

MASTER SERVICES AGREEMENT

By and Between

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
MINISTER OF ECONOMIC DEVELOPMENT, EMPLOYMENT AND
INFRASTRUCTURE AS REPRESENTED BY ONTARIO INFRASTRUCTURE AND
LANDS CORPORATION**

(“IO” or “INFRASTRUCTURE ONTARIO”)

And

SNC-LAVALIN OPERATIONS & MAINTENANCE INC.

(“PMSP”)

Dated: August 6, 2014

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MASTER SERVICES AGREEMENT

This Master Services Agreement dated the 6th day of August, 2014.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF ECONOMIC
DEVELOPMENT, EMPLOYMENT AND INFRASTRUCTURE AS
REPRESENTED BY ONTARIO INFRASTRUCTURE AND LANDS
CORPORATION
("IO" or "INFRASTRUCTURE ONTARIO")**

-and-

**SNC-LAVALIN OPERATIONS AND MAINTENANCE INC.
("PMSP")**

RECITALS:

1. IO has agreed to retain the services of PMSP to provide best in class project management and program management for various projects, studies, infrastructure initiatives and capital repair programs to be carried out primarily in Infrastructure Ontario's Pillar Zone (the "**Awarded Zone**"), and PMSP has agreed to provide the services and perform the duties and responsibilities set out in this Agreement.
2. IO is a Crown agent and statutory delegate of Her Majesty the Queen in Right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure pursuant to the *Ontario Infrastructure and Lands Corporation Act, 2011*, SO 2011, c 9, Sch 32 and the *Ministry of Infrastructure Act, 2011*, SO 2011, c 9, Sch 27 as amended from time to time. IO is designated as the service provider for real estate services for the Ontario Government's real property. In keeping with its mandate, and written letters of direction, IO manages and enhances the Ontario Government's real estate assets while delivering services in support of Client Ministries, agencies and the broader public service.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

In this Agreement, the following terms shall have the meanings set out herein:

“**Additional Work**” means any other services outside of the scope of Services to be provided by PMSP under this Agreement, that IO may require PMSP to provide in accordance with the terms of this Agreement.

“**Affected Party**” or “**Affected Parties**” have the meaning ascribed thereto in Section 2.7.

“**Agreement**” means this Master Services Agreement, together with the Schedules, Exhibits and Appendices attached hereto, as the same may be amended from time to time.

“**Applicable Laws**” means all statutes, laws, by-laws, regulations, ordinances, codes, orders and requirements of Government Authorities having jurisdiction.

“**Asset Management**” means the Asset Management business unit within IO responsible for the delivery of IO’s Projects and Studies.

“**Assignment**” means a Project or a Study.

“**Assignment Costs**” means the actual, direct costs contracted for and incurred by PMSP with no profit margin, duplication or mark-up, inclusive of HST and all other applicable taxes, for the performance of an Assignment which is approved for delivery by IO through a Project Charter. Assignment Costs shall be reduced by the amount of any Rebate, or the proportionate amount of any Rebate, directly or indirectly attributable to any Assignment performed by PMSP. Assignment Costs shall not include the Assignment Fee, or any costs not contracted for from a third party by PMSP.

“**Assignment Fee**” means the fixed percentage fee determined as set out in Schedule “D”, to be paid to PMSP pursuant to Section 9.1.1 for the satisfactory performance of each Assignment which is approved for delivery by IO through a Project Charter, including all costs of PMSP except Assignment Costs. Assignment Fee is intended to be the all-inclusive final payment made to PMSP for performance of an Assignment and all Services relating thereto or arising therefrom. For greater clarity, Assignment Fee includes, but is not limited to:

- (i) all disbursements incurred by PMSP in the performance of an Assignment and all Services related thereto or arising therefrom;
- (ii) costs of services contracted for by PMSP for the performance of an Assignment and all Services related thereto or arising therefrom;
- (iii) computing hardware, networking and connectivity, computing software, telecommunications, file transfers;
- (iv) telephone, fax, cell phones, Blackberry and other PDA hardware, services and usage;

- (v) the cost of any permit not directly related to an Assignment;
- (vi) salaries, benefits and other costs, including bonuses and profit-sharing for all PMSP staff, contract staff and management;
- (vii) all office administration, such as printing, photocopying and delivery charges (mail, courier, etc.) related to Assignments and all Services related thereto or arising therefrom;
- (viii) PMSP accommodation costs including, but not limited to lease costs, fit-up, rents, furniture, equipment for its operations, utilities and property taxes;
- (ix) supplies and materials utilized by PMSP in the performance of an Assignment and all Services related thereto or arising therefrom;
- (x) all necessary business, technical and professional licenses, memberships and training for PMSP staff;
- (xi) insurance and insurance premiums, investigation and adjuster's services;
- (xii) financing;
- (xiii) termination and severance liabilities for any PMSP staff;
- (xiv) all legal services including litigation, whether on behalf of the PMSP or on behalf of IO in accordance with Article 15 (Legal Services) hereof, including legal services for contract negotiations and formulation, arbitrations and alternative dispute resolution processes;
- (xv) PMSP's mark-up, overheads, interdepartmental charges and profit;
- (xvi) any and all taxes imposed on or payable by PMSP including without limitation income and profit taxes upon the income of PMSP;
- (xvii) all costs related to the provision of Program Management, Corporate Support, Technical Services and Consulting Services by PMSP to IO; and
- (xviii) PMSP's costs related to all IO audits of Services.

“Assignment Fee at Risk” means a portion of PMSP's Assignment Fee that may be payable to IO based on KPI results.

“Awarded Zone” has the meaning ascribed thereto in the recitals of this Agreement.

“Balanced Score Card” means the tool used to measure PMSP performance and achievement of Balanced Score Card Criteria, as set out in Article 10 Performance Management.

“Balanced Score Card Criteria” means value-added operational performance criteria for PMSP which are aligned to IO's corporate and business objectives and which shall be collaboratively

identified by PMSP and IO on a Fiscal Year basis. The achievement of Balanced Score Card Criteria shall be assessed through Balanced Score Cards.

“**Business Day**” means a day on which the offices of IO and the Government of Ontario are open to conduct public business.

“**Capital and Repair Projects**” means Projects undertaken with funding allocated by MEDEI to IO.

“**Class Budgets or Class Estimates**” mean:

- (i) **Class “A” Estimate** – This estimate is based on the Class “B” estimate which shall be updated concurrently with the development of construction documents and which shall be submitted as a final pre-tender estimate. It requires that Project systems be designed and specified to near completion, and is based on a realistic construction schedule and accurate labour and material costs. Typically, the total forecast is presented in elemental format and includes all actual associated fees and costs. Expected degree of accuracy: 5%.
- (ii) **Class “B” Estimate** – This estimate is based upon data (on cost, time and construction) having a level of precision that is typically available when the design of the major systems and sub-systems of the facility (including outline specifications and preliminary drawings and models), as well as when the results of all site or installation investigations, are completed. This estimate also makes allowance for all costs resulting from the anticipated schedule, expected market conditions and suitable level of contingencies. Expected degree of accuracy: 10%.
- (iii) **Class “C” Estimate** – This estimate is based on updated user requirements, general description of the end built works, preliminary site information and existing conditions and production, and takes into consideration construction experience and market conditions as well as basic implementation logistics. It includes costs for design, documentation and construction supervision. Expected degree of accuracy: 15%.
- (iv) **Class “D” Estimate** – This estimate provides an indication of the total costs of the Project, based on the user’s functional requirements to the degree known at the time. It is based on historical cost data for similar work, suitably adjusted for such factors as: effect of inflation, location, risk, quality, size and time. All related factors affecting cost are considered to the extent possible. Such an estimate is strictly an indication (rough order of magnitude) of the Assignment Costs and completion date. Estimated degree of accuracy: 20%.

