

APPENDIX 2A

INDEPENDENT CERTIFIER AGREEMENT

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SCHEDULE 1 FUNCTIONS

SCHEDULE 2 FEE

SCHEDULE 3 INDEPENDENT CERTIFIER PERSONNEL

APPENDIX 2A

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the ▼ day of ▼, 2012

AMONG:

▼

(the “**Authority**”)

AND:

▼

(“**Project Co**”)

AND:

▼

(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 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 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 Agreement) will have meanings given to them in the Project Agreement and the following terms will have the following meanings:

“**Agreement**” means this Independent Certifier Agreement and its schedules;

“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;

“Functions” means:

- (a) all of the functions and obligations conferred on the Independent Certifier under the Project Agreement;
- (b) all of the functions and obligations conferred on the Independent Certifier under this Agreement, including the functions described in Schedule 1 of this Agreement; and
- (c) all other things or tasks which the Independent Certifier is required to do to comply with its obligations under this Agreement;

“Functions Variation” means any change to the Functions;

“Intellectual Property” means any and all intellectual property rights throughout the world, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names;

“PA Parties” means, collectively, the Authority and Project Co;

“PPP Canada” means PPP Canada Inc., manager of the P3 Canada Fund;

“Project Agreement” means that certain agreement entitled “Project Agreement” and made between the Authority and Project Co as of the ▼ day of ▼, 2012 with respect to the design, construction, financing and maintenance for the Buildings, as the same may be amended, supplemented or replaced from time to time; and

“Project Material” means all material:

- (a) provided to the Independent Certifier or created by or required to be created by any PA Party; and
- (b) 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).

2. INTERPRETATION

2.1 Interpretation

The division of this 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 Agreement and will not be used to affect the construction or interpretation of this 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 Agreement to "**Section**" and "**Schedule**" is to a Section of, and a Schedule to, this 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

The obligations of the PA Parties under this Agreement will be several. Except as specifically provided for in this Agreement, the rights of the PA Parties under this 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 Agreement. The Independent Certifier will perform the Functions in accordance with this 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 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 Building Opening for a Building, and that the Independent Certifier will use its best skill and judgment in providing the Functions and making any certifications. A PA Party may dispute any other decision made by the Independent Certifier, including any list of Building Opening Deficiencies or list of incomplete Design and Construction that must be completed prior to Building Opening for a Building.

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;
- (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) or 3.6(b), 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 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 Buildings and Building Sites, 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 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 and 3.7(b), perform the Functions so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
- (d) provide copies to all PA Parties of all reports, communications, certificates and other documentation that it provides to any PA Party.

3.8 Conflict of Interest

The Independent Certifier warrants that:

- (a) at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement; and
- (b) if, during the term of this 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.

3.9 Independent Certifier Personnel

- (a) Subject to Section 3.9(b), the Independent Certifier will use the partners, directors or employees described in Schedule 3 [Independent Certifier Personnel] of this Agreement in connection with the performance of the Functions and such persons' services will 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 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 or employee 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 who will previously have been approved in writing by the PA Parties.

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 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 a Building Opening has 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 Buildings, Building Sites and work in progress at any reasonable time in connection with the exercise or proposed exercise of rights under this Agreement, subject to:

- (a) observance of the reasonable rules of Project Co as to safety and security for the Building Sites, Buildings and work in progress;

- (b) not causing unreasonable delay to the carrying out of the Construction by reason of its presence at the Building Sites or Buildings; and
- (c) not causing any damage to the Building Sites, Buildings 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 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. PPP CANADA

5.1 Beneficiary

PPP Canada is a designated beneficiary under this Agreement and will be entitled to rely upon all reports and certificates to be delivered by the Independent Certifier under this Agreement.

5.2 Duty of Care

The Independent Certifier owes an independent duty of care to PPP Canada in connection with its obligations to PPP Canada under this Agreement.

5.3 Information

The Independent Certifier will provide PPP Canada with all reports and certificates it provides to any PA Party.

5.4 Right of Inspection

The Independent Certifier will maintain accurate and complete records related to the Functions performed under this Agreement and such records will be made available to PPP Canada upon reasonable written notice to the Independent Certifier.

5.5 PPP Canada not Liable

PPP Canada will not be liable for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Agreement or otherwise.

6. SUSPENSION

6.1 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 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.

6.2 Costs of Suspension

The Independent Certifier will:

- (a) subject to the Independent Certifier complying with Section 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(b) valued as a Functions Variation under Section 9; and
- (b) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a).

6.3 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.

7. INSURANCE AND LIABILITY

7.1 Independent Certifier's Professional Indemnity Insurance

[NTD: Consider extent of required insurance]

- (a) The Independent Certifier will, at its cost, have in place:
 - (1) professional errors and omissions insurance:
 - (A) 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;
 - (B) with a term and extended reporting period from the date of this Agreement until the expiration of [REDACTED] from the cessation of the Functions; and
 - (C) 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 Agreement or the provision of the Functions; and

- (2) at all times during the term of this Agreement, comprehensive general liability insurance in the amount of [REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than [REDACTED] per occurrence for property damage, 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 7.1(a):
 - (A) bears an endorsement to the effect that the insurer will not effect any adverse material change or amendment to the policy or any cancellation of the policy without first giving at least 30 days prior written notice by registered mail to the Authority; and
 - (B) 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 7.1(a) to each of the PA Parties upon request.

7.2 Workers' Compensation Insurance

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

8. PAYMENT FOR SERVICES

8.1 Fee

- (a) In consideration of the Independent Certifier performing the Functions in accordance with this 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.

8.2 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. 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 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.

9. FUNCTIONS VARIATIONS

9.1 Notice of Functions Variation

- (a) If the Independent Certifier believes, other than a “Functions Variation Order” under Section 9.3, 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 9.1(a)(1), 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 Agreement and all directions, including any direction in respect of which notice has been given under this Section.

9.2 No Adjustment

If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

9.3 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 9.4.

9.4 Cost of Functions Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Functions Variations or suspensions under Section 6.1(b) carried out by the Independent Certifier by:
- (1) the amount (if any) stated in the "Functions Variation Order" in accordance with Section 9.3(c);
 - (2) if Section 9.4(a)(1) is not applicable, an amount determined pursuant to the fee schedule for Functions Variations in Schedule 2; 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.

10. TERM AND TERMINATION

10.1 Term

Subject to earlier termination, this 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.

10.2 Notice of Breach

If the Independent Certifier commits a breach of this 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.

10.3 Termination for Breach

If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Agreement.

10.4 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 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.

10.5 Termination for Convenience

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

10.6 Independent Certifier's Rights upon Termination for Convenience

Upon a termination under Section 10.5, 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 Agreement but for it being terminated.

10.7 Procedure upon Termination

Upon completion of the Independent Certifier's engagement under this Agreement or earlier termination of this Agreement (whether under Sections 10.3, 10.4 or 10.5 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.

10.8 Effect of Termination

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

10.9 Survival

Termination of this Agreement will not affect the continuing rights and obligations of Project Co or the Authority and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section 10.9 or under any other Section which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 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 Agreement or the Project Agreement; or
- (b) any act or omission of the Independent Certifier in connection with the subject matters of this Agreement.

12. GENERAL

12.1 Entire Agreement

This 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 Agreement between the PA Parties and the Independent Certifier with respect to the subject matter of this Agreement.

12.2 Negation of Employment

- (a) The Independent Certifier, its 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 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 officers, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

Failure by any PA Party or the Independent Certifier to enforce a provision of this 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 Agreement.

12.4 Notices

Any document which is to be or may be issued or given to or served upon Project Co, the Authority or the Independent Certifier under this Agreement will be deemed to have been sufficiently issued or given to or served if:

- (a) it is delivered or sent by commercial courier, upon receipt;
- (b) it is sent by fax, upon confirmation of a successful transmission by a transmission report received by the sender,

to the addresses set out below:

- | | | |
|-----|---------------------------------|-----------------------------|
| (1) | if to Project Co: | ▼
Fax No.:
Attention: |
| (2) | if to the Authority: | ▼
Fax No.:
Attention: |
| (3) | if to Independent
Certifier: | ▼
Fax No.:
Attention: |

- (c) Any party may change its address for notice by notice given to the other parties in accordance with this Section.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (1) will not assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement without the prior written consent of the PA Parties or PPP Canada, which each PA Party and PPP Canada 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 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 Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement in accordance with the terms of the Project Agreement.

12.6 Governing Laws and Attornment

This 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 Agreement.

12.7 Confidentiality

- (a) The Independent Certifier will ensure that:
 - (1) neither it nor any of its 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 Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its 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.

12.8 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 agent or employee 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).

12.9 Time of the Essence

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

12.10 Amendment

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

12.11 Severability

If any provision of this 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 Agreement.

12.12 Enurement

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

12.13 Counterparts

This 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 Agreement.



By: _____
 Name:
 Title:

By: _____
 Name:
 Title:

[PROJECT CO]:

By: _____
Name:
Title:

By: _____
Name:
Title:

[INDEPENDENT CERTIFIER]:

By: _____
Name:
Title:

By: _____
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 Agreement, including this Schedule 1, and a provision of the Project Agreement, the Project Agreement will prevail.

[NTD: to be reviewed for consistency with scope of the final Project Agreement, particularly Schedule 2, and the final PPP Canada Contribution Agreement]

- (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 for the purposes of the Independent Certifier's functions under this Agreement, and will no later than the 10th calendar 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 month and
 - (iv) the progress of the Design and Construction relative to the Updated Project Schedule, with an overview analysis of any variances.
- (b) 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 Building Opening for a Building, review the list of Building Opening Deficiencies for that Building and deliver to Project Co and the Authority's Design and Construction Representative comments on the list of Building Opening Deficiencies for that Building.
- (c) No later than 5 Business Days after application by Project Co for a Certificate of Building Opening for a Building, 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 Building, review the basis for Project Co's application for Building Opening for that Building, and then within a further 5 Business Days:
 - (i) if Building Opening for that Building has been achieved, issue a Certificate of Building Opening, together with comments on the list of Building Opening Deficiencies (if any); or
 - (ii) if Building Opening for that Building has not been achieved, 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 Building Opening for the Building.

- (d) The Independent Certifier will, promptly after the Building Opening Date for a Building, prepare and deliver to the Authority and Project Co a certificate certifying the Direct Construction Costs applicable to that Building.

SCHEDULE 2

FEE

[This Schedule should also include a fee schedule for Functions Variations.]

SCHEDULE 3

INDEPENDENT CERTIFIER PERSONNEL