

**SCHEDULE 2**

**DESIGN AND CONSTRUCTION PROTOCOLS**

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## SCHEDULE 2

### DESIGN AND CONSTRUCTION PROTOCOLS

#### 1. INTERPRETATION

##### 1.1 Definitions

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

**"Building Condition Reports"** has the meaning set out in Section 6.7 of this Schedule;

**"Building Opening Deficiency"** has the meaning set out in Section 13.1 of this Schedule;

**"Building Site"** means the site upon which a Building is located;

**"Certificate of Building Opening"** has the meaning set out in Section 13.3(a) of this Schedule;

**"City"** means the City of Vancouver;

**"Commissioning Plan"** has the meaning set out in Section 12.3 of this Schedule;

**"Construction Period Joint Committee"** has the meaning set out in Section 2.6 of this Schedule;

**"Decanting"** means, as may be required to renovate a Building:

- (a) moving Residential Tenants of a Building out of the Building and into other spaces;
- (b) moving Residential Tenants within a Building; and
- (c) moving Residential Tenants into the Building after completion of the renovation;

**"Decanting Schedule"** had the meaning given in Section 10.5 of this Schedule;

**"Deficiency"** means a Building Opening Deficiency;

**"Deficiency Deadline"** has the meaning set out in Section 13.5 of this Schedule;

**"Design and Construction Representative"** has the meaning set out in Section 2.1 of this Schedule;

**"Independent Certifier"** has the meaning set out in Section 3.1 of this Schedule;

**"Intended Uses"** means the uses for the Buildings as described in the Design and Construction Specifications;

**"Move-In Notice"** has the meaning given in Section 6.10(b)(1)(A)(ii) of this Schedule;

**"Move-Out Notice"** has the meaning given in Section 6.10(b)(1)(A)(i) of this Schedule;

**"PDS"** has the meaning set out in Section 6.21 of this Schedule;

**“Project Co’s Quality Consultant”** has the meaning set out in Section 8.3 of this Schedule;

**“Project Schedule”** has the meaning set out in Section 10.1 of this Schedule;

**“Proposal Extracts (Design and Construction)”** means the provisions of Appendix 2G [Proposal Extracts (Design and Construction)];

**“Quality Assurance Plan”** has the meaning set out in Section 8.5 of this Schedule;

**“Quality Assurance Program”** has the meaning set out in Section 8.4 of this Schedule;

**“Quality System”** means an organizational structure, procedures, processes and resources necessary to implement a comprehensive, planned and systematic program, designed and implemented by Project Co pursuant to this Agreement, to ensure that the standards of quality control, quality management and quality assurance required by this Agreement are achieved by Project Co in every material aspect of the Design and Construction;

**“Reviewed Drawings and Specifications”** has the meaning set out in Section 6(a) of Appendix 2C [User Consultation and Design Review];

**“Submittal”** has the meaning set out in Section 1 of Appendix 2C [User Consultation and Design Review];

**“Submittal Schedule”** has the meaning set out in Section 2(a) of Appendix 2C [User Consultation and Design Review];

**“Threat and Risk Assessment”** has the meaning set out in Section 4.8 of this Schedule;

**“Updated Project Schedule”** has the meaning set out in Section 10.2 of this Schedule;

**“User Consultation Group”** has the meaning set out in Section 5.2(a) of this Schedule; and

**“Work Plan”** has the meaning set out in Section 6.9(d) of this Schedule.

## **2. PARTIES’ DESIGN AND CONSTRUCTION REPRESENTATIVES**

### **2.1 Appointment of Representatives**

Both parties will within 5 Business Days of the Effective Date designate in writing a person (the **“Design and Construction Representative”**) to be the party’s single point of contact with respect to the Design and the Construction. A party’s Design and Construction Representative may or may not be a Key Individual. Except as otherwise set out in this Agreement, all costs or expenses incurred by or with respect to a party’s Design and Construction Representative will be for the account of that party.

### **2.2 Replacement**

Subject to Section 2.12 of this Agreement in respect of Key Individuals, a party may at any time and in its own discretion by notice to the other party change the person appointed as the party’s Design and Construction Representative. If for any reason a party’s Design and Construction Representative is unable or unwilling to continue then the party will immediately appoint a replacement Representative. If

at any time a party objects to a Representative of the other party then the other party will give reasonable consideration to replacing the Representative with a person reasonably acceptable to the objecting party.

### **2.3 Authority of Representatives**

A party's Design and Construction Representative will have full authority to act on behalf of and bind the party with respect to Design and Construction under this Agreement, including giving any review, acceptance, approval or confirmations which may be given by the Authority. Notwithstanding the above, a party's Design and Construction Representative will not have the authority to execute or agree to any amendments or to give any waivers of this Agreement.

### **2.4 Review Procedure**

The parties will comply with Appendix 2C [User Consultation and Design Review].

### **2.5 Authority Not Responsible for Design or Construction**

The Authority's review, acceptance, approval or confirmation of compliance with respect to any aspect of the Design or the Construction, including pursuant to Appendix 2C [User Consultation and Design Review], will be for the Authority's benefit only, and no review, acceptance, approval or confirmation of compliance by the Authority's Design and Construction Representative or other representative of the Authority will in any way relieve Project Co of its obligation for all aspects of the Design and Construction of the Buildings except as may be expressly set out in this Agreement.

### **2.6 Construction Period Joint Committee**

- (a) Not less than 20 Business Days after the Effective Date, the Authority and Project Co will establish, and will maintain until Service Commencement is achieved a joint liaison committee (the "**Construction Period Joint Committee**") consisting of the Design and Construction Representatives and such other members as the parties may agree from time to time.
- (b) The purpose of the Construction Period Joint Committee is to provide a formal forum for the parties to consult and cooperate in all matters relating to the Buildings during the Construction Period and any member appointed to the Construction Period Joint Committee will not have any duties or obligations arising out of such appointment independent of such member's duties or obligations to the party making such appointment.
- (c) The Construction Period Joint Committee:
  - (1) will only have the authority as expressly delegated to it by the Authority and Project Co, and both parties will give reasonable consideration to delegating appropriate authority to permit efficient decision making with respect to the Buildings;
  - (2) may strike, establish terms of reference for, delegate authority and appoint members having the necessary experience and qualifications to, such sub-

committees as the Construction Period Joint Committee may determine are necessary from time to time and all such sub-committees will report to the Construction Period Joint Committee, including the establishment of a sub-committee for each of the Buildings which includes representatives from the Authority, Project Co and the applicable Housing Operator the purpose of which sub-committees will be to:

- (A) coordinate and provide an interface between the Authority, Project Co, the Housing Operator and Tenants of such Building;
  - (B) address Building specific issues including:
    - (i) occupational health and safety;
    - (ii) communications with Housing Operators and Tenants with respect to the Construction and Project Schedule;
    - (iii) coordination of Building related services and access;
  - (3) will establish protocols and procedures for undertaking the tasks and responsibilities delegated to it, including a co-operative and consultative process to review all documentation submitted to it in relation to the Design and Construction;
  - (4) may make recommendations to the parties on all matters relating to the Buildings, which the parties may accept or reject in their complete discretion; and
  - (5) will have no authority to agree to any amendments or to give any waivers of this Agreement.
- (d) Subject to the provisions of this Agreement, the members of the Construction Period Joint Committee may adopt such procedures and practices for the conduct of the activities of the Construction Period Joint Committee as they consider appropriate from time to time and:
- (1) may invite to any meeting of the Construction Period Joint Committee such other (non-voting) persons as a member may decide; and
  - (2) receive and review a report from any person agreed by the members of the Construction Period Joint Committee.
- (e) The Construction Period Joint Committee will meet at least once each month at a location provided by Project Co at or near the Buildings Sites (unless otherwise agreed by its members) and from time to time as necessary. If any member of the Construction Period Joint Committee requests an additional meeting, the parties will act reasonably in accommodating this request. Meetings of the Construction Period Joint Committee will be convened on not less than 10 Business Days' notice (which will also identify the agenda items to be discussed at the meeting) provided that in an emergency a meeting

may be called at any time on such notice as may be reasonable in the circumstances. The Construction Period Joint Committee will be chaired by a representative of the Authority unless the Authority requires that a representative of Project Co chair the Construction Period Joint Committee.

- (f) Project Co will keep minutes of all recommendations and meetings of the Construction Period Joint Committee in accordance with Schedule 14 [Records and Reports] and circulate such minutes to the parties promptly within five Business Days of the making of the recommendation or the holding of the meeting.

### **3. INDEPENDENT CERTIFIER**

#### **3.1 Appointment**

The parties will cooperate to jointly appoint a person (or firm of persons) (the “**Independent Certifier**”), who is:

- (a) qualified and experienced with respect to the design and construction of projects in British Columbia similar to the Project, and
- (b) independent from both the Authority and Project Co (and who will be impartial to the parties),

to provide certification services for the benefit of the parties during the Construction Period. The parties will enter into an agreement with the Independent Certifier on the terms generally as set out in Appendix 2A [Independent Certifier Agreement]. The parties confirm that Project Co may also appoint the Independent Certifier to provide certification services in respect of the Design-Build Agreement and the PPP Canada Contribution Agreement.

#### **3.2 Appointment and Replacement**

If within 20 Business Days of the Effective Date the Independent Certifier has not been appointed, or if for any reason during the Construction Period the Independent Certifier is unable or unwilling to continue to perform the Independent Certifier services or if the Independent Certifier’s appointment has been terminated by the Authority and Project Co, then:

- (a) within 5 Business Days of the date that is 20 Business Days after the Effective Date (or within 5 Business Days of the date of termination of the Independent Certifier’s appointment, if applicable), Project Co will provide the names of 3 candidates acceptable to Project Co for consideration by the Authority;
- (b) within 10 Business Days of receiving the candidate names, the Authority will notify Project Co of the candidates acceptable to the Authority, and the parties will cooperate to enter into a contract with an acceptable candidate generally in the form set out in Appendix 2A [Independent Certifier Agreement]; and
- (c) if none of the candidates are acceptable to the Authority, acting reasonably, or if for any reason an Independent Certifier is not appointed within 40 Business Days of the Effective



Date (or within 20 Business Days of the date of termination of the Independent Certifier's appointment, if applicable), then either party may immediately apply to the British Columbia International Commercial Arbitration Centre for the selection of an Independent Certifier, providing the other party the opportunity to participate in the selection and appointment process.

### **3.3 Monthly Inspections and Report**

The parties will require the Independent Certifier to:

- (a) consult with the Design-Builder and others involved in the Design; and
- (b) conduct inspections of the Construction,

as the Independent Certifier determines is required for purposes of the Independent Certifier's functions under this Agreement and, no later than the 10th day of each month, prepare and deliver to the Authority and Project Co a monthly written report containing a description of:

- (c) the Design and Construction completed in the previous month; and
- (d) the progress of the Design and Construction relative to the Updated Project Schedule, with an overview analysis of any variances.

### **3.4 Application for Certificates of Building Opening**

The parties will require the Independent Certifier to perform the obligations of the Independent Certifier described in Section 13 of this Schedule.

### **3.5 Certification of Direct Construction Costs**

The parties will require the Independent Certifier to, 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.

### **3.6 Permitted Access**

Project Co will give the Independent Certifier access to the Design and Construction work as the Independent Certifier reasonably requests in order to be fully informed as to the progress of the Design and Construction including:

- (a) access to drawings, specifications, schedules, records, and other documents or data relating to the Design and Construction, including such information that is being produced by or in the possession of the Design-Builder or others; and
- (b) access to the Building Sites,

and Project Co will:

- (c) permit the Independent Certifier to attend all Design and Construction meetings during the Construction Period except to the extent Project Co and the Authority expressly otherwise agree; and
- (d) keep the Independent Certifier fully informed as to the progress of the Construction, including giving notice in accordance with Good Industry Practice of any part of the work before it becomes covered up and unavailable for inspection.

### **3.7 No Responsibility for Design or Construction**

Nothing in this Agreement (including this Schedule) will be interpreted as giving the Independent Certifier any responsibility or authority for any aspect of the Design or the Construction, or as relieving Project Co of its responsibility for the Design and Construction as set out in this Agreement, and neither Project Co nor the Design-Builder nor any Sub-Contractor will be entitled to rely on any review, acceptance, approval or confirmation that the Independent Certifier may give with respect to Design or Construction.

## **4. PROJECT CO'S RESPONSIBILITIES**

### **4.1 Design/Build Responsibility**

Notwithstanding any other provision of this Agreement, Project Co will:

- (a) have complete responsibility for the Design and Construction of the Buildings;
- (b) perform and complete the Design and Construction:
  - (1) in accordance with all terms of this Agreement including the terms of this Schedule and the Design and Construction Specifications;
  - (2) so as to provide renovated single room occupancy buildings that at Building Opening:
    - (A) are complete and operational and fit for the Intended Uses; and
    - (B) will permit Project Co to provide the Services in accordance with the requirements of this Agreement.
  - (3) to reflect and capture the intent and benefits to the Authority of the Proposal Extracts (Design and Construction).

Each of the obligations in Sections 4.1(b)(1), 4.1(b)(2) and 4.1(b)(3) of this Schedule are independent obligations, and the fact that Project Co has satisfied one obligation will be no defence to an allegation that it has failed to satisfy another.

### **4.2 Standard of Performance for Design and Construction**

Without limiting the other requirements of this Agreement, Project Co will perform the Design and Construction to the standards as required by Section 2.1 of Schedule 3 [Design and Construction Specifications].

#### **4.3 Defects in Design or Construction**

Project Co will, without cost to the Authority, and without limiting Project Co's obligations to perform the Services as set out in this Agreement, including Schedule 4 [Services Protocols and Specifications], correct any Defect that becomes apparent at any time during the Term, subject to the terms of this Agreement, including any Scheduled Maintenance and the Handback Requirements.

#### **4.4 Compliance with Laws**

Project Co will undertake and perform the Design and Construction in accordance with applicable Laws, and so that all elements of the Design and the Construction, including all workmanship, construction equipment and materials, and the supply and installation of Equipment, meet or exceed the requirements of applicable Laws. If there is any conflict or ambiguity between the provisions of applicable Laws, or between a provision of applicable Laws and the Design and Construction Specifications, or between provisions of the Design and Construction Specifications, then the provision of higher quality or higher standard will govern.

#### **4.5 Permits for the Design and Construction**

Except as expressly provided otherwise in this Agreement, Project Co will obtain all Permits required for the Design and Construction, including all Permits required by the City such as development permits, building permits, heritage alteration permits and any permits required by the City's Single Room Accommodation Bylaw. Project Co will:

- (a) keep the Authority's Design and Construction Representative fully informed of the details of all discussions and negotiations with Governmental Authorities with respect to all Permits for which it is responsible;
- (b) upon request from the Authority's Design and Construction Representative, provide to the Authority copies of all documentation and correspondence with a Government Authority relating to such Permits; and
- (c) provide reasonable advance notice to the Authority of any meetings with the City or other Governmental Authorities (where practicable) and upon request by the Authority permit a representative of the Authority to attend any such meetings.

Project Co assumes all risk and costs arising in relation to Permits for which Project Co is responsible as described in this Section 4.5, including delays to the Project Schedule arising from delays in obtaining Permits or inability to obtain Permits, conditions of obtaining Permits, or amendments to Permits as may be required. The Authority will provide Project Co with such information within the Authority's possession, and co-operate with Project Co, as Project Co may reasonably require in relation to all Permits for which Project Co is responsible.

#### 4.6 Energy Incentive Programs

Project Co will, on behalf of the Authority, apply to:

- (a) BC Hydro for any applicable energy incentive programs and take all reasonable steps to obtain for the Authority the maximum benefits (funding, incentives and cost savings) offered by BC Hydro under such program(s). Without limitation, Project Co will:
  - (1) meet with BC Hydro at an early stage of the Design;
  - (2) within 30 Business Days of BC Hydro notifying Project Co or the Authority as to which energy incentive program(s) is applicable to a Building, prepare and deliver to BC Hydro and the Authority the completed application forms for that program(s);
  - (3) within 30 Business Days of acceptance of the applications by BC Hydro, carry out any required energy studies and calculations and prepare and deliver the results of such studies and calculations to the Authority and BC Hydro for the purpose of measuring electrical savings to be achieved through the program;
  - (4) collaborate with BC Hydro to identify potential improvements to the Design that will achieve greater energy efficiency; and
  - (5) use all reasonable efforts to obtain for the Authority the maximum funding or incentives offered by BC Hydro, including revising the design for each Building as may be required (to the extent possible without materially changing the Design and Construction Specifications or the intent of the Proposal Extracts (Design and Construction)), and to minimize the Authority's energy costs during the Operating Period.
  
- (b) FortisBC for all applicable energy incentive programs offered by FortisBC and take all reasonable steps to obtain for the Authority the maximum benefits (funding, incentives and cost savings) offered by FortisBC under such program(s). Without limitation, Project Co will:
  - (1) meet with FortisBC at an early stage of the Design;
  - (2) collaborate with FortisBC to identify potential improvements to the Design that will achieve greater energy efficiency; and
  - (3) use all reasonable efforts to obtain for the Authority the maximum funding or incentives offered by FortisBC, including revising the design for each Building as may be required (to the extent possible without materially changing the Design and Construction Specifications or the intent of the Proposal Extracts (Design and Construction)), and to minimize the Authority's energy costs during the Operating Period.

#### **4.7 Entitlement to Environmental Credits**

The Authority will be entitled to any and all Environmental Credits related to the Building and its operation.

#### **4.8 Threat and Risk Assessment**

Project Co will, by the date specified in the Submittal Schedule, deliver to the Authority a comprehensive threat and risk assessment report for each Building ("**Threat and Risk Assessment**") identifying specific risks and vulnerabilities to people, property and the Authority associated with the Building and the surrounding community, and describing how the Design will mitigate these risks and vulnerabilities. The Threat and Risk Assessment will be based on the preliminary threat and risk assessment included in the Proposal Extracts (Design and Construction). The Authority may provide comments on the Threat and Risk Assessment within 15 Business Days of receiving it. Project Co will, acting reasonably, take account of the Authority's comments in finalizing the Threat and Risk Assessment and deliver to the Authority a copy of the final Threat and Risk Assessment within 15 Business Days of receiving the Authority's comments. Project Co will implement the risk mitigation strategies described in the Threat and Risk Assessment in developing the Design.

### **5. DESIGN**

#### **5.1 Additional Design Considerations**

In addition to other requirements of this Agreement, Project Co will undertake and perform the Design so that the Design:

- (a) is undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the Design, as of the date of this Agreement, and Project Co will appoint a design team that:
  - (1) is so qualified;
  - (2) includes (as required by applicable Law or Good Industry Practice) licensed or registered professional engineers and architects; and
  - (3) has sufficient expertise and experience to expeditiously and efficiently perform all of the Design in a proper and professional manner to the standard set out in this Agreement;
- (b) includes specific consideration of "constructability" and "life cycle" cost issues at all stages of Design, as appropriate; and
- (c) includes consideration of efficient and cost-effective operation and maintenance.

#### **5.2 Design Process**

Project Co will undertake the Design of each Building:

(a) in accordance with Appendix 2C [User Consultation and Design Review], including providing Submittals to the Authority in accordance with the Submittal Schedule and undertaking consultation with representatives of the Building Users (the "**User Consultation Group**") in accordance with Appendix 2C [User Consultation and Design Review];

(b) in phases progressively, with each phase capturing the information and detail of a previous phase, as follows:

(1) Schematic Design Phase

This phase will include supplemental information not included in Appendix 2G [Proposal Extracts (Design and Construction)] and development of drawings and other documents illustrating the scale and character of the Building, architecture and all engineering systems in sufficient detail to describe how all the parts of the Building functionally relate to each other, such as the site plan, spatial relationship diagrams, principal floor plans, building systems, sections, and elevations; together with a written project brief and system schematics. At a minimum provide the items described in Attachment 2 to Appendix 2C.

(2) Design Development Phase

This phase will include drawings and other documents, including a site plan, elevations and sections, together with a written project brief detailing area calculations, detailing all building systems and outline specifications, to fully describe the size and character of the entire Building including the architectural, heritage, landscaping, civil, structural, mechanical, electrical and IMIT systems, security, materials and other elements to fully describe the Building. At a minimum provide the items described in Attachment 2 to Appendix 2C.

(3) Construction Documents Phase

This phase will include construction documents consisting of drawings and specifications describing in detail the requirements for the construction of all components, systems and equipment of the Building delivered to the Authority:

(A) at 50% completion; and

(B) at 100% completion,

and, despite any later dates set out in the Submittal Schedule, in a timely way in advance of Construction with sufficient detail to permit the Authority to understand and assess the Design of the Building. At a minimum provide the items described in Attachment 2 to Appendix 2C.

(c) so that in each phase, Project Co will provide to the Authority the level of detail and documentation that the Authority would customarily receive or expect to receive for a

renovation of a Building similar to the Building in accordance with Good Industry Practice, and including the items described in Attachment 2 to Appendix 2C.

Project Co will only issue drawings and specifications for construction purposes based on Reviewed Drawings and Specifications as described in Appendix 2C [User Consultation and Design Review].

This Section 5.2 does not limit Project Co's obligation to comply with any requirements set out in the Design and Construction Specification in relation to the stages and requirements for Design.

### **5.3 Design Change**

The following will apply to the Authority's requests for amendments to a Building design:

- (a) revisions to drawings, specifications and additional Design requested by the Authority under the processes described in Section 5 of this Schedule and in Appendix 2C [User Consultation and Design Review], are not Changes and will be completed at Project Co's cost (except to the extent that any such requested revision would constitute a material change to the Design and Construction Specifications, the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply and such revision will not be implemented except under a Change Certificate issued by the Authority); and
- (b) if and to the extent the Authority requires a variation of any Design described in the Reviewed Drawings and Specifications (other than a variation required to bring the Design into conformity with this Agreement then such variation will be a Change and the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.

### **5.4 Mock-Ups**

Project Co will, at its cost and as part of the user consultation and design review process described in Appendix 2C [User Consultation and Design Review], provide and make available to the Authority for review the "mock-ups" described in Sections 5.4(a) to 5.4(h) below for each Building (except as may be inapplicable to a particular Building). Mock-ups may be constructed in situ in a Building as the first example of a type of work, or off-site in advance of the Building being ready for construction if the mock-ups include features that have long delivery times such as heritage items. Project Co will include dates on the Submittal Schedule for construction of and for Authority review of mock-ups. The time periods for Authority review and comment on Submittals set out in Appendix 2C will apply to mock-ups. For mock-ups that include heritage elements, additional approvals may be required from Governmental Authorities.

- (a) Structural Remediation Work – if the structure of a Building shows signs of material damage or decay (such as decaying wood structural members, damaged beams and columns and decayed sheathing), Project Co will provide a mock-up of the proposed remediation.
- (b) Structural Repair/ Reinforcing Work – Project Co will provide mock-ups to show the proposed reinforcing of existing structural members (including roof/floor joists, beams, columns and existing foundations) that are in good condition, but need to be upgraded.

- (c) Masonry Structural Ties, Re-Pinning of Brick, and Reinforcement of Masonry Back-Up Wall System – Project Co will provide a mock-up to show the proposed reinstatement of connections between exterior masonry walls and their back-up structural walls (including replacement of existing masonry ties and re-pinning of exterior brick to an adequate structural back-up wall).
- (d) Repointing of Exterior Brick Walls and Anchorage of Falling Hazards – Project Co will provide a mock-up to show the proposed repointing of existing masonry walls and the proposed anchorage of falling hazards, including window sills, roof parapets, chimneys, canopies, signs, cornices and steel fire exit stairs.
- (e) Masonry – Project Co will provide a 3 foot by 3 foot example of masonry restoration on each elevation where restoration work will be undertaken.
- (f) Door and Window Openings – Project Co will provide an example of door or window opening preparation for each door or window type prior to door or window installation. In addition Project Co will provide an example of a finished door and window installation including flashing and trim on each elevation.
- (g) Cladding - Project Co will provide 3 foot by 3 foot mock-up of any new exterior cladding.
- (h) Architectural and Heritage – Project Co will provide the following:
  - (1) new window mock-up;
  - (2) rehabilitated window mock-up;
  - (3) storefront window mock-up (base, lower fixed, clerestory);
  - (4) new sheet metal cornice/pediment mock-up;
  - (5) rehabilitated cornice patch/selective replacement mock-up;
  - (6) mortar repointing mock-up;
  - (7) masonry restoration patching mortar mock-up;
  - (8) masonry cleaning/stain removal mock-up;
  - (9) storefront alcove tile surface mock-up;
  - (10) replacement skylight mock-up;
  - (11) skylight rehabilitation mock-up;
  - (12) new roofing mock-up, including curb wraps, wall wraps with regletted cap flashings, plumbing stacks, scupper and drain tie-ins, and other project-specific roof surface penetrations and anchorage conditions;
  - (13) insulation mock-ups;



- (14) sheet flooring, cove and cap floor/wall detail, and inlaid pattern mock-ups;
- (15) interior window casing/door casing mock-ups;
- (16) cabinet floor seal mock-up;
- (17) bedbug sauna typical wall/floor construction mock-up;
- (18) vented parapet for parapet bracing mock-up;
- (19) new free-standing stainless steel counter unit with integral single or double compartment basin as described in the room datasheets for Residential Rooms included in the Building Specifications; and
- (20) typical room mock-ups (eg. Residential Room, program manager's office, admin office, laundry room, bathroom, kitchen, bed bug sauna) with all accessories, furnishing and equipment layout.

## 5.5 Ownership of Design

With respect to ownership and property rights relating to the Design:

- (a) the Authority will not have an ownership interest in the Design, including any of the drawings or specifications prepared and produced by Project Co, the Design-Builder or any Sub-Contractor;
- (b) Project Co grants to the Authority, or will cause the Design-Builder and all Sub-Contractors to grant to the Authority, an irrevocable perpetual license giving the Authority the non-exclusive right to use the Design, including any of the documents and information listed in Section 6.29 of this Schedule:
  - (1) in connection with the Buildings during and beyond the end of the Term and as long as the Buildings exist, including for operational purposes during the Term and for renovations, additions and alterations to the Buildings; and
  - (2) for reference purposes in connection with other operations, projects and facilities of the Authority; and
- (c) Project Co will execute and deliver, or cause to be executed and delivered, any and all further and other documents as the Authority may reasonably request to effect and record the licence referred to in Section 5.5(b) of this Schedule.

## 5.6 Record of Adjustments to Design and Construction

The parties wish to create a single record of adjustments to the Design and Construction that are reflected in the Reviewed Drawings and Specifications, but which do not constitute Changes for which there are adjustments to payments or the Target Building Opening Dates. The adjustments include all inconsistencies with or differences from the Design and Construction Specifications, the Proposal Extracts, this Schedule 2 and any other parts of this Agreement. Project Co will maintain a list of all such

adjustments, to be referred to as “Adds/Omits” or other name agreed to by the parties. Project Co will provide a copy of such list, and proposed updates to the list, together with each of the phases of Design set out in Section 5.2 above, and will modify the list for reasonable comments made by the Authority. Upon the achievement of Service Commencement, the parties intend to agree on documentation to reflect such adjustments and may for convenience set out such adjustments in a Change Certificate. Unless otherwise agreed, at least 90 days prior to the Service Commencement Date, Project Co will provide the Authority with a draft Change Report, without adjustments to payments or to the Target Service Commencement Date, setting out such adjustments, and the parties will seek to agree on final documentation within 30 days after the Service Commencement Date.

## **6. CONSTRUCTION**

### **6.1 Construction of the Buildings**

Project Co will perform the Construction in strict conformity with the Reviewed Drawings and Specifications, as may be modified and amended from time to time in accordance with the terms of this Agreement, and this obligation will be in addition to all other obligations of Project Co under this Agreement.

### **6.2 Amendments and Changes to the Drawings and Specifications**

During the Construction, Project Co will submit all amendments or additions to the Reviewed Drawings and Specifications to the Authority's Design and Construction Representative for review under Appendix 2C [User Consultation and Design Review].

Any Changes during the Construction will be subject to the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals].

### **6.3 Skilled Workers**

Project Co will employ or cause the Design-Builder to employ a sufficient number of sufficiently skilled workers to perform the Construction in compliance with this Agreement. Trades and other workers will be licensed or registered as required by applicable Law or Good Industry Practice.

### **6.4 Control of the Construction**

Project Co will have total control of the Construction and will effectively direct and supervise the Construction so that it is undertaken in compliance with the terms of this Agreement. Project Co will be responsible for all construction means, methods, techniques, sequences and procedures with respect to the Construction and for coordinating the various elements of the Construction, and nothing in this Agreement (including this Schedule) will be interpreted as giving any responsibility for the above to the Authority, the Authority's Design and Construction Representative or any other representative or agent of the Authority, or to the Independent Certifier.

### **6.5 Existing Utilities and Services**

Project Co will confirm the location of, and protect, all existing utilities and services that may be affected by the Construction.

## 6.6 Site Investigation

By entering into this Agreement, Project Co will be deemed to have inspected the Buildings and Building Sites in relation to the performance of its obligations under this Agreement and to have satisfied itself and accepted all risks and related responsibilities relating to the Buildings and Building Sites (except as expressly provided to the contrary in this Agreement) including:

- (a) the adequacy of the rights of access to and through the Buildings and Building Sites for the Construction;
- (b) vehicular access and parking;
- (c) temporary storage of building materials and equipment;
- (d) existing utilities and services serving the Buildings;
- (e) subject to Appendix 2H [Undisclosed Rotting Structural Components and Brick Repointing and Render Repairs], existing structural conditions in the Buildings;
- (f) Hazardous Substances present in the Buildings (but not in the lands comprising the Building Sites);
- (g) building components requiring demolition and disposal; and
- (h) geotechnical conditions.

## 6.7 Building Condition Reports

The Authority has made available certain reports describing existing Building conditions (the “**Building Condition Reports**”) for Project Co’s reference, but Project Co acknowledges that the Authority makes no representation whatsoever as to the accuracy or completeness of any information in the Building Condition Reports. Project Co will not be entitled to any compensation from the Authority if actual conditions vary from those described in the Building Condition Reports.

The Authority has made available letters from the authors of some of the reports regarding reliance on the reports.

## 6.8 Building Sites

During the Construction Period, Project Co will:

- (a) provide a 24-hour hotline (the “**Construction Period Help Line**”) for the Authority and the Housing Operators to notify Project Co of:
  - (1) any maintenance or safety issue in respect of any Building under Construction; and
  - (2) any Construction related emergencies;

- (b) respond to any phone calls made the Construction Period Help Line within 30 minutes of the call being made;
- (c) maintain an electronic log of all reports made to the Construction Period Help Line including:
  - (1) the name of the operator to whom the enquiry was made;
  - (2) the name of the person making the request;
  - (3) date and time;
  - (4) location;
  - (5) nature of the request;
  - (6) unique request reference identifier;
  - (7) date and time request passed to the appropriate person for response; and
  - (8) action taken and by whom;
- (d) if a Building under Construction is fully or partially occupied, undertake routine inspection, testing and servicing of all existing building systems in accordance with all applicable Laws, including all regulator testing and reporting;
- (e) provide security, including security patrols, so as to protect the Authority's property from theft and vandalism during all stages of the Construction; and
- (f) before commencing the Construction, prepare and implement in co-operation with the Authority a construction fire safety plan for the Project, which plan will describe emergency access routes to and from the Buildings during an emergency.

## **6.9 Work Affecting Spaces Remaining Occupied During Construction**

Subject to Section 6.10 and Section 6.12, in any Building that will remain fully or partially occupied by Tenants during the Construction, Project Co will:

- (a) take all reasonable steps to undertake the Construction so as to minimize interference to and disruption of Tenants;
- (b) maintain safe access to such Building and to all Residential Rooms, Commercial Spaces and Common Areas within the Building;
- (c) maintain such Building and all relevant building systems so that all Residential Rooms and Commercial Space in such Building are habitable and provided with all required utilities and services including heat, water, sewer, electrical and life safety systems.
- (d) at least 60 days before commencing work which may interfere with or disrupt Tenants or before using any existing building heating or ventilation systems or elevators, deliver to

the Authority and obtain the Authority's approval of a work plan ("**Work Plan**") clearly identifying:

- (1) the activity that may interfere with or disrupt the relevant spaces in the Building, including a description of the nature, timing and extent of interference, or the proposed use of existing building heating or ventilation systems or elevators;
- (2) the steps Project Co intends to take to minimize the extent of such interference or disruption;
- (3) the temporary measures that the Authority will be required to take to accommodate the interference or disruption; and
- (4) any specific reporting relationships between Project Co and the staff desirable or required to coordinate the interference or disruption,

unless the Authority, at its discretion, notifies Project Co in writing that a Work Plan will not be required for particular work;

- (e) prior to delivering a Work Plan, consult with the Authority and, upon reasonable request, the Authority will make appropriate staff available for such consultation to determine the Work Plan that minimizes interference;
- (f) not proceed with any work described in Section 6.9(d) above without:
  - (1) the Authority's prior written approval of a Work Plan under this Section 6.9, such approval not to be unreasonably withheld or delayed; or
  - (2) advance written notice from the Authority confirming that a Work Plan is not required; and
- (g) undertake the Construction in accordance with any Work Plan approved by the Authority; and
- (h) if Project Co uses existing heating and ventilation systems for temporary heating or ventilation, then Project Co will, prior to Building Opening, overhaul any mechanical equipment by:
  - (1) replacing all filters;
  - (2) cleaning all pipes and ducts; and
  - (3) inspecting and lubricating all equipment.

#### **6.10 Work Affecting Residential Rooms and Authority Swing Space**

- (a) For each of the Dominion Hotel and the Orange Hall, Project Co will undertake the Construction without moving Residential Tenants out of the Building. If Project Co requires temporary access to a Residential Room (i.e. without Decanting) to perform

work, Project Co will submit a Work Plan in accordance with Section 6.9 describing: (a) the work to be undertaken; and (b) the proposed timing of such work, including reasonable time to allow the Authority to comply with its notice and other obligations to the Residential Tenant under applicable Laws. If the Work Plan is approved and the Authority fails to cause the Residential Rooms identified in the approved Work Plan to be made available to Project Co at the times described in the approved Work Plan, then such failure will be a Relief Event.

(b) For all Buildings other than the Dominion Hotel and the Orange Hall, if Project Co cannot reasonably perform the Construction in or around any Residential Room in accordance with Section 6.9 without Decanting:

(1) Project Co will:

(A) notify the Authority:

- (i) prior to commencing the Construction affecting the relevant Residential Rooms, such notice to be delivered before the first day of the month which is four months prior to the date Project Co requires such Residential Rooms to be vacant (each a **“Move-Out Notice”**); and
- (ii) when such Residential Rooms will again be available for occupation by Residential Tenants, such notice to be delivered before the first day of the month which is three months’ prior to the date Project Co will make such Residential Rooms available for occupation by Tenants (each a **“Move-In Notice”**),

provided that at no time may Project Co require:

- (iii) Residential Rooms in excess of the Authority Swing Space and the Project Co Swing Space in excess of the Authority Swing Space required to accommodate Residential Rooms which are the subject of a Move-Out Notice be vacant;

(B) comply with Section 10.5 of this Schedule with respect to Decanting and the Decanting Schedule; and

(2) the Authority will:

(A) cause the Residential Rooms which are the subject of a Move-Out Notice to be vacant and available to Project Co for Construction provided that:

- (i) the Authority Swing Space has not been exceeded; and

- (ii) Project Co provides all Project Co Swing Space in excess of the Authority Swing Space required to accommodate Residential Rooms which are the subject of a Move-Out Notice; and
- (B) notwithstanding anything to the contrary herein contained, cause the Gastown Hotel, the Washington Hotel and the second and third floors of the Marble Arch Hotel to be vacant and available to Project Co no later than April 1, 2013.
- (c) With respect to the Authority Swing Space, Project Co will pay to the Authority the sum of [REDACTED] within 2 Business Days of the Effective Date as a contribution to the Authority's costs of providing the Firm Swing Space Leased Units and the Additional Swing Space Units.

### 6.11 Project Co Swing Space

Project Co will provide up to 51 units of swing space for the period from October 1, 2014 to July 31, 2015 (the "Project Co Swing Space") and if Project Co requires the Authority to Decant Residential Tenants into the Project Co Swing Space:

- (a) Project Co will no later than four months prior to the date on which Project Co requires the Authority to Decant Residential Tenants into the Project Co Swing Space, obtain written confirmation from the Authority, acting reasonably, that the proposed Project Co Swing Space meets or exceeds the standards employed by the Authority in the Authority's own inventory for equivalent Residential Rooms, and that such space is operated and maintained to the same (or higher standards) employed by the Authority in the Authority's own inventory for equivalent Residential Rooms; and
- (b) the Authority will pay, or cause to be paid, to Project Co monthly in advance on the first day of each month, [REDACTED] per month (pro-rated at [REDACTED] per day for partial months) for each unit of Project Co Swing Space occupied by a Residential Tenant provided that:
  - (1) such Project Co Swing Space complies with Section 6.11(a) of this Schedule;
  - (2) Project Co has complied with Section 10.5 of this Schedule in respect of such Project Co Swing Space; and
  - (3) the Authority's obligation to pay for such Project Co Swing Space will not, subject to the occurrence of a Supervening Event, extend beyond the earlier of:
    - (A) the date the relevant Residential Tenant is scheduled to move back into a Building as shown in the Decanting Schedule; and
    - (B) July 31, 2015.

No more than once in any calendar month, Project Co will deliver an invoice to the Authority for all Project Co Swing Space occupied by a Residential Tenant for which payment is due under this Section 6.11 (and for which Project Co has not been paid directly by a third party) and the Authority will:

- (a) pay, within 10 Business Days of receipt, all amounts set out in the such invoice approved by the Authority; and
- (b) refer all amounts not approved by the Authority for resolution pursuant to Section 7.1(d) of Schedule 8 [Payments].

### **6.12 Work Affecting Commercial Spaces**

If:

- (a) Project Co cannot reasonably perform the Construction in any Commercial Space in accordance with Section 6.9 without such space being vacant; and
- (b) pursuant to the terms of the relevant Commercial Lease, the Authority may terminate the relevant lease on notice to the Commercial Tenant or may, without terminating the lease, issue a notice to the Commercial Tenant requiring the Commercial Tenant to vacate the Commercial Space,

Project Co will notify the Authority prior to commencing the work affecting the relevant Commercial Space, such notice to be delivered, at minimum, a number of days before commencing the work equal to:

- (c) the number of days' notice that the Authority is required to provide to the Commercial Tenant to terminate the relevant lease or cause the Commercial Tenant to vacate the Commercial Space, as applicable, plus
- (d) 20 Business Days.

### **6.13 Indemnity for Business Interruption**

If Project Co:

- (a) disrupts a Commercial Tenant for a period of time that is longer than the disruption period identified for that Commercial Space in the Project Schedule;
- (b) performs the work other than in accordance with the approved Work Plan; or
- (c) fails to give the Authority the minimum notice (as described in Section 6.12) required for it to terminate a Commercial Lease or cause the Commercial Tenant to vacate the Commercial Space, as applicable,

Project Co will indemnify and hold harmless the Authority and all Authority Persons from and against any Direct Losses suffered or incurred by the Authority, or any Authority Persons, that arise from or relate to any business interruption suffered or incurred by a Commercial Tenant except to the extent caused, or contributed by, the Commercial Tenant, the Authority or any Authority Person..

### **6.14 Engagement with Housing Operators and Tenants**

Project Co will:



- (a) provide each Housing Operator with bi-weekly Building-specific project updates, in the form of a circular written in plain English and including supporting information/photos (translation and sign language available as needed), for distribution to Residential Tenants;
- (b) work with the Housing Operators to develop communication materials to inform Residential Tenants about the Project and the Decanting process, including:
  - (1) why temporary relocation is necessary;
  - (2) where, when and for how long they will be temporarily relocated;
  - (3) what standards they can expect from the property to which they are being relocated;
  - (4) what support will be provided (by Project Co, the Authority and/or the Housing Operators) and what other resources are available in the community; and
  - (5) how to make a complaint or provide suggestions or other feedback;

Project Co will produce these materials, which will be written in plain English and be available in alternative languages as determined in consultation with the Authority.
- (c) provide bulletin boards in each Building and provide regular project updates on those boards, including photos, timelines, blueprints and newsletters; and
- (d) in consultation with the Housing Operator, provide a minimum of two social events for Residential Tenants who are displaced for 12 months or less and a minimum of three social events for Residential Tenants who are displaced for more than 12 months.

### **6.15 The Authority's Access to the Buildings**

Subject to complying with all relevant safety procedures, including any relevant health and safety plans for the carrying out of the Construction and Project Co's and/or the Design-Builder's site rules, the Authority's Design and Construction Representative and its delegates and any other person designated by the Authority will have access at all reasonable times during normal working hours to:

- (a) attend the Buildings and view the Construction and any test or investigation being carried out in respect of the Construction; and
- (b) subject to obtaining the consent of the relevant manufacturer or supplier (which Project Co will use all reasonable efforts to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Construction for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Construction.

The Authority's Design and Construction Representative and its delegates will have the right to attend all monthly progress meetings and site meetings, including meetings between Project Co and the Design-Builder or its Sub-Contractors.

Project Co will cooperate with the Authority to arrange for tours of the Buildings at reasonable times during Construction for interested Authority and building operator personnel, in a way that does not interfere with the progress of the Construction.

Except as set out above or as otherwise provided for in this Agreement, the Authority will not grant any person access to a Building while under Construction without the consent of Project Co, such consent not to be unreasonably withheld or delayed.

This Section 6.15 will not limit the Authority's, or any Tenant's, right to access a Building not vacated for the purposes of the Construction, subject to them complying with all relevant and reasonably necessary safety procedures, including any relevant health and safety plans for the carrying out of the Construction and Project Co's and/or the Design-Builder's site rules.

### **6.16 Inspection**

Prior to the Building Opening Date for a Building, Project Co will, upon request by the Authority's Design and Construction Representative including detailed reasons for the request, open up for inspection by the Authority's Design and Construction Representative any part of the work on a Building in the Building which the Authority's Design and Construction Representative, acting reasonably, believes is defective and:

- (a) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are no Defects in the relevant part of such work, and Project Co complied with the requirements of Section 3.6 of this Schedule, then any delay caused by the exercise of such rights will be treated as a Compensation Event and be subject to Section 8.3 of this Agreement;
- (b) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that any relevant part of the work on a Building is defective, then:
  - (1) Project Co will rectify and make good such Defect(s);
  - (2) any consequence of such rectification or making good Defect(s) will be carried out by Project Co at no cost to the Authority; and
  - (3) Project Co will not be entitled to any extension of time to the Project Schedule in relation to such rectification and making good of such work; and
- (c) if the parties are unable to reach agreement in accordance with Sections 6.16(a) or (b) above, then the matter will, at the request of either party, be referred to the Dispute Resolution Procedure. If, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of the matter in Dispute, the parties will proceed in accordance with the position of the Authority, provided that Project Co proceeding in accordance with the Authority's position will be a Compensation Event if the relevant matter in Dispute is determined in favour of Project Co.

### 6.17 **Builders Lien Act and Builders Liens**

With respect to builders liens and the requirements of the *Builders Lien Act* (British Columbia):

- (a) the Authority will not have any responsibility to be the payment certifier under any contract related to Construction;
- (b) Project Co will make all required builders lien holdbacks;
- (c) no builders lien holdback will be retained by the Authority under this Agreement;
- (d) if it is determined that any builders lien holdback is required to be retained by the Authority, then Project Co agrees that it is making and will make all of its required holdbacks as agent for the Authority;
- (e) Project Co will indemnify the Authority from any damages, costs, claims and expenses of any kind, including actual solicitors costs, arising from the failure of the Authority to retain a builders lien holdback; and
- (f) failure to hold back payment of amounts due to any Person in accordance with section 4 of the *Builders Lien Act* (British Columbia) will not constitute a Project Co Event of Default.

### 6.18 **Safety**

Project Co will:

- (a) be solely responsible for safety during the Construction Period, including the safety of all persons in the Buildings and any other location where the Construction is performed (whether on the Building Site or other location lawfully or not) and members of the public, and will comply with the requirements of applicable Laws, applicable construction safety legislation, regulations and codes and Good Industry Practice; and
- (b) for each Project Co Person that will be working in a Building during the Construction Period, review a criminal record check (obtained in accordance with applicable Laws concerning individuals working with children or vulnerable adults) prior to the Project Co Person starting work in a Building, and provide a copy of the criminal record check to the Authority.

### 6.19 **Protection of Property**

Project Co will:

- (a) protect the property of the Authority, Housing Operators, Tenants, and other third parties from damage caused by the Construction, including buildings, equipment, furniture, services and infrastructure, surfaces, roadways and drainage systems; and
- (b) without limiting Project Co's obligation under Section 6.19(a):

- (1) use enclosures/hoarding systems to protect property so that dust, dirt, debris and fumes from the construction work do not enter areas of the Building outside of the work area;
  - (2) provide protection for all entrance and exit-ways, floors, walls and all fixtures, air intakes and equipment rooms;
  - (3) for areas to be protected but requiring access such as primary exit routes and stairs, use temporary pressurized vestibules with pressurization adjusted by Project Co to prevent dust from entering these areas;
  - (4) for any demolition, provide measures to prevent unintended falling debris (for example, for any demolition of a ground floor exterior wall, provide shoring to prevent the walls above from falling down);
  - (5) use full height dust protection for scaffolding;
  - (6) if an exterior wall has to be removed with security/dust protection compromised, use full height hoarding, and provide temporary doors as may be required for emergency egress;
  - (7) erect and maintain pedestrian walkways, including roof and side covers complete with electrical lighting, to protect the public and property from injury or damage;
  - (8) erect and maintain site enclosures as required to enclose the work area; and
  - (9) maintain all enclosures daily, keeping them clean and free of graffiti; and
- (c) promptly repair any damage to property caused by Project Co in undertaking the Construction. If any damage caused by Project Co triggers a requirement from the City or other Governmental Authority for additional work (such as additional seismic upgrade work) then Project Co will at its cost perform such additional work.

## **6.20 Survey and Monitoring**

Project Co will:

- (a) prior to start of any Construction, conduct a pre-construction survey of each Building and Building Site and pre-construction surveys of all adjacent properties, infrastructure, roadways (including all underground services and installations) within a radius required by the Authority and in a form and detail satisfactory to the Authority, acting reasonably, which will without limitation meet the requirements set out Section 6.21 (Photographic Documentation), and deliver a copy of the pre-construction survey report to the Authority; and
- (b) conduct monitoring surveys at regular intervals throughout the Construction Period and at six months following the Building Opening Date, and deliver monitoring surveys to the Authority in a form and detail satisfactory to the Authority, acting reasonably.

The monitoring will include monitoring of all locations identified in the Design and Construction Specifications.

### **6.21 Photographic Documentation of Construction**

Project Co will provide a photo documentation service (“PDS”) of construction progress and as-built conditions for each Building in accordance with the requirements set out in this Section.

- (a) Required Elements
  - (1) The PDS will combine inspection-grade digital photography with an indexing, navigation and storage system to capture actual conditions throughout the Construction Period, including at critical milestones determined in consultation with the Authority. The PDS will incorporate the architectural drawings, making such drawings interactive using an on-line interface. For all PDS documentation referenced, indexing and navigation will be organized by both time (date-stamped) and location.
  - (2) The PDS documentation will include a pre-construction site survey providing overlapping photo documentation of each Building and its immediately surrounding areas to carefully memorialize conditions as at the Effective Date before the Construction commences.
  - (3) Construction progress will be tracked through the PDS at regular intervals, monthly as a minimum. The PDS will capture:
    - (A) a general overview of both the exterior and interior construction of each Building, including all elevations and major site features; and
    - (B) interior improvements by each area refurbished from the commencement of any substantial interior work (typically at stud-work commencement) and continuing until the relevant Building Opening Date, including:
      - (i) overlapping images of all in-floor/ceilings utilities within each building envelope;
      - (ii) the mechanical, electrical, plumbing and all other systems prior to pre-insulation, sheet rock or dry wall installation and overlapping images of all finished systems located in the walls and ceilings of each Building; and
      - (iii) all interior walls, ceilings and floors in their post-inspection, completed condition, prior to occupancy.
  - (4) The PDS will capture all miscellaneous events that do not fit into the regular photo path, such events including the arrival of materials on site, with these

miscellaneous events dated and inserted into a separate section in the navigation structure of the PDS.

- (b) Hosting Requirements and End Product
- (1) All PDS documentation will be made accessible at all times on-line, through the use of any standard internet connection, to the Authority or any Authority Persons. The PDS will enable multiple-user access, simultaneously, online and access will be secure and accomplished through password protection.
  - (2) Project Co will provide redundant server back-up of the PDS documentation for the period from the Effective Date until the relevant Building Opening Date.
  - (3) Project Co will make available to the Authority or Authority Persons, at the cost of Project Co, any necessary technical support related to the use of the PDS.
  - (4) As soon as reasonably practicable after the relevant Building Opening Date, Project Co will provide to the Authority, final copies of the PDS documentation (the "**Permanent PDS Record**") with the indexing and navigation system embedded and active, in an electronic media format, typically a DVD or external hard-drive. On-line access will be deleted and all records removed from the hosting sites upon delivery of the Permanent PDS Record.

## 6.22 Control of Vibration

Project Co will discuss with the Authority any expected ground vibration from Project Co's Construction activities in advance of those activities (as vibration may result in damage to adjacent buildings or the use and enjoyment of adjacent buildings and properties), and without limiting Section 6.19 Project Co will:

- (a) limit vibration from construction equipment to avoid damages to the Authority's (and any third party's) property; and
- (b) engage a qualified independent third-party to complete vibration monitoring during the Construction to confirm vibration levels and Project Co's compliance with Section 6.22(a).

## 6.23 Control of Dust, Noise and Noxious Odours

Project Co will take all reasonable steps (including any specific steps reasonably required by the Authority) to minimize dust, noise and noxious odours (including diesel exhaust) from the Construction and to mitigate any adverse effects on parts of the Building that remain open during the Construction.

## 6.24 Construction Debris and Waste Management

Project Co will develop and implement a comprehensive waste management plan for the Construction that:

- (a) complies with Metro Vancouver's "The Greater Vancouver Regional District 3Rs Code of Practice for the Building Industry" (dated February 1997);

- (b) requires Project Co to divert from landfill, and describes Project Co's plans for diverting from landfill, at least 60% of waste (not including hazardous materials) from the Construction;
- (c) quantifies Project Co's material diversion, including recycling or salvage, goals;
- (d) identifies materials that will be recycled, including the following items:
  - (1) clean dimensional wood and palette wood;
  - (2) concrete/brick/concrete block/asphalt;
  - (3) drywall;
  - (4) florescent tubes;
  - (5) old corrugated cardboard;
  - (6) paint; and
  - (7) scrap metal; and
- (e) describes the plans and procedures to be implemented by Project Co for:
  - (1) the separation of materials, and prevention of contamination of materials, to be recycled or salvaged; and
  - (2) the removal, handling and disposal of hazardous wastes in accordance with applicable laws and Good Industry Practice.

Project Co will deliver to the Authority a copy of its waste management plan by the date specified in the Submittal Schedule.

#### **6.25 Usage of Utilities**

Project Co will manage the use of all utilities supplied by the Authority and required for the Construction (including electricity, gas and water) and will take all reasonable and prudent steps necessary and practical to minimize the use of all such utilities.

#### **6.26 Signage**

Project Co may erect signage at the Buildings during Construction to identify Project Co, the Design-Builder and Project Contractors provided such signs are acceptable to the Authority's Design and Construction Representative, acting reasonably.

#### **6.27 Temporary Works**

During the Construction Period, Project Co will have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use.

## 6.28 Project Meetings

Without limiting the obligations pursuant to Section 2.6 of this Schedule in respect of the Construction Period Joint Committee, at the Authority's request, Project Co's Design and Construction Representative will attend meetings to update the Authority on the progress of Construction and to discuss any issues that have arisen. The meetings will be at least weekly unless agreed otherwise by the Authority.

## 6.29 Project Records

Notwithstanding any other provision of this Agreement:

- (a) As-Built Drawings and Specifications: Project Co will:
- (1) throughout the Construction, update the Reviewed Drawings and Specifications (with respect to the drawings, such update will be in hard copy and "CAD" or other electronic format reasonably acceptable to the Authority's Design and Construction Representative), including all final shop drawings, so as to produce accurate and complete as-built documents for each Building;
  - (2) as requested from time to time during the Construction, make available such as-built drawings and specifications in hard copy and "CAD" or other electronic format to the Authority's Design and Construction Representative for review to permit the Authority's Design and Construction Representative to monitor Project Co's compliance with the requirements of this Section and for the Authority's operational and other use; and
  - (3) provide three full-size hard copies and two electronic copies in ".dwg" or "Revit" format of the completed as-built drawings and specifications to the Authority's Design and Construction Representative on or before Building Opening.

Project Co will submit all electronic copies in compliance with the standards established by the Authority from time to time for electronic copies.

- (b) Maintenance Manuals: Project Co will:
- (1) on or before Building Opening, make available all maintenance manuals, specifications, warranties and related information, in either written or electronic form, for all the equipment and systems that have been included in the Design and Construction of the Building for review by the Authority's Design and Construction Representative; and
  - (2) organize and store such information in accordance with Schedule 14 [Records and Reports];
- (c) Design Records: Project Co will retain records of the Design process;
- (d) Minutes of Meetings: Project Co will retain minutes of all meetings between the Authority and Project Co relating to the Design and Construction. Project Co will circulate such minutes to the Authority's Design and Construction Representative for review and



comment within the time period specified in this Agreement for the particular meeting or if no time period is specified then as soon as reasonably possible after the relevant meeting, and a reasonable period before any subsequent meeting so that all parties may consider the minutes and take required actions in advance of the subsequent meeting;

- (e) Inspection Reports and Tests Results: Project Co will retain official reports and certified test records of all inspections and tests which were undertaken as part of the Construction;
- (f) Monitoring Results: Project Co will retain all survey and monitoring records obtained in connection with Section 6.20 (Survey and Monitoring);
- (g) Utility Plans: Project Co will retain utility plans for the Buildings and the Building Sites;
- (h) Landscape and Irrigation Plans: Project Co will retain landscape and irrigation plans for the Building Sites;
- (i) Copies of all Permits: Project Co will retain copies of all Permits for the Construction and occupation of the Buildings; and
- (j) Signed Quality Assurance Plan: Project Co will retain a signed copy of the Quality Assurance Plan for the Construction and all records of the Quality Assurance Program implemented as required by this Agreement.

### **6.30 Monitoring and Measurement of Energy Consumption**

Project Co will install equipment to record and monitor consumption of each type of Energy in each Building. Such equipment must be suitable and properly calibrated to enable a detailed monitoring of Energy trends and consumption to allow analysis of the data collected to enable various matters, including early warning of malfunctions and deviations from norms.

## **7. EQUIPMENT SUPPLY AND INSTALLATION**

### **7.1 Design and Construction Requirements**

The parties will comply with Appendix 2E [Equipment and Furniture].

Without limiting Appendix 2E [Equipment and Furniture], Project Co will complete the Design and Construction to accommodate in the Buildings the installation, operation, repair and maintenance of all Equipment and all equipment set out on the Room Data Sheets, including as required all electrical and plumbing connections, structural support, seismic restraints and space for efficient access, all to the tolerances and specifications as may be specified and required by the manufacturers or suppliers of such equipment (which may be of a higher standard than specified in Schedule 3 [Design and Construction Specifications]).

Any items of equipment or systems referred to in the Design and Construction Specifications or the Room Data Sheets that are not specifically listed in the Equipment List referred to in Appendix 2E [Equipment and Furniture] are the sole responsibility of Project Co to be supplied and included as part of the Buildings.

## 8. QUALITY MANAGEMENT

### 8.1 Quality of the Design and Construction

Project Co is solely responsible for the quality of the Design and Construction.

### 8.2 Quality System

Project Co acknowledges that a comprehensive Quality System is critical for the proper and timely completion of the Design and Construction and accordingly Project Co will implement and follow a Quality System.

### 8.3 Project Co's Quality Consultant

Project Co will retain a qualified, independent expert in quality management ("**Project Co's Quality Consultant**") to develop a Quality Assurance Program and Quality Assurance Plan in conjunction with Project Co.

### 8.4 Quality Assurance Program

Project Co's quality assurance program (the "**Quality Assurance Program**") will:

- (a) detail Project Co's measures required to complete all aspects of the Design and Construction pursuant to its Quality System and in accordance with the requirements of this Agreement including this Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications];
- (b) address and be applicable to all aspects of the Design and Construction;
- (c) provide for a graded approach to quality in which the appropriate level of quality assurance requirements for various elements of the Design and Construction are defined;
- (d) describe or comply with the following:
  - (1) the required quality level for each process or activity involved in the Design and Construction and the means of achieving it;
  - (2) the steps to ensure that everyone participating in the Design or Construction is committed to the Quality Assurance Program;
  - (3) the steps to ensure that the management and organizational structure and responsibilities are defined and understood by everyone participating in the Design or Construction;
  - (4) require that all persons participating in the Design or Construction are competent to do their required tasks;
  - (5) require that individuals involved with the Quality Assurance Program will be held accountable for their work;

- (6) provide that the right people will have the right information at the right time;
- (7) provide that relevant experience for each process or activity will be sought and used;
- (8) Design and Construction activities are planned and controlled;
- (9) the right items, processes, and practices will be used;
- (10) materials and services are verified to confirm that they are correct; persons giving verification will be sufficiently qualified and will be independent from those who perform or install the materials or services;
- (11) peer reviews and inspections will be performed on structured planned basis on all elements of the Design and Construction and:
  - (A) errors and deficiencies will be identified and recorded;
  - (B) errors and deficiencies remedied or corrected and a record maintained of the remedy or correction, and
- (12) maintain records as required by this Agreement;
- (e) provide for design verification in accordance with Good Industry Practice;
- (f) provide that professionals of record will:
  - (1) carry out on-site inspections, review materials testing and inspector's reports, undertake required surveying, measuring, and verification of materials and construction methods to ensure conformance with the Reviewed Drawings and Specifications and the Design and Construction Specifications; and
  - (2) provide a letter of assurance that is an attestation that the Design and Construction has been performed in accordance with the Reviewed Drawings and Specifications and the Design and Construction Specifications.

### 8.5 Quality Assurance Plan

Project Co will develop a reasonable quality assurance plan (the "**Quality Assurance Plan**") that describes the implementation of the Quality Assurance Program in accordance with the following:

- (a) Project Co will deliver to the Authority a preliminary draft of the Quality Assurance Plan (that is based on the preliminary quality assurance plan included in the Proposal Extracts (Design and Construction) not less than 20 Business Days after the Effective Date, failing which, the Authority will be entitled to make a Deduction of \$2,500 for each week or part thereof after the date falling 20 Business Days after the Effective Date until Project Co has delivered to the Authority a preliminary draft of the Quality Assurance Plan but if Project Co has not delivered to the Authority a preliminary draft of the Quality Assurance

Plan by the date falling 40 Business Days after the Effective Date, the Deduction applicable under this Section 8.5(a) will increase to \$5,000;

- (b) the Authority will provide its comments, if any, on the preliminary draft to Project Co within 20 Business Days of receipt of the preliminary draft;
- (c) Project Co will deliver a revised draft of the Quality Assurance Plan to the Authority not less than 20 Business Days after receiving the Authority's comments, failing which, the Authority will be entitled to make a Deduction of \$5,000 for each week or part thereof after the date falling 20 Business Days after the Authority's comments were received by Project Co until Project Co has delivered to the Authority a revised draft of the Quality Assurance Plan;
- (d) the Authority will, within 15 Business Days of receipt of the revised draft, advise Project Co whether the Authority accepts the Quality Assurance Plan, and if the Authority does not accept it the Authority will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (e) if the Authority does not accept the Quality Assurance Plan, the parties will, acting reasonably, diligently work together with a view to revising the Quality Assurance Plan to address the Authority's reasons for non-acceptance;
- (f) if the Authority has not accepted the Quality Assurance Plan by the date that is 90 Business Days after the Effective Date, Project Co may refer the dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Quality Assurance Plan is reasonable.
- (g) any Deduction the Authority is entitled to make pursuant to Section 8.5(a) or Section 8.5(b) of this Schedule will be made from the first Service Payment payable to Project Co pursuant to Schedule 8 [Payments]; and
- (h) Deductions made pursuant to this Section 8.5 will not be counted for the purposes of Sections 11.1 or 12.1(h) of this Agreement or Sections 6.7 or 6.8 of Schedule 4 [Services Protocols and Specifications].

Project Co will promptly implement and strictly comply with the Quality Assurance Plan developed under this Section.

## **8.6 Reporting**

Project Co will deliver to the Authority a monthly report of the Quality Assurance Plan prepared by Project Co's Quality Consultant covering all aspects of the Design and Construction completed in the reporting period that are relevant to the Quality Assurance Plan. Project Co will highlight any deficiencies identified and corrective actions taken to address such deficiencies during the period covered by such report. The report will include all supporting documentation including field reviews, photographs, reports and other material.

## **8.7 Quality Review by the Authority**

The Authority may, at its discretion, perform its own audits of the Quality Assurance Program and for that purpose Project Co will make available for review by the Authority, upon request from the Authority, all records of the Quality Assurance Program and the Quality Assurance Plan to permit the Authority to be satisfied that Project Co is following its Quality Assurance Plan.

## **9. WORKERS COMPENSATION**

### **9.1 Evidence of WorkSafe BC Compliance**

Project Co will provide evidence, satisfactory to the Authority's Design and Construction Representative, of compliance by Project Co and all Project Contractors with the requirements of the *Workers Compensation Act*, as amended, and all regulations and successor legislation thereto, including payments due thereunder at the following times:

- (a) prior to commencing the Construction; and
- (b) at any time during Construction, upon request of the Authority's Design and Construction Representative acting reasonably.

### **9.2 Indemnity for WorkSafe BC Non-Compliance**

If Project Co or anyone employed by or through Project Co in the performance of any Construction does not comply with the requirements of the *Workers Compensation Act*, as amended, and all regulations and successor legislation thereto, including payment and deduction and remittance of any and all contributions, fees, assessments and charges required to be made pursuant to the above, Project Co will indemnify the Authority from any cost, loss, liability or obligation which the Authority may incur as a result.

### **9.3 Prime Contractor**

For the purposes of applicable legislation and regulations, Project Co agrees to be, or will cause the Design-Builder to be, at all times during Construction at a Building, the prime contractor as defined in the *Workers Compensation Act* for that Building Site and accordingly will comply, or will cause to be complied, with all resulting requirements and obligations including:

- (a) ensuring continuing coordination of the occupational health and safety activities of all employers on the Building Site, including the Authority, the Authority's Design and Construction Representative, any other contractors and everyone engaged by or through any of them;
- (b) delivering any notices of the Project as required by applicable regulations; and
- (c) complying with the obligations of a prime contractor for a multi-employer workplace as prescribed by the applicable regulations.

If for any reason WorkSafe BC (the Workers' Compensation Board of British Columbia) refuses to recognize Project Co or the Design-Builder as the prime contractor then, to the extent permitted by law, Project Co will cooperate with the Authority and perform on behalf of the Authority the obligations which the

Authority is required to undertake as prime contractor in connection with the Construction by virtue of the *Workers Compensation Act* and Regulations, or other statutes.

#### **9.4 Failure to Comply with WorkSafe BC Requirements**

If at any time the Construction is stopped because Project Co, or any Project Co Person providing services or work on the Project, unreasonably fails or refuses to comply with an order issued pursuant to the *Workers Compensation Act*, then such failure or refusal will be considered a Project Co Material Breach.

### **10. PROJECT SCHEDULE AND SCHEDULING**

#### **10.1 Initial Project Schedule**

Attached as Appendix 2F [Initial Project Schedule] is the initial project schedule (the "**Project Schedule**"), which the parties have relied upon in entering into this Agreement.

#### **10.2 Project Schedule Updates**

Project Co will, as required from time to time until Service Commencement, but no less than once per calendar month by the 15<sup>th</sup> day of each month, in consultation with the Authority update the Project Schedule so that it is at all times an accurate, reasonable and realistic representation of Project Co's plans for the completion of the Design and Construction in accordance with the requirements of this Agreement. The updates will include:

- (a) adjustments resulting from Supervening Events and Changes, if any, as permitted by this Agreement;
- (b) best estimates of the following for each Building:
  - (1) the start and completion dates for the Design phases described in Section 5.2 of this Schedule; and
  - (2) the commencement of Construction;
  - (3) the planned start and completion dates of the major activities of Construction; and
- (c) the Target Building Opening Date for each Building, which (except to the extent necessary to reflect adjustments made in accordance with Section 10.2(a) of this Schedule) may not be updated or otherwise changed unless the Authority, in its discretion, consents.

Project Co will deliver an updated Project Schedule monthly to the Authority and the Independent Certifier and upon delivery the updated Project Schedule (the "**Updated Project Schedule**") will be the Project Schedule under this Agreement in substitution for the previously issued Project Schedule. If at any time the Authority does not agree with the proposed updates that may be required to the Project Schedule then the disagreement may be referred to the Dispute Resolution Procedure.

### 10.3 Failure to Update Project Schedule

If Project Co fails or refuses to deliver an Updated Project Schedule as required under Section 10.2 of this Schedule, then such failure or refusal will be deemed to be a Project Co Material Breach.

### 10.4 Compliance with Project Schedule

Project Co will undertake the Design and Construction of the Buildings in compliance with the Updated Project Schedule, as may be updated pursuant to this Agreement.

### 10.5 Decanting Schedules

Project Co:

- (a) acknowledges that the Authority will rely on the dates set out in the Project Schedule (as may be adjusted under Section 10.2 of this Schedule) to plan for Decanting of Residential Tenants in each Building;
- (b) will, by the date specified in the Submittal Schedule, deliver to the Authority a Decanting schedule for each Building ("**Decanting Schedule**") indicating the anticipated dates when Residential Tenants will be required to vacate each Building and when they may move back into the Building;
- (c) will include in the Decanting Schedule a description of Project Co's plans with respect to Buildings requiring complete vacancy or partial vacancy of Tenants and Buildings which will remain fully occupied;
- (d) will, as required from time to time until Service Commencement, but no less than once every two weeks, provide the Authority with any updates to the Decanting Schedules or confirm to the Authority that the Decanting Schedule for each Building is up to date and accurate,

provided that nothing in this Section 10.5 or in any Decanting Schedule will relieve Project Co of its obligation to deliver Move-Out Notices and Move-In Notices in accordance with Section 6.10(b)(1)(A) of this Schedule.

## 11. DELAYS AND ACCELERATION

### 11.1 Acceleration to Recover Project Co Delays

If at any time the Authority, acting reasonably, determines that Project Co is behind the Updated Project Schedule and will not have a Building available for tenant move-in by the date specified in the Move-In Notice or will not achieve Building Opening for a Building by the applicable Target Building Opening Date, then the Authority may deliver notice to Project Co's Design and Construction Representative to use its best efforts, at Project Co's own cost and at no cost to the Authority, to accelerate the Construction so as to conform to the Updated Project Schedule, make the Building available for tenant move-in by the date specified in the applicable Move-In Notice and achieve Building Opening for the Building by the Target Building Opening Date.

## **11.2 Delay Costs**

If, other than due to a Supervening Event or a Change, Project Co fails to make a Building available for tenant move-in by the date specified in the applicable Move-In Notice or achieve Building Opening for any Building by the Target Building Opening Date for that Building, then Project Co will reimburse the Authority for any additional out-of-pocket costs which the Authority reasonably incurs and evidences to Project Co because the Authority relied on the relevant Move-In Notice or Decanting Schedule, which are in excess of the costs which the Authority would have incurred had Project Co achieved the dates set out in the relevant Move-In or Notice Decanting Schedule. Notwithstanding anything contained in this Agreement (including any Schedule), the liability of Project Co for failing to make a Building available for tenant move-in by the date specified in the applicable Move-In Notice or to achieve Building Opening by the Target Building Opening Date will not exceed \$475 per Residential Room per month.

## **11.3 Acceleration to Advance Construction**

Without prejudice to the Authority's rights under Section 11.1 of this Schedule, if at any time the Authority determines that it requires the Construction to proceed in advance of the Updated Project Schedule then the Authority may give written notice to Project Co to provide the Authority with a written proposal to accelerate the Construction, including cost estimates and an estimate of the time saved. If the Authority acting reasonably decides to proceed with the acceleration then:

- (a) the Authority will notify Project Co in writing;
- (b) Project Co will implement the directed acceleration in accordance with its proposal;
- (c) the Authority will reimburse Project Co for costs that were described in Project Co's proposal and reasonably incurred by Project Co (but not for any other costs); and
- (d) if the acceleration involves a Change (other than to the Updated Project Schedule) then such Change will be made in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

## **12. COMMISSIONING**

### **12.1 Testing and Commissioning**

Project Co will, prior to applying for a Certificate of Building Opening for a Building, test and commission all equipment and systems in the Building (including Equipment to be Commissioned by Project Co) to demonstrate to the reasonable satisfaction of the Authority's Design and Construction Representative that all equipment and systems in the Building are operating so that the Authority may occupy the Building for the Intended Uses and the Availability Conditions are satisfied for all Functional Units.

### **12.2 Equipment and Systems Operation and Training**

Project Co will be knowledgeable on the proper use and maintenance of all equipment and systems Project Co installs in the Buildings, including all equipment and systems described in the Design and Construction Specifications and any other communication systems, and will provide sufficient training and education to the Authority staff to enable the Authority to properly utilize such equipment and systems.



The Authority will identify the relevant Authority staff and make such staff available for training at reasonable times before the Building Opening Date for each Building. All training will be completed before the Building Opening Date unless agreed by the Authority, acting reasonably.

### 12.3 Commissioning Plan

Project Co will prepare and deliver to the Authority's Design and Construction Representative and the Independent Certifier a detailed plan (the "**Commissioning Plan**") for each Building setting out the testing, commissioning, training and other activities Project Co intends to carry out to satisfy Sections 12.1, 12.2 and 12.3 of this Schedule and to achieve Building Opening, including:

- (a) a description of the specific equipment and systems to be tested and commissioned and the associated commissioning requirements, including those to be completed before Building Opening;
- (b) supporting documentation, including as appropriate:
  - (1) design calculations and/or assumptions;
  - (2) sequences of operation; and
  - (3) manufacturer's specifications;
- (c) a description of the training and education that Project Co intends to provide to the Authority's staff to enable the Authority to properly utilize the equipment and systems installed in the Buildings, including all training and education to be completed before Building Opening;
- (d) the name of the commissioning agent and the names of other persons to be involved in testing, commissioning and training;
- (e) a description of Project Co's system for managing records of tests, inspections, quality assurance and training;
- (f) a general description of Project Co's transition plans for handover to the Authority of the Buildings at Building Opening;
- (g) a schedule, related to the Project Schedule, showing:
  - (1) the timing of all testing and commissioning and training;
  - (2) for each requirement of Building Opening (described in Schedule 1 [Definitions and Interpretation]), the date upon which Project Co anticipates achieving the requirement; and
  - (3) a matrix of all equipment and systems, including all Integrated Equipment, and how they integrate with each other, along with an overview of the procedures that will be followed to demonstrate that integration of all equipment and systems has been and will be achieved.

The Commissioning Plan must be reasonable having regard to the requirements of Sections 12.1, 12.2 and 12.3 of this Schedule and will be developed and finalized as follows:

- (h) Project Co will deliver a preliminary draft of the Commissioning Plan for each Building to the Authority not less than 12 months before the Target Building Opening Date for the relevant Building, failing which, the Authority will be entitled to make a Deduction of \$2,500 for each week or part thereof after the date falling 12 months before the Target Building Opening Date for the relevant Building until Project Co has delivered to the Authority a preliminary draft of the Commissioning Plan, but if Project Co has not delivered to the Authority a preliminary draft of the Commissioning Plan by the date falling 9 months before the Target Building Opening Date for the relevant Building, the Deduction applicable under this Section 12.3(h) will increase to \$5,000;
- (i) the Authority will provide its comments, if any, on preliminary draft Commissioning Plans to Project Co within 20 Business Days of receipt of a preliminary draft;
- (j) Project Co will deliver a revised draft of a Commissioning Plan to the Authority not less than 40 Business Days after receipt of the Authority's comments on the relevant preliminary draft, failing which, the Authority will be entitled to make a Deduction of \$5,000 for each week or part thereof after the date falling 40 Business Days after the Authority's comments were received by Project Co until Project Co has delivered to the Authority a revised draft of the relevant Commissioning Plan;
- (k) the Authority will, within 15 Business Days of receipt of a revised draft, advise Project Co whether the Authority accepts the Commissioning Plan for the Building or, if the Authority does not accept it, the Authority will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (l) if the Authority does not accept one or more Commissioning Plans, the parties will, acting reasonably, diligently work together with a view to revising the unacceptable Commissioning Plan(s) to address the Authority's reasons for non-acceptance;
- (m) if the Authority has not accepted a Commissioning Plan by the date that is 6 months before the Target Building Opening Date for the relevant Building, Project Co may refer the Dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Commissioning Plan is reasonable;
- (n) any Deduction the Authority is entitled to make pursuant to Section 12.3(h) or Section 12.3(j) of this Schedule will be made from the first Service Payment payable to Project Co pursuant to Schedule 8 [Payments]; and
- (o) Deductions made pursuant to this Section 12.3 will not be counted for the purposes of Sections 11.1 or 12.1(g) of this Agreement or Sections 6.7 or 6.8 of Schedule 4 [Services Protocols and Specifications].

### 13. COMPLETION

#### 13.1 Deficiency List

Prior to and as a condition of issuance of a Certificate of Building Opening for a Building, Project Co will, in cooperation with the Authority's Design and Construction Representative and the Independent Certifier, prepare a complete list of Defects that are apparent upon inspection of the Building at that time (the "**Building Opening Deficiencies**") and deliver to the Authority's Design and Construction Representative the list of Building Opening Deficiencies for that Building.

The list of Building Opening Deficiencies will include all items required by the Authority to be included on such list.

The Authority or Project Co may refer matters relating to the accuracy or completeness of the list of Building Opening Deficiencies to the Dispute Resolution Procedure.

#### 13.2 Advance Notice of Application for Building Opening

Project Co acknowledges that, for each Building, the Independent Certifier will need sufficient time to complete any inspections, consult with the Authority, and consider the list of Building Opening Deficiencies, and accordingly Project Co will:

- (a) at least 30 days (but no more than 60 days) before the Target Building Opening Date for a Building, deliver to the Independent Certifier and the Authority's Design and Construction Representative a notice setting out:
  - (1) a description of all outstanding Design and Construction to be completed by Project Co prior to Building Opening for that Building; and
  - (2) a list of all Defects that Project Co is aware of at the time of the notice; and
- (b) assist the Independent Certifier to make any advance inspections requested by the Independent Certifier.

#### 13.3 Application for Certificate of Building Opening

If Project Co believes it has achieved the requirements for Building Opening for a particular Building and complied with Section 13.2 then Project Co may apply to the Independent Certifier (with a copy to the Authority's Design and Construction Representative) for a Certificate of Building Opening for the Building. No later than 5 Business Days after application by Project Co for a Certificate of Building Opening, the parties will require the Independent Certifier to, 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, and then within a further 5 Business Days:

- (a) if Building Opening has been achieved for the Building, issue a certificate indicating that Building Opening has been achieved for the Building (a "**Certificate of Building Opening**"), together with comments on the list of Building Opening Deficiencies (if any); or

- (b) if Building Opening has not been achieved for the Building, 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 .

A Certificate of Building Opening issued by the Independent Certifier will be final and not referable to the Dispute Resolution Procedure or otherwise subject to dispute between the parties.

#### **13.4 Early Building Opening**

Notwithstanding any other provision of this Schedule, Project Co is not entitled to achieve:

- (a) Building Opening for any Building or receive any Building Opening Payments in respect of the relevant Building more than two months prior to the relevant Target Building Opening Date in effect as of the Effective Date for that Building; or
- (b) Service Commencement or receive any Service Payments more than six months prior to the Target Service Commencement Date in effect as of the Effective Date.

#### **13.5 Correction of Deficiencies**

Upon issuance of the Certificate of Building Opening for a Building, Project Co will proceed expeditiously to correct each Deficiency by the date that is 30 days after the Building Opening Date with respect to the Building Opening Deficiencies, or such later date as may be reasonably required to provide sufficient time to correct the Deficiency and that is agreed by the Authority, acting reasonably (each Deficiency having its own "**Deficiency Deadline**"). Each Deficiency which has not been fully corrected by its Deficiency Deadline will be deemed (without the requirement for any further action by the Authority) to have generated a Demand Maintenance request on that day and thereafter the applicable provisions of this Agreement, including applicable Rectification Periods and Deductions, will apply to each such deemed request. Nothing in this Section 13 limits Project Co's responsibilities for correction of Defects that are identified after the preparation of the lists of Building Opening Deficiencies.