“**Class Environmental Assessment Process**” means the mandatory evaluation of the environmental impacts of an activity pursuant to the *Environmental Assessment Act*, as required by MEDEI’s Class Environmental Assessment Process.

“**Client**” means the various entities to which IO provides project management services, which for greater clarity includes any of the Ontario Government Ministries and their agencies and entities in the broader public service.

“**Client Program Projects**” means Projects undertaken in support of IO Clients’ programs with funding directly from budgets of any of the Ontario Government Ministries or their agencies.

“**Commencement Date**” means the commencement date of the Term of this Agreement set out in Section 8.1 hereof.

“**Confidential Information**” means any and all information and materials, which:

- (i) are designated in writing, as confidential at the time of disclosure, or
- (ii) if disclosed orally or visually, are designated as confidential at the time of disclosure, or
- (iii) a reasonable person, having regard to the relevant circumstances, would regard as confidential.

Without limiting the foregoing, for the purposes of this Agreement, Confidential Information of IO includes any information described in clauses (i), (ii) or (iii), including commercial or personal information, belonging to, in the possession of or relating to any suppliers, service providers, any Client or MEDEI.

“**Conflict of Interest**” means any actual, potential or perceived situation or circumstance where, in relation to the RFP process or this Agreement or the performance by PMSP of its obligations under this Agreement, PMSP’s other commitments, relationships, interests, financial or otherwise, could be seen:

- (i) to provide PMSP with an unfair advantage over other Proponents during the RFP Process leading to this Agreement, thereby rendering the RFP Process non-competitive and unfair including, but not limited to, when PMSP has Confidential Information not available to other Proponents; or
- (ii) to render PMSP unable or potentially unable to perform the duties and obligations of PMSP under this Agreement; or
- (iii) to impair or potentially impair, actually or perceptually, PMSP’s judgment in performing its duties and obligations under this Agreement; or
- (iv) to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment.

“**Consultant**” means a professional or entity engaged by PMSP to provide Consulting Services.

“**Consulting Services**” means the provision of expertise or strategic advice that is presented for consideration and decision-making, including but not limited to:

- (i) management consulting (i.e. helping IO improve its performance, primarily through the analysis of existing problems and development of plans for improvement. This includes organizational change management assistance and strategy development);

- (ii) information technology consulting (i.e. advisory services that help IO assess different technology strategies, including aligning its technology strategy with its business or process strategy);
- (iii) technical consulting (i.e. activities related to actuarial science, appraisal, community planning, employment placement, engineering, health sciences, interior design, realty, social sciences);
- (iv) research and development (i.e. investigative study for the purpose of increasing the available store of knowledge and/or information on a particular subject);
- (v) policy consulting (i.e. the provision of advisory services to provide policy options, analysis and evaluation); and
- (vi) communication consulting (i.e. the provision of strategy and advice in conveying information through various channels and media).

Consulting Services do not include services in which the physical component of an activity would predominate, for example, services for the operation and maintenance of a facility or plant; water-testing services; exploratory drilling services; surveying; temporary help services; training/education instructors and aerial photography.

Consulting Services do not include any licensed professional services provided by Design Professionals, medical doctors, dentists, nurses, pharmacists, veterinarians, land surveyors, chartered accountants, lawyers and notaries in their regulated capacities

“**Contract**” means this Agreement, the Proposal Extract; and individual Project Charters and any Project Charter Change Forms, if applicable. Should there be an inconsistency in any of the documents forming the Contract, they shall be interpreted in the following order of priority:

- (i) this Agreement;
- (ii) Project Charter and any Project Charter Change Forms, if applicable, and the Purchase Order; and
- (iii) the Proposal Extract.

“**Day**” means any calendar day.

“**Design Professional**” means an architect, engineer, interior designer, or other professional or entity engaged by PMSP to provide Services other than Consulting Services.

“**Expiration**” means the expiration of the Term of this Agreement by reason of lapse of time.

“**Extension Term**” means the additional periods which, in accordance with Section 8.2 hereof, may extend the Contract following the expiration of the Term, for five (5) additional terms of one (1) year each.

“**Field Guide**” means IO’s central depository of processes, procedures, policies, due diligence requirements, templates and technical information related to heritage and environmental matters, including the Class Environmental Assessment process, processes related to the monitoring, containment, handling, removal and disposal of Hazardous Materials, environmental risk assessments, the requirements of Phase 1 and Phase 2 environmental site assessments and similar matters, as same may be amended, replaced or supplemented from time to time. The Field Guide shall be available to PMSP electronically through an electronic data room or FTP site.

“**FIPPA**” has the meaning ascribed thereto in Section 21.11 hereof.

“**Fiscal Year**” means IO’s fiscal year, which as of the date of this Agreement runs from April 1 to March 31. The Fiscal Year is divided into quarters.

“**Force Majeure**” shall mean an event which any party hereto could not reasonably and in good faith control or circumvent despite diligent attempts to do so (including without limitation labour disputes, casualties, acts of God or the public enemy, civil commotion, governmental embargo restrictions, strikes, action or non-action of public utilities or of municipal, provincial or federal governments affecting the work and extreme weather conditions).

“**General Contractor**” means a general contractor, design builder or construction manager engaged by PMSP to carry out the construction of a Project and in respect of which a construction contract is entered into by PMSP.

“**Government Authorities**” means any Person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over the Portfolio or any Properties forming part of the Portfolio, the duties and responsibilities of PMSP contemplated in this Agreement and/or one or both of the Parties hereto.

“**Hazardous Materials**” means any substance, chemical, waste, contaminant, pollutant or other material that is or becomes regulated by any federal, provincial or local Government Authority because of its toxicity, infectiousness, radio-activity, explosiveness, ignitability, corrosiveness or reactivity including, without limitation, asbestos containing materials, underground storage tanks, radon, urea formaldehyde and PCB’s and any other substances regulated by the Hazardous Waste Laws.

“**Hazardous Waste Laws**” means the *Environmental Protection Act* (Ontario) and all regulations issued pursuant thereto, the *Canadian Environmental Protection Act* (Canada) and all regulations issued pursuant thereto, and any policies, guidelines, directives or orders issued by any Government Authorities relating to Hazardous Materials.

“**Hourly Rate**” means the hourly rates to be charged by PMSP for any Additional Work to be provided by PMSP under this Agreement that is approved by IO in accordance with this Agreement.

“**IO**” means Ontario Infrastructure and Lands Corporation which operates under the brand name “**Infrastructure Ontario**”. IO is the statutory agent and delegate of Her Majesty the Queen in Right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure or his or her duly authorized successor.

IO Intellectual Property” means: (a) any Intellectual Property developed and owned by IO or licensed by IO from a third party prior to the date of this Agreement; (b) any Intellectual Property that is developed by or on behalf of IO during the Term including Intellectual Property developed by PMSP for IO as part of the Services; and (c) any Intellectual Property that is licensed by IO from a third party during the Term and that is made available by IO to PMSP in connection with the provision of Services.

“Intellectual Property” means any property, tangible or intangible, that is subject to Intellectual Property Rights, including, as applicable and without limitation, ideas, formulae, algorithms, concepts, techniques, processes, procedures, approaches, methodologies, plans, systems, research, information, documentation, data, data compilations, specifications, requirements, designs, diagrams, programs, Inventions, technologies, tools, products knowledge, know-how and other materials or things, excluding third party software used by PMSP.

“Intellectual Property Rights” means (a) any and all proprietary rights anywhere in Canada provided under: (i) patent law; (ii) copyright law, including moral rights; (iii) trade-mark law; (iv) design patent or industrial design law; (v) semiconductor chip or mask work law; (vi) trade secret law; (vii) privacy law; or (viii) any other statutory provision or common law principle applicable to this Agreement and which subsists in Intellectual Property; and (b) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.

“Invention” means any new and useful art, process, methodology, technique, machine, manufacture or composition of matter, or any new and useful improvement of any art, process, methodology, technique, machine, manufacture or composition of matter, whether or not patentable.

“Joint Property” has the meaning ascribed thereto in Section 21.4.5.

“Key Performance Indicators” or **“KPIs”** means the numerical measures of performance used by IO to assess PMSP’s achievement of performance expectations.

“Key Personnel” has the meaning ascribed thereto in Section 2.2.7.

“KPI Remedy” has the meaning ascribed thereto in Section 10.6.2

“LiveLink” means IO’s on-line document management system.

“MEDEI” means the Minister of Economic Development, Employment and Infrastructure or his or her duly authorized successor, the representative owner of Crown patented land.

“Non-Conformance” means the failure by PMSP to meet KPIs, Balanced Score Card Criteria, prescribed performance reporting guidelines (including without limitation the Performance Metric Reporting Package) or other prescribed performance standards in delivering Services.

“NSB/ERD” means the Negotiations & Security Branch, Employee Relations Division of the Ministry of Government Services, or any successor thereof. Security Clearance Checks are administered by NSB/ERD.

“**OPS**” means the Ontario Public Service.

“**Other Agreement(s)**” means any other contractual agreement already entered into, or entered into directly by IO or PLMSP with a third party at any time during the Term or any Extension Term of this Agreement, including but not limited to lease agreements, accommodation and occupancy agreements with Tenants and/or landlords, and agreements with other contractors for services and projects.

“**Other Properties**” means all lands, buildings, structures, improvements and fixtures which IO is not responsible to manage on behalf of Her Majesty the Queen in Right of Ontario and in respect of which PMSP is required to perform any Services under this Agreement.

“**Party**” or “**Parties**” shall mean IO and PMSP.

“**Performance Action Plan**” has the meaning ascribed thereto in Section 14.2.

“**Performance Incentive**” means an amount that may be payable to PMSP, which is dependent upon the achievement by PMSP of the Balanced Score Card Criteria.

“**Performance Metric Reporting Package**” has the meaning ascribed thereto in Section 10.2.

“**Person**” means any individual, company, firm, partnership, limited liability company, corporation, trust, association or other legal entity.

“**PMO**” PMSP’s Project Management Office.

“**PMSP**” means SNC-Lavalin Operations & Maintenance Inc.

“**PMSP Intellectual Property**” means: (a) any Intellectual Property developed and owned by PMSP or licensed by PMSP from a third party prior to the date of this Agreement and used in the performance of the Services; and (b) any Intellectual Property that is licensed by PMSP from a third party during the Term and used in the performance of the Services.

“**Portfolio**” means all Properties and Other Properties within the Awarded Zone in respect of which PMSP is to provide Services in accordance with this Agreement.

“**Portfolio Planning**” means the creation of annual and multi-year plans that prioritize and optimize the delivery of Projects and Studies within an Awarded Zone.

“**Post Tender Estimate**” means the total budget for a Project based on all known elements of that project including the General Contractor’s awarded price, the post contract contingency and any other accepted prices.

“**Program Management**” means the activities undertaken by PMSP to comply with IO’s standards, protocols and systems required to support the delivery of Assignments, as outlined in greater detail in Article 3 (Program Management).

“Process Charts” means the charts prepared by IO outlining various processes to be followed by PMSP in the performance and delivery of Assignments under this Agreement, as the same may be amended, replaced or supplemented from time to time. IO shall make the Process Charts available to PMSP electronically through an electronic data room or FTP site.

“Project(s)” means a construction initiative including, but not limited to, interior alterations, demolition, repairs, leasehold improvements related to Properties or Other Properties, and new construction. There are three types of Projects, as more fully described in Article 4, namely Client Program Projects, Capital and Repair Projects and broader public service Projects. There are three streams of projects, namely : (i) small projects, which are Projects with an assignment value of between One Hundred Thousand Dollars (\$100,000) and Two Hundred and Fifty Thousand Dollars (\$250,000); (ii) medium projects, which are Projects with an assignment value of between Two Hundred and Fifty Thousand Dollars (\$250,000) and Five Million Dollars (\$5,000,000); and (iii) large projects, which are Projects with an assignment value of between Five Million Dollars (\$5,000,000) and Ten Million Dollars (\$10,000,000).

“Project Charter” means the form used to confirm scope, schedule, budget and other delivery considerations in the initiation of a Project or Study (see Schedule “C”).

“Project Charter Change Form” means the form used to amend the Project Charter (see Schedule “C”).

“Project Management” means the management of the full life cycle of a Project or Study, including but not limited to initiation; estimating; scheduling; design, where applicable; tender; construction, where applicable; and close-out.

“Project Management Information System” or **“PMIS”** means the technical solution (Project Module of the TRIRIGA Integrated Workplace Management System) implemented by IO for the management of Projects, Studies, Program Management, Corporate Support and Technical Services information.

“Project Manager” means the designated Project or Study lead representing PMSP on any given Project or Study.

“Property and Land Management Service Provider” or **“PLMSP”** means the entity retained by IO from time to time to provide facility and land management services in the Zones.

“Properties” means all lands, buildings, structures, improvements and fixtures which IO is responsible to manage on behalf of Her Majesty the Queen in Right of Ontario or any Ontario government agency and for which PMSP is required to perform any Services under this Agreement.

“Proponent” means an entity submitting a Proposal in response to the RFP.

“Proposal” means a submission provided by a Proponent in response to the RFP.

“Proposal Extract” means those portions of the Proposal accepted by IO which have been determined by IO and PMSP, acting reasonably, to form a part of the Contract.

“**Purchase Order**” or “**PO**” or “**E-Purchase Order**” or “**ePO**” means a written or electronic authorization to expend the assigned budget that is set out and approved in the Project Charter or Project Charter Change Form.

“**Quality Management System**” or “**QMS**” means a set of quality policies, processes and procedures that direct and control the way an organization operates.

“**Rebate**” means the value of any discounts, rebates, fees, services in kind or other incentives for which PMSP may be eligible.

“**Record(s)**” means any document, material, information or file of the Ontario government, IO, PMSP, any General Contractor, Consultant, Design Professional or other service provider hired by PMSP or any sub-trade involved in an Assignment or any portion thereof, in delivering the Services, both originals and copies, and in electronic or hardcopy format. Records include, but are not limited to, reference documents, drawings, photographs, letters, vouchers, other agreements, data and databases and any other item on which information is recorded or stored by graphic, electronic or mechanical means, all available as-built drawings (including but not limited to architectural, mechanical, electrical and structural drawings), specifications, shop drawings, operation and maintenance service manuals, surveys, reports, policy and procedure manuals.

“**Record Drawing(s)**” means the drawings showing the built condition of a Project submitted in accordance with IO’s standards for Record Drawings.

“**Reference Document(s)**” means all available Record Drawings (including but not limited to architectural, mechanical, electrical and structural drawings), specifications, shop drawings, operation and maintenance service manuals, surveys, reports, policy and procedural manuals, both original and copies, and in electronic, non-electronic or hard copy format.

“**Regions**” means the six (6) Regions (North East Region, North West Region, Southwest Region, East Region, Central Region and Toronto Region) which are the subject of the award of services by IO to all project management service providers. “**Region**” means any one of the Regions.

“**RFP**” means the Request for Proposals (RFP 13-283R) for Outsourced Project Management Services, all Appendices and Schedules thereto and any Addenda issued by IO in respect thereof.

“**RFP Process**” means the process set out in the RFP which for further clarity commenced upon issuance of the RFP and ended upon execution of this Agreement.

“**Security Clearance Check**” includes all of the following:

- (i) a written declaration by an individual disclosing any unresolved charges and previous convictions under the offense provisions of federal statutes, including but not limited to the *Criminal Code*, R.S.C. 1985, C. C-46, as amended, for which a pardon under the *Criminal Records Act*, R.S.C. 1985, C. C-47, as amended, has not been granted;
- (ii) a police records check through the Canadian Police Information Centre and provincial and municipal police force records for information about the individual in relation to:

- A. convictions under the offense provisions of federal statutes, including but not limited to the *Criminal Code*, R.S.C. 1985, C. C-46, as amended, for which a pardon under the *Criminal Records Act*, R.S.C. 1985, C. C-47, as amended, has not been granted;
 - B. findings of guilt in relation to federal statutes for which a court has not granted a discharge;
 - C. charges laid under the offense provisions of any federal statutes that are unresolved; and
 - D. records of judicial orders in effect made in relation to the offense provisions of federal statutes;
- (iii) a police records check in other jurisdictions as deemed necessary by the NSB/ERD during a Security Clearance Check; and
 - (iv) if deemed necessary by NSB/ERD considering the circumstances of providing the Services, a driving records check.

“**Services**” means the whole or a portion of the services, including Consulting Services, to be provided by PMSP under this Agreement and the Schedules hereto.

“**Software**” means computer programs, whether in source or object code, computer program documentation recorded in any form or medium, and includes modifications to any of the foregoing, but excludes all data and databases.

“**Standard**” means any guideline, procedure, policy, best practice document or requirement of IO or the Ontario government the purpose of which is to ensure uniformity and quality of Services delivery.

“**Study**” means a review, analysis and resulting recommendations, if applicable, related to Properties, Other Properties, facilities planning, design and/or construction.

“**Substantial Performance**” means the date when a construction contract entered into by PMSP with a General Contractor under this Agreement is substantially performed within the meaning of that term in the *Construction Lien Act*, R.S.O. 1990, c.C-30, as amended.

“**Tenant**” means any person, group (including a Client Ministry) or entity which has from time to time entered into a lease agreement or accommodation/occupancy agreement with IO, or for which IO has entered into a lease agreement on its behalf with a third party landlord for occupancy of the whole or any portion of the Portfolio.

“**Term**” has the meaning ascribed thereto in Section 8.1 hereof, as the same may be extended as set out in Section 8.2 hereof.

“**Termination Date**” means, subject to IO’s right to exercise any Extension Term, the Expiration of this Agreement, or the earlier termination of the Contract in accordance with its terms, whichever is

earlier. If IO exercises its option to extend the Contract for any Extension Term(s), the Termination Date shall be adjusted to reflect the termination of the applicable Extension Term or the earlier termination of the Contract in accordance with its terms, whichever is earlier.

“**Transfer Date**” means December 8, 2014, the date upon which PMSP shall assume full responsibility for the Services.

“**Transition**” has the meaning ascribed thereto in Exhibit “E” to Schedule “A”.

“**Transition Period**” means the time period between the Commencement Date and the Transfer Date, during which the performance of and responsibility for the Services will be transitioned from IO or its incumbent service provider to PMSP, as more particularly described in Exhibit “E” to Schedule “A”.

“**Transition Plan**” means the written description of each party’s obligations during the Transition Period, the purpose of which shall be to smoothly facilitate the transfer of the Services to PMSP.

“**Vendor of Record**” or “**VOR**” means a listing of vendors or suppliers that have been pre-qualified by IO to provide services including, but not limited to, General Contractors, Design Professionals and Consultants.

“**Vendor Performance Score Card**” means a report generated in connection with IO’s Vendor Performance Program.

“**Vendor Performance Program**” means IO’s policy for evaluating vendor performance, including the collection and incorporation of vendor performance into a vendors’ evaluation and selection process, as same may be amended from time to time.

“**Zones**” mean the two (2) geographical areas namely the Corridor Zone – comprised of the Southwest Region, East Region, and Central Region, and the Pillar Zone – comprised of the North East Region, North West Region and Toronto Region, which are the subject of the award of services by IO to all project management service providers. “**Zone**” means any one of the Zones.

ARTICLE 2 **DUTIES AND SERVICES OF PMSP**

2.1 Engagement of PMSP

IO hereby retains PMSP, and PMSP hereby agrees with IO, to perform the Services set out in this Agreement (the “**Services**”), for the Assignment Fee hereinafter set forth. Commencing on the Commencement Date, PMSP shall perform the Services within the Awarded Zone. PMSP shall perform any services, functions and responsibilities not specifically described in this Agreement that are required for the proper performance and provision of the Services (and which shall be included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement and for further clarity, any such services, functions and responsibilities shall not be considered Additional Work). PMSP shall provide the Services within the budgets in Project Charters approved by IO and at the performance standard levels set out in this Agreement.

2.2 Duties and Services of PMSP

2.2.1 The Services shall be provided in accordance with Article 3 (Program Management), Article 4 (Projects and Studies), Article 5 (Corporate Support) and Article 6 (Technical Services). With respect to Assignments, PMSP shall provide the Services to successfully deliver Assignments from planning to design to execution and close-out and in compliance with the Field Guide relevant to the Assignments, Process Charts, design and other Standards, any of which may be amended, supplemented or replaced from time to time to reflect Ontario Government priorities, policies and best practices. IO agrees to make available to PMSP any IO specific documents or policy changes that are relevant to the delivery of the Services under this Agreement. In providing the Services under this Agreement, PMSP acknowledges the need for the Parties to work co-operatively at all levels. PMSP commits to co-operate with mutual respect and trust in order to deliver the Services with high quality and cost effectively and in a safe and productive work environment.

2.2.2 PMSP shall perform the Services and carry out its responsibilities with respect thereto as set forth herein, together with such additional services and responsibilities as may be expressly agreed to by the Parties. The Services shall be provided in accordance with the requirements of this Agreement and the applicable requirements of Applicable Laws. PMSP shall maintain at all times during the Term sufficient facilities, staff and other resources as shall be required to perform the Services and all other duties and responsibilities under this Agreement. PMSP shall use adequate numbers of qualified individuals with the requisite skills, training, education, certification and experience to perform the Services as set out in Section 5.1.5 and Exhibit "K" to Schedule "A". PMSP agrees with IO that required PMSP staff delivering Services shall obtain PMP designations. At all times, PMSP's level of performance shall be at least consistent with industry standards and the specific performance standards set out in this Agreement.

2.2.3 PMSP shall be accountable, on a day-to-day basis, to the IO Regional Manager and IO Asset Management Managers responsible for Project delivery for the assigned Awarded Zone where the Project is being undertaken. IO shall identify an IO contact (Project Services Manager) for each Assignment who will act as the IO single point of contact for the respective Assignment. PMSP shall assign a Project Manager to each Assignment who shall have full responsibility for delivering and completing the Assignment.

2.2.4 PMSP covenants and agrees that, to support the effective operation of facilities and property of the Ontario Government, the delivery of Services by PMSP shall be co-ordinated with IO's property and facilities management staff and PLMSP. In addition, PMSP shall also co-ordinate with IO Clients that may be affected by the Services performed by PMSP under this Agreement and, where applicable, take into account needs and goals of the Client when delivering Services. In particular, the manner in which the Services are delivered shall ensure that Clients' needs at a facility by facility level are addressed, that Portfolio Planning processes as set out in Exhibit "A" to Schedule "A" address property management requirements and that specific requirements associated with close out and transfer procedures are met to maintain integrity and longevity of assets, equipment, systems and components.

2.2.5 PMSP acknowledges and agrees that any office space or premises required by PMSP to perform the Services shall be provided by PMSP at its own cost.

2.2.6 PMSP agrees that PMSP personnel assigned to the IO Portfolio shall be acceptable to IO. PMSP personnel assigned to the IO Portfolio shall not be selected, removed or replaced by PMSP without the prior review and acceptance of the IO Regional General Manager. IO, acting reasonably, shall have the right, at any time in its discretion, to request PMSP to remove and replace any PMSP personnel assigned to the IO Portfolio. PMSP agrees that it will remove and replace in an expeditious manner and at its sole cost any PMSP personnel or employee that IO determines in its sole and absolute discretion is unacceptable or ineffectively or inadequately performing the Services. Any personnel to be replaced shall be replaced with a person of suitable ability and qualifications that is acceptable to IO. Such right of approval shall in no way be deemed to create or imply any form of employer/employee relationship between IO and a PMSP candidate, personnel or employee.

2.2.7 PMSP agrees that the PMSP personnel assigned to the IO Portfolio and to the delivery of the Services shall include those personnel listed in Schedule "F" ("**Key Personnel**"). Notwithstanding PMSP's substitution rights in Section 2.2.6, members of the Key Personnel shall not be removed from the IO Portfolio without the prior review and acceptance of IO's VP Asset Management. In the event that any of the Key Personnel is removed or is no longer fully engaged in the delivery of the Services, without IO's prior review and acceptance, IO shall have the right to terminate this Agreement, without liability, cost or penalty, and without prejudice to any other rights or remedies under the Agreement or at law or in equity, upon giving at least thirty (30) Days written notice of termination to PMSP.

2.3 Change of Law

2.3.1 If, subsequent to the execution of this Agreement, there is any change in any Applicable Law, including but not limited to laws related to taxes and duties, which increases or decreases the costs incurred by PMSP in performing the Services, then the Assignment Fee otherwise payable to PMSP under this Agreement shall be increased or decreased accordingly.

2.4 Independent Contractor

2.4.1 PMSP is an independent service provider providing services to IO and neither PMSP nor the employees or agents of PMSP shall be considered to be employees of IO or the Crown.

2.4.2 Nothing contained herein shall be construed as implying a joint venture, agency or partnership relationship between the parties hereto.

2.5 Standard of Care

PMSP shall render the Services with promptness and diligence, and shall execute the Services in a good, workmanlike and professional manner, in accordance with the practices and high professional standards used in well managed operations performing services similar to the Services.

2.6 Representations and Warranties of PMSP

PMSP hereby represents and warrants to IO as follows:

2.6.1 PMSP is experienced, competent and qualified to perform the Services contemplated by this Agreement and is authorized to do business in the Province of Ontario.

2.6.2 PMSP has and shall maintain at all times during the Term sufficient facilities, expertise, staff with the requisite skills, assets and other resources to perform the Services and its duties and obligations under this Agreement.

2.6.3 PMSP holds and shall maintain at all times during the Term all licences, permits, consents, authorizations or other certifications necessary to perform the Services and its duties and obligations under this Agreement.

2.6.4 PMSP is a corporation duly incorporated and validly subsisting under the laws of Canada, is authorized to transact business in the Province of Ontario, and has the full right, power and authority to enter into this Agreement and to perform all of the obligations, duties and responsibilities of PMSP required to be performed hereunder.

2.6.5 This Agreement has been duly and validly executed and delivered by and on behalf of PMSP and constitutes a valid, binding and enforceable obligation of PMSP, enforceable in accordance with its terms. The aforesaid representation and warranty is qualified to the extent the enforceability of this Agreement may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws of general application affecting the rights of creditors in general.

2.6.6 Neither the execution and delivery of this Agreement nor the taking of any actions contemplated hereby, will conflict with or result in a breach of any of the provisions of, or constitute a default, event of default or event creating a right of acceleration, termination or cancellation of any obligation under any instrument, note, mortgage, contract, judgment, order, award, decree or other agreement or restriction to which PMSP is a party, or by which PMSP is otherwise bound.

2.7 Security Screening

PMSP acknowledges that the applicable Government of Ontario Ministry responsible for Security Clearance Checks, may conduct Security Clearance Checks on PMSP's directors, officers, owners, partners, PMSP's employees and personnel and any Consultant, Design Professionals, General Contractors (including each of their respective directors, officers, owners, partners and employees who provide services for the Portfolio) (collectively referred to as "**Affected Parties**" and individually as an "**Affected Party**"). Accordingly, PMSP shall require each Affected Party to undergo a Security Clearance Check. For the purposes of this Section 2.7, Security Clearance Checks shall be conducted in accordance with the Ontario Government's Contract or Security Screening Process described in the Field Guide.

ARTICLE 3 **PROGRAM MANAGEMENT**

3.1 Overview

3.1.1 Program Management consists of the activities required for the management and delivery of the following: (i) annual portfolio delivery; (ii) portfolio delivery planning; and (iii)

development of the PMO. To appropriately manage, integrate, coordinate and fulfill its obligations under this Agreement, PMSP shall undertake certain activities to comply with IO Standards, protocols and systems. Such activities include Capital Planning and Annual Program, Reporting, Quality Management, Contract Governance and Transition, as hereinafter more fully described. All such activities that are required to appropriately manage, integrate, coordinate and fulfill PMSP's obligations constitute Program Management. PMSP shall not be entitled to direct compensation for any of these activities. Compensation for Program Management shall be included in the Assignment Fee payable to PMSP under this Agreement.

3.2 Description of Program Management Activities

The following are brief descriptions of the activities to be undertaken by PMSP as part of Program Management. Further detail is set out in the corresponding Schedules and Exhibits:

3.2.1 Capital Planning and Annual Program (Schedule "A" - Exhibit "A")

As part of Capital Planning PMSP will provide budget planning for IO and Government funding allocations, direction and oversight for IO and Government financial policy and procedures, financial reporting, implement and maintain a management control system, accounting systems and audit liaison and follow-up. Working in connection with IO's regional staff, PMSP shall contribute on an ongoing basis to the annual program and multi-year capital plan that prioritize and optimize the delivery of Assignments within the Awarded Zone.

3.2.2 Reporting (Schedule "A" - Exhibit "B")

PMSP shall compile and submit monthly, quarterly, year-to-date and other operational reports on an as-needed basis in IO prescribed formats, as more specifically set out in Article 19 and Exhibit "B" to Schedule "A".

3.2.3 Quality Management (Schedule "A" - Exhibit "C")

PMSP will establish a PMO as part of managing the quality of the Services and deliverables in accordance with IO approved quality management standards. The primary purpose of the PMO is to serve as the focal point for Program Management matters by providing direction, planning and oversight for financial policy and procedures and financial reporting. The PMO will also manage a range of human resource issues related to the Contract including but not limited to workforce transition and personnel training.

3.2.4 Contract Governance (Schedule "A" - Exhibit "D")

To ensure that the Services are delivered in accordance with the standards set out in this Agreement, PMSP will assume risk management and contract governance responsibilities, in accordance with industry best practices, and Exhibit "D" to Schedule "A".

3.2.5 Transition (Schedule “A” – Exhibit “E”)

The performance and responsibility for the Services will be transitioned from IO or its incumbent project management service provider to PMSP during the Transition Period. In addition, PMSP will be required to transition the performance and responsibility for the Services upon Expiration or termination of the Contract, all in accordance with Exhibit “E” to Schedule “A”. PMSP’s obligation to transition the performance and responsibility for the Services upon Expiration or termination of the Contract shall survive the Expiration or termination of the Contract and all of the transition obligations in Exhibit “E” to Schedule “A” shall remain in full force and effect and will not be terminated or impacted in any way by any Expiration or termination of the Contract.

ARTICLE 4 **PROJECTS AND STUDIES**

4.1 Overview of Projects

4.1.1 IO is responsible to the Ontario Government for design and construction Projects that support Ontario Government and Client programs. From time to time, IO also delivers design and construction Projects that support initiatives undertaken by the broader public service. PMSP will provide the Project Management for all such Projects.

4.1.2 Client Program Projects are funded directly by any of the Ontario Government Ministries or their agencies in support of specific Client program needs. These Projects include such initiatives as new construction, interior, special purpose space renewal, retrofit, renovation and reconfiguration.

4.1.3 Capital and Repair Projects are funded by IO through its Portfolio funding allocations from MEDEI. Capital and Repair Projects support the delivery of age and condition related infrastructure renewal of buildings within the IO managed portfolio as well as the delivery of Projects in support of Ontario Government priorities such as energy consumption reduction and enabling access for Ontarians with disabilities.

4.1.4 Client Program Projects and Capital and Repair Projects are related to facilities such as office buildings, , correctional centres, courthouses, police detachments and other special purpose facilities and may take place on any of the Properties.

4.1.5 Broader public service Projects are funded by municipalities, health service providers, non-profit and other broader public service entities in support of their program needs. These Projects include such initiatives as new construction, interior, special purpose, space renewal, retrofit, renovation and reconfiguration. Broader public service Projects are related to facilities such as community health centres, and may take place on non-Government owned or leased land or buildings.

4.1.6 It shall be primary to the Project Management responsibilities of PMSP to keep IO, on an immediate and ongoing basis, informed of conformity with schedule and budget for all Projects and any matter or event which may impact the schedule or budget of any Project.

4.2 Scope of Work for Projects

4.2.1 PMSP shall, through the full life cycle of each Project, ensure compliance with the budget, scope, quality of work and schedule as set out in the Project Charter. PMSP will be responsible to maintain ongoing controls including the identification, recording and resolution of risks, contingency management, budget management and change process management and correcting deficiencies in the quality of the design and construction. PMSP will be responsible for the carriage, management and regular reporting to IO, of all construction lien matters.

4.2.2 The details provided in this Article describe PMSP's responsibilities, by phase, in respect to Project Management; however, the actual responsibilities and delivery methodology required for any given Project may vary depending on the Project value and requirements. The following provisions of this Article 4 set out the general scope of work relevant to all Projects.

4.2.3 The Tables Containing the Responsibility Matrices - Projects annexed as Exhibit "F" to Schedule "A" also form part of the Services and describe the specific responsibilities of PMSP with respect to small, medium and large Projects, respectively. PMSP shall be required to perform all responsibilities that are outlined in this Article, the Responsibility Matrices – Projects, and this Agreement. Notwithstanding any term or provision of the Contract to the contrary PMSP shall be required to fulfill the more inclusive description of a responsibility where there is any variation between the responsibilities as described in this Article, the Responsibility Matrices, the Proposal Extract, or this Agreement.

4.2.4 The responsibilities shall be delivered by PMSP in compliance with the requirements prescribed in this Agreement, in particular "Program Management, Corporate Support and Technical Services".

4.2.5 Each activity of PMSP in fulfilling its responsibilities will be identified, recorded and reported through PMIS or any other reporting system required by IO.

4.2.6 As noted below, Project Management can be categorized into four distinct phases: Initiation, Design, Construction, and Close-out, as described in Sections 4.3, 4.4, 4.5 and 4.6, respectively.

4.3 Initiation of Projects

4.3.1 This phase outlines the responsibilities of PMSP prior to the full execution of the Project Charter.

4.3.2 IO will provide PMSP with the unsigned Project Charter which outlines in general terms the intended Project, including the scope, schedule and anticipated budget.

4.3.3 PMSP will be responsible to complete, sign and submit each Project Charter within a time period agreed to by PMSP and IO in accordance with the Responsibility Matrices - Projects. The signed Project Charter shall detail the scope of work, resources required, regulatory approvals required, feasibility analysis, applicable design and contingency amounts, delivery method, scheduling, identification of potential risks and a corresponding risk management plan,

proposed communications plan, refined and targeted budget and cash flow forecast. PMSP shall also state in the Project Charter the assumptions and limitations upon which the above details are made.

4.3.4 The budget in the Project Charter will be consistent with a Class “D” Estimate which will be within twenty percent (20%) of the Assignment Costs, plus Project contingency based on the identified Project risks.

4.3.5 The initiation phase will be completed upon the Project Charter being fully executed. IO shall use reasonable commercial efforts to arrange prompt execution of an acceptable Project Charter.

4.3.6 Subject to Section 4.3.7 and 4.3.8, PMSP shall not be entitled to an Assignment Fee in respect of a Project until and unless the Project Charter is fully executed..

4.3.7 IO acknowledges that PMSP may be required to undertake due diligence activities with respect to a proposed Project prior to a Project Charter being fully executed.

4.3.8 Further to the foregoing, if a Project Charter is not fully executed because of the cancellation or deferral of a Project or for any other reason not within PMSP’s control, PMSP shall be entitled to Assignment Fees where the accumulated Assignment Fees for due diligence activities are more than Three Thousand, Five Hundred Dollars (\$3,500). Notwithstanding that a Project Charter is not fully executed on account of a reason that is not within PMSP’s control, PMSP shall not be entitled to Assignment Fees where the accumulated Assignment Fees for due diligence activities are less than Three Thousand, Five Hundred Dollars (\$3,500). PMSP shall provide explanations, background and substantiating documentation, satisfactory to IO, in respect of the value of the accumulated Assignment Fees.

4.4 Design of Projects

4.4.1 Upon receipt of a fully executed Project Charter, PMSP shall commence the design phase. This phase entails all work required prior to the commencement of construction. The main purpose of the design phase is to ensure that the final design and the preparation of construction tender documents that result from that design will provide a Project that is on time and on budget while reducing the need for changes during the execution phase.

4.4.2 In connection with the design phase, PMSP shall have responsibilities, which include, but are not limited to:

- (a) Report to IO any site conditions which may affect delivery of the Project;
- (b) Procure qualified Design Professionals to undertake design work and enter into IO’s prescribed form of agreement;
- (c) Ensure appropriate and necessary information is provided to the Design Professional;
- (d) Maintain ongoing communication with IO during the design process;
- (e) Finalize a communications plan for the Project;

- (f) Participate in design meetings and ensure that the applicable Design Professional leads design meetings, including the taking of minutes, to an acceptable industry standard, and the distribution of such minutes to all stakeholders. When required to ensure achievement of Project objectives, KPI goals or Client satisfaction, PMSP shall lead meetings with stakeholders to effectively manage Project planning;
- (g) Ensure the design is completed in a timely manner;
- (h) Review all design drawings, ensuring that all applicable Standards have been complied with;
- (i) Ensure IO and the Clients are involved throughout the Project at milestone dates to verify that Project requirements are met as defined in the Project Charter;
- (j) Conduct a review of all specifications and drawings at various stages to minimize risks of post-tender changes and to confirm general compliance with the intended and approved Project scope;
- (k) Review, monitor, report on the use of design contingency amounts and release unused contingency amounts as directed by IO;
- (l) Advise IO of any issues or changes that may affect the budget or schedule;
- (m) For the purposes of KPI calculation, refine the budget to within five percent (5%) of the total estimated Assignment Costs, plus Project contingency, based on the identified Project risks consistent with a Class "A" Budget Estimate at the completion of construction tender. (Note that IO may also require, at different stages, Class "B" and "C" Budget Estimates);
- (n) Procure qualified General Contractors and enter into IO's prescribed form of agreement;
- (o) The terms of the form of agreement with the General Contractor shall not vary from the terms of the Project Charter unless a Project Charter Change Form has been signed by IO; and
- (p) Procure a commissioning agent for the commissioning of the systems necessary to complete the execution phase.

4.4.3 IO reserves the right to review all design and procurement documents. This reserved right does not in any manner relieve PMSP from any obligations or responsibilities imposed by this Agreement. If IO exercises its right of review, IO and PMSP shall agree on a reasonable period of time for IO to undertake its review. If IO exceeds that time period, upon written request from PMSP, the consequential delay will be excluded from the calculation of PMSP's Project specific KPI.

4.5 Construction of Projects

4.5.1 PMSP will manage the General Contractor, the Design Professional and other service providers to ensure completed execution of the construction contract documents. Additionally, the commissioning of the facility and its systems is considered part of this phase.

4.5.2 In connection with the construction phase, PMSP shall have responsibilities, which include, but are not limited to:

- (a) Complete a baseline master Project schedule;
- (b) Provide shop drawings as per IO's requirements;
- (c) Provide IO with monthly Project status reports;
- (d) Co-ordinate and participate in all Project and site meetings including the taking of minutes, to an industry acceptable standard agreed to by IO. Distribution of minutes shall be to all applicable stakeholders. When required to ensure achievement of Project objectives, KPI goals or Client satisfaction, PMSP shall lead meetings with stakeholders to effectively manage the execution of the Project;
- (e) Ensure acquisition of building and other permits as required by Applicable Laws;
- (f) Ensure the provision by the Design Professional of appropriate and comprehensive on-site training to facilities management, operations and technical staff and provide detailed operations manuals;
- (g) Ensure that a list of inspection and testing requirements as required by IO's standard schedule of inspections and tests is provided;
- (h) Where applicable, make submissions to agencies that may provide financial assistance to special initiative Projects (e.g. energy conservation);
- (i) Administer the full construction change process;
- (j) Review, monitor, report on the use of contingency amount and release un-used contingency amounts as directed by IO;
- (k) Provide support to commissioning agents and coordinate with commissioning agents and all stakeholders;
- (l) Ensure that there is appropriate assistance for facilities management, operating and maintenance staff in the preparation of maintenance requirements for all equipment and, when required, directly intervene to co-ordinate appropriate assistance;
- (m) Prior to Substantial Performance, in consultation with all stakeholders, compile a list of all deficiencies and ensure their rectification;

- (n) Provide all commissioning reports, warranties and warranty information, contact lists, spare parts list, equipment list, Reference Documents, training reports, testing reports, risk logs and other required documentation; and
- (o) Obtain the requisite certifications in respect to Substantial Performance and advertise Substantial Performance as required by the *Construction Lien Act*, R.S.O. 1990, c.C-30, as amended.

4.6 Close-Out of Projects

4.6.1 In connection with the close-out phase, PMSP shall have responsibilities, which include, but are not limited to:

- (a) Ensure all deferred commissioning tests have been performed;
- (b) Provide IO with a final Project Charter Change Form acceptable to IO,
- (c) Completion of Vendor Performance Program requirements;
- (d) Act on IO's behalf to resolve any disputes related to warranty or construction lien matters or any other disputes for the twelve (12) months following Substantial Performance; and
- (e) Co-ordinate 1-year warranty inspection and satisfactory completion of "punch list" items.

4.7 Overview of Studies

Studies can vary in scope but include a review, analysis and possible recommendations related to Properties, Other Properties, facilities planning, design and construction.

4.8 Scope of Work for Studies

4.8.1 PMSP shall, through the full life cycle of the Study, ensure compliance with the budget, scope, quality of work and schedule as set out in the Project Charter. PMSP shall be responsible to maintain ongoing controls for the Study including the identification, recording and resolution of risks, correcting deficiencies in the quality of the Study deliverables, budget management and change process management.

4.8.2 The details provided in this Section describe the responsibilities, by phase, of PMSP in respect to Studies; however, the actual responsibilities on any given Study may vary.

4.8.3 The Table Containing the Responsibility Matrix - Studies annexed as Exhibit "F" to Schedule "A" also forms part of the Services and details further responsibilities. PMSP shall be required to perform all responsibilities that are outlined in this Article, the Responsibility Matrix – Studies and this Agreement. Furthermore, PMSP shall be required to fulfill the more inclusive description of a responsibility where there is any variation between the responsibilities as described in this Article, the Responsibility Matrix – Studies or this Agreement.

4.8.4 The specific responsibilities for each phase as detailed below shall be delivered by PMSP in compliance with the requirements prescribed in this Agreement.

4.8.5 Each activity of PMSP in fulfilling its responsibilities will be identified, recorded and reported through PMIS or any other reporting system required by IO.

4.8.6 A Study is categorized into five distinct phases: Initiation, Design, Execution, Acceptance and Close-out, which are further detailed in the Responsibility Matrix – Studies.

4.8.7 IO will provide PMSP with a Project Charter which includes the particulars for each Study to be undertaken by PMSP. PMSP will complete and submit the Project Charter within a time period agreed to by PMSP and IO. Unless otherwise stated, the Project Charter for Studies shall meet the same requirements as specified for the Project Charter for “Projects” and all provisions therein shall apply, *mutatis mutandis*.

4.8.8 Subject to Section 4.3.7 and 4.3.8, *mutatis mutandis*, PMSP shall not be entitled to an Assignment Fee in respect of a Study unless and until the Project Charter for such Study is fully executed.

ARTICLE 5 **CORPORATE SUPPORT**

5.1 Overview

As part of Corporate Support, PMSP will provide consolidated, continuous and stable corporate support services; in order to achieve economies of scale through standardization and streamlined operations. PMSP corporate support activities shall include Information Technology, Financial Management, annual Statutory Declarations, Procurement, Human Resources, Records Management, adherence to IO and Government Standards and Communications, as hereinafter more fully described. PMSP shall not be entitled to direct compensation for any of these activities. Compensation for Corporate Support will be included in the Assignment Fee.

Overall Corporate Support responsibility will reside with PMSP’s Account Executive Lead. The following are brief descriptions of the Corporate Support activities. Further detail can be obtained in the corresponding Exhibits:

5.1.1 Information Technology (“IT”) (Schedule “A” - Exhibit “G”)

PMSP will have in place IT systems and resources capable of facilitating the timely flow of information in a format compatible with IO’s IT requirements. Commencing immediately after execution of this Agreement, PMSP shall implement and utilize throughout the Term and any Extension Term(s) all subsystems of the project management information system referred to as PMIS. IO will require compatibility with PMIS.

5.1.2 Financial Management (Schedule “A” - Exhibit “H”)

PMSP will provide and utilize suitable financial systems and resources to enable PMSP to effectively manage the Portfolio and communicate to IO the true and accurate financial state of the Portfolio. PMSP will follow IO required procedures including the procedure and timelines for invoice processing and vendor payment. PMSP will demonstrate that appropriate internal corporate financial controls are being maintained. IO reserves the right to audit PMSP’s financial records and statements and matters related to the performance of this Agreement as set out in Article 18 (Audit).

5.1.3 1.1.1 Statutory Declaration Affirming Compliance (Schedule “A” – Exhibit “I”)

PMSP shall provide, no later than 45 Days following the end of each Fiscal Year, a statutory declaration in which it affirms its compliance with all critical obligations outlined in this Agreement, as determined by IO in its sole discretion.

5.1.4 Procurement (Schedule “A” - Exhibit “J”)

PMSP will be required to procure General Contractors, Design Professionals, Consultants and other necessary service providers in a fair and competitive manner consistent with Applicable Laws and IO’s procurement policies. PMSP will evaluate vendor performance and will participate in vendor selection from time to time.

5.1.5 Human Resources (Schedule “A” - Exhibit “K”)

Subject to Article 2 hereof, PMSP shall ensure that appropriate and adequate staff is provided to completely deliver the Services. PMSP acknowledges that, in some cases, minimum qualifications and experience shall be mandatory.

5.1.6 IO and Government Standards (Schedule “A” - Exhibit “L”)

PMSP shall observe and comply with all applicable Standards and guidelines of IO and the Ontario Government, examples of which are noted in Schedule “A” - Exhibit “L”.

5.1.7 Records Management (Schedule “A” - Exhibit “M”)

PMSP shall be responsible for maintaining, managing and making available for inspection and the requirements of FIPPA, documents and Records required for the fulfillment of PMSP’s responsibilities under this Agreement.

5.1.8 Communication Management (Schedule “A” - Exhibit “N”)

PMSP shall coordinate all levels of communication related to the Portfolio. PMSP shall develop a communications plan acceptable to IO within the first sixty (60) days following contract award, which includes communication protocols and procedures, as set out in Schedule “A” - Exhibit “N”. These protocols will promote an effective and complete transfer of information.

ARTICLE 6 **TECHNICAL SERVICES**

6.1 Field Guide

PMSP agrees that, in performing the Services under this Agreement, PMSP shall comply with and deliver all Services in accordance with the terms and requirements of the Field Guide. PMSP acknowledges that it has the on-going obligation and responsibility to review and comply with the Field Guide in carrying out the performance of the Services under this Agreement.

6.2 Technical Services

Technical Services consist of the activities required to provide direction leadership and expertise in the delivery of Assignments and the execution of the program management in accordance with the individual components of the Field Guide. As part of Technical Services, PMSP shall provide expertise relating to heritage and environmental matters, including the Class Environmental Assessment process, processes related to the monitoring, containment, handling, removal and disposal of Hazardous Materials, environmental risk assessments, the requirements of Phase 1 and Phase 2 environmental site assessments and similar matters. PMSP shall not be entitled to direct compensation for any of these activities. Compensation for Technical Services will be included in the Assignment Fee.

ARTICLE 7 **ADDITIONAL WORK**

7.1 Additional Work

At any time during the Term or any Extension Term of this Agreement, IO may require PMSP to provide Additional Work that is outside the scope of Services to be provided by PMSP under this Agreement. Studies having an Assignment Cost of more than \$250,000 shall constitute Additional Work under this Agreement.

7.2 Process applicable to Additional Work

7.2.1 PMSP shall respond to IO’s request(s) for services related to Additional Work by submitting for IO’s approval, within the time frame specified in the request for services, a written proposal for the Additional Work. Such proposal shall include a detailed scope of work, outline, budget, completion schedule and details of all anticipated costs including PMSP’s Assignment Fee or Hourly Rate, if any, for carrying out the Additional Work. If the proposal is accepted by IO,

PMSP shall implement and provide the Additional Work in accordance with the terms of this Agreement, including, if required by IO: (i) tendering the requirements; (ii) reviewing and evaluating proposals received in response to the tender process; and (iii) presenting the results and recommendations to IO for further review and approval.

7.2.2 In the event that IO requires and approves a proposal for Additional Work, it shall issue to PMSP a PO for such Additional Work.

7.2.3 Upon receipt of a PO, PMSP shall arrange and enter into all necessary contracts for the completion of the Additional Work in accordance with the terms of this Agreement. PMSP shall be responsible to ensure that the Additional Work meets all of the requirements of this Agreement, that all deliverables are achieved on schedule and are within budget and shall provide ongoing project reports to IO detailing these items.

7.2.4 IO reserves the right to call competitive bids for Additional Work and to engage other contractors to perform any Additional Work.

ARTICLE 8 **TERM**

8.1 Initial Term

This Agreement shall be in force for a term (the “**Term**”), commencing on August 6, 2014 (the “**Commencement Date**”) and expiring on March 31, 2020, unless extended or terminated in accordance with this Agreement.

8.2 IO’s Extension Options

IO reserves the right in its sole and absolute discretion to extend the Term of this Agreement for-five (5) additional terms of one (1) year each, at IO’s sole option, upon the same terms and conditions as set out in this Agreement (the “**Extension Terms**”). IO shall provide PMSP with at least six (6) months’ written notice, in advance of each extension term, indicating IO’s exercise of its right to extend the term of this Agreement for such extension term.

ARTICLE 9 **ASSIGNMENT FEE AND ASSIGNMENT COSTS**

9.1 Assignment Fee

9.1.1 Subject to the terms and conditions set out in this Agreement and in consideration for the Services satisfactorily performed (as determined by IO in its sole opinion), IO agrees to pay to PMSP the Assignment Fee for the performance of the Services under this Agreement, determined as set out in Schedule “D” hereto. The Assignment Fee shall be payable as set out in Section 9.3 hereof.

9.1.2 PMSP acknowledges and agrees that, during the Term and any Extension Term of this Agreement, the Assignment Fee as set out in Schedule “D” shall remain the same.

9.2 Assignment Costs

9.2.1 IO covenants and agrees to pay to PMSP the Assignment Costs incurred by PMSP in delivering the Services in accordance with the terms of this Agreement. Assignment Costs shall be payable as set out in Exhibit “H” to Schedule “A”.

9.3 Payment of Assignment Fee

9.3.1 During the Term and any Extension Term of this Agreement, and subject to the terms and conditions of this Agreement, the Assignment Fee shall be paid by IO to PMSP in Canadian dollars as set out in this Section 9.2 and in Exhibit “H” to Schedule “A”. Payment of the Assignment Fee shall be subject to the provisions set out in Exhibit “H” to Schedule “A”, Article 10 (Performance Management) and Article 14 (Default and Termination).

9.3.2 Assignment Fees shall be paid on an individual Assignment basis, as set out in Exhibit “H” to Schedule “A”.

9.3.3 PMSP shall invoice Assignment Fees for Projects at the completion of milestone events, as detailed in Exhibit “H” to Schedule “A” and outlined below:

- (a) Ten percent (10%) upon execution of the Project Charter;
- (b) Forty percent (40%) at the completion of tender ready documents;
- (c) Thirty percent (30%) at Substantial Performance; and
- (d) Twenty percent (20%) upon submission of a final Project Charter Change Form for the Project acceptable to IO.

9.3.4 PMSP shall invoice Assignment Fees for Studies at the completion of milestone events, as detailed in Exhibit “H” to Schedule “A” and outlined below:

- (a) Twenty percent (20%) upon execution of the Project Charter;
- (b) Forty percent (40%) at the completion of the Study; and
- (c) Forty percent (40%) upon submission of a final Project Charter Change Form for the Study acceptable to IO.

9.3.5 Upon receipt of an invoice, IO shall have five (5) Business Days to review the invoice and approve, reject or amend the invoice. Once an invoice is approved by IO, IO shall pay the amount stipulated in the approved invoice to PMSP within five (5) Business Days. If IO rejects or amends the invoice, it shall inform PMSP of the nature of the amendment and the rationale for the amendment.

9.4 Assignment Fee at Risk

PMSP acknowledges and agrees that a certain percentage of the Assignment Fee will be at risk and shall be held back from each milestone payment. Release of the Assignment Fee at Risk for

payment will be subject to PMSP's performance against the KPIs that have been set for a particular Fiscal Year, as set out in Section 10.6 and any resulting Performance Incentive earned by PMSP pursuant to Section 10.7.

9.5 No Deemed Acceptance

No payment to PMSP and no partial or entire use of a Project, a Study or any aspect of the Services shall be construed as an acceptance of any services or work not in accordance with this Agreement.

9.6 No Sub-Contracting

PMSP covenants and agrees that it shall not sub-contract the performance of any of its duties, obligations or responsibilities under this Agreement without the prior written consent of IO.

9.7 Delay in Payments

Delay in payments by IO shall be deemed not to be a breach of this Agreement by IO. Such delay shall entitle PMSP to simple interest on any undisputed amount more than thirty (30) Days overdue at the rate established by the Bank of Canada and in effect on the date that such payment was due and payable. Any delay in payment by IO of an undisputed invoice shall not negatively impact the assessment of PMSP's KPIs or Balanced Score Card Criteria.

9.8 Right to Set-off/Hold Back

IO, acting reasonably, reserves the right to hold back or set-off a part or the whole of any payment on account of the Assignment Fees and/or costs to PMSP if, PMSP has failed to comply with any requirement of this Agreement. IO shall provide prior written notice to PMSP of IO's intention to exercise its right of holdback or set-off.

9.9 Payments by PMSP

In paying any account in relation to this Agreement, PMSP shall ensure that such payment is made to suppliers, utility providers, its staff, General Contractors, Consultants, Design Professionals, other contractors and third parties on or before the payment due date in order to avoid penalties and to take advantage of any available discounts.

9.10 PMSP to Provide Copies of Records

Upon request by IO, PMSP shall promptly provide to IO copies of Records, documents, quotations, agreements and evidence of payment of staff, suppliers, General Contractors, Consultants, Design Professionals, other contractors and third parties in respect of any invoice.

9.11 PMSP to Retain Holdbacks

PMSP will maintain the appropriate holdbacks, where applicable, in respect of payments to General Contractors, Design Professionals, Consultants, other contractors and