the relevant matter to take effect in the relevant Contract Year.

If the parties do not agree within 30 days after completion of the review, either party may refer the matter to the Dispute Resolution Procedure. No change will be made with respect to a matter under review until agreed or until determined under the Dispute Resolution Procedure. For the avoidance of doubt, if the changes that are agreed or determined under the Dispute Resolution Procedure alter the overall risk profile of the relevant Service, the matter will be deemed a Change subject to the provisions of Schedule 6.

## **5.3 Effective Time of Adjustments**

Any adjustment pursuant to a review will be effective from the commencement of the relevant Contract Year.

## **6. FAILURE BY PROJECT CO TO MONITOR OR REPORT**

### **6.1 Performance Monitoring Report**

The Performance Monitoring Report produced by Project Co for any Payment Period will be the initial source of the information regarding the performance of the Services for the relevant Payment Period for the purposes of calculating the relevant Deductions.

### **6.2 Failure to Monitor or Report**

If Project Co fails to monitor or accurately report an Event, a Service Failure or an Unavailability Event:

- (a) such failure will be deemed to be a new Low Service Failure for each Event that has been misreported. The relevant Deduction for the new Low Service Failure will be made in addition to the Deductions that would have been made had there been no failure to monitor or report;

- (b) the Authority will be entitled to make Deductions in respect of any Service Failures or Unavailability Events in the manner prescribed in this Schedule and the Performance Monitoring Report(s) and invoice(s) with respect to all Payment Periods affected by such failure will be restated to include any such Deductions; and
- (c) Project Co will forthwith pay to the Authority the amount, if any, by which the amount paid to it for the affected Payment Periods exceeds the amount in the restated invoices for such Payment Periods.

### **6.3 Misconduct**

If the Authority's inspection or investigation of records reveals, on the part of Project Co or a Project Co Person:

- (a) fraudulent action or inaction;
- (b) deliberate misrepresentation; or
- (c) gross misconduct or incompetence,

then a new High Service Failure will be deemed to have occurred for each Event that has been misreported. The relevant Deduction for the new High Service Failure will be made in addition to the Deductions that would have been made had there been no misreporting.

### **6.4 No Prejudice to Other Rights**

The provisions of this Section 6 are without prejudice to any rights of the Authority in this Agreement, including pursuant to Section 6 (Performance Monitoring and Reporting) of Schedule 4 [Services Protocols and Specifications] and Section 12.1 (Project Co Events of Default) of this Agreement.

## **7. GENERAL PAYMENT PROVISIONS**

### **7.1 Invoicing and Payment Arrangements**

With respect to invoicing and payment:

- (a) all Service Payments and Building Opening Payment will be payable in advance for each Payment Period;
- (b) a minimum of 10 Business Days prior to each Payment Period (and any month in which Building Opening Payment is due), Project Co will provide the Authority with an invoice in a form agreed by the parties, acting reasonably. The invoice will include as a minimum:
  - (1) the estimated Service Payments for the applicable Payment Period or the Building Opening Payment for the applicable month, or both in the case of a Payment Period in respect of which a Service Payment and a Building Opening Payment become payable;

- (2) any adjustments to a previous Service Period or Building Opening Payment, as set out in the applicable Payment Adjustment Report approved by the Authority;
  - (3) any amount owing to the Authority under this Agreement;
  - (4) any amount owing to Project Co under this Agreement;
  - (5) the amount of applicable HST calculated in accordance with Section 7.2 of this Appendix;
  - (6) Project Co's HST registration number; and
  - (7) the net amount owing by the Authority to Project Co, or by Project Co to the Authority, as applicable;
- (c) the Authority will:
- (1) review each invoice submitted in accordance with this Section 7.1 within 5 Business Days; and
  - (2) pay the amount approved by the Authority on the later of the first day of the Payment Period or the 10<sup>th</sup> Business Day after receipt of the invoice;
  - (3) concurrently advise Project Co of any amounts the Authority has not approved and the reasons for non-approval; and
- (d) Project Co:
- (1) will, after discussion and agreement with the Authority, clarify and resubmit an invoice for any amounts not approved by the Authority in any previously submitted invoice and the Authority will pay such agreed amounts in accordance section 7.1(c)(2); and
  - (2) may refer for resolution pursuant to Dispute Resolution Procedure the amount of any invoice it has not agreed with the Authority;
- (e) the Authority will not be obligated to make any payment unless all conditions of such payment in this Agreement have been satisfied;
- (f) within 10 Business Days following the end of each Payment Period, Project Co will submit to the Authority:
- (1) a Performance Monitoring Report for that Payment Period; and
  - (2) a report (a "**Payment Adjustment Report**") setting out any adjustments, including Deductions, to the Service Payments or Building Opening Payment for that Payment Period, and the amount of over-payment or under-payment from the amount paid previously by the Authority for that Payment Period;

- (g) Project Co will include with each invoice and Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the invoiced amounts and amounts set out in each Payment Adjustment Report;
- (h) for the final 3 Payment Periods of the Term, the Authority may withhold from payment a reasonable amount for possible adjustments to the Service Payments, and within 30 days after the expiry of the Term Project Co will provide the Authority with a final invoice setting out Project Co's calculations to reconcile any over-payments or under-payments and the Authority or Project Co, as applicable, will promptly pay the amount properly due and payable to the other party; and
- (i) no payment will be construed as an acceptance or approval of incomplete, defective or improper Design, Construction, Services or any other matter provided by Project Co which is not in conformance with the requirements of this Agreement, and will not operate to relieve Project Co from any of its obligations under this Agreement.

## **7.2 HST**

Project Co will include in each invoice:

- (a) for a Building Opening Payment, the HST payable by the Authority in respect of all Direct Construction Costs for that Building; and
- (b) for a Service Payment, the HST payable by the Authority on the Service Payment, excluding any portion of such Service Payment relating to Direct Construction Costs in respect of which the Authority has already paid HST pursuant to Section 7.2(a) of this Schedule.

**APPENDIX 8A**

**FUNCTIONAL UNITS, UNIT DEDUCTION AMOUNTS, RECTIFICATION PERIODS**

**LINKED UNITS PRINCIPLES**


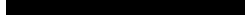
**APPENDIX 8B**

**CONSTRUCTION PAYMENTS**

**APPENDIX 8C**

**LIFE CYCLE PAYMENT**

<b>A</b>	<b>B</b>
<b>Payment Period after Service Commencement Date</b>	<b>Life Cycle Payment (\$ as of Base Date) (Index Linked)</b>
Month 1	
Month 2	
Month 3	
Month 4	
Month 5	
Month 6	
Month 7	
Month 8	
Month 9	
Month 10	
Month 11	
Month 12	
Month 13	
Month 14	
Month 15	
Month 16	
Month 17	
Month 18	
Month 19	
Month 20	
Month 21	

A	B
Payment Period after Service Commencement Date	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 22	
Month 23	
Month 24	
Month 25	
Month 26	
Month 27	
Month 28	
Month 29	
Month 30	
Month 31	
Month 32	
Month 33	
Month 34	
Month 35	
Month 36	
Month 37	
Month 38	
Month 39	
Month 40	
Month 41	
Month 42	
Month 43	
Month 44	
Month 45	
Month 46	
Month 47	



A	B
Payment Period after Service Commencement Date	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 48	
Month 49	
Month 50	
Month 51	
Month 52	
Month 53	
Month 54	
Month 55	
Month 56	
Month 57	
Month 58	
Month 59	
Month 60	
Month 61	
Month 62	
Month 63	
Month 64	
Month 65	
Month 66	
Month 67	
Month 68	
Month 69	
Month 70	
Month 71	
Month 72	
Month 73	

A	B	
Payment Period after Service Commencement Date	Life Cycle Payment (\$ as of Base Date) (Index Linked)	
Month 74		
Month 75		
Month 76		
Month 77		
Month 78		
Month 79		
Month 80		
Month 81		
Month 82		
Month 83		
Month 84		
Month 85		
Month 86		
Month 87		
Month 88		
Month 89		
Month 90		
Month 91		
Month 92		
Month 93		
Month 94		
Month 95		
Month 96		
Month 97		
Month 98		
Month 99		

A	B
Payment Period after Service Commencement Date	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 100	
Month 101	
Month 102	
Month 103	
Month 104	
Month 105	
Month 106	
Month 107	
Month 108	
Month 109	
Month 110	
Month 111	
Month 112	
Month 113	
Month 114	
Month 115	
Month 116	
Month 117	
Month 118	
Month 119	
Month 120	
Month 121	
Month 122	
Month 123	
Month 124	
Month 125	

A	B
Payment Period after Service Commencement Date	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 126	
Month 127	
Month 128	
Month 129	
Month 130	
Month 131	
Month 132	
Month 133	
Month 134	
Month 135	
Month 136	
Month 137	
Month 138	
Month 139	
Month 140	
Month 141	
Month 142	
Month 143	
Month 144	
Month 145	
Month 146	
Month 147	
Month 148	
Month 149	
Month 150	
Month 151	

A	B
Payment Period after Service Commencement Date	Life Cycle Payment (\$ as of Base Date) (Index Linked)
Month 152	
Month 153	
Month 154	
Month 155	
Month 156	
Month 157	
Month 158	
Month 159	
Month 160	
Month 161	
Month 162	
Month 163	
Month 164	
Month 165	
Month 166	
Month 167	
Month 168	
Month 169	
Month 170	
Month 171	
Month 172	
Month 173	
Month 174	
Month 175	
Month 176	
Month 177	

A	B
<b>Payment Period after Service Commencement Date</b>	<b>Life Cycle Payment (\$ as of Base Date) (Index Linked)</b>
Month 178	[REDACTED]
Month 179	[REDACTED]
Month 180	[REDACTED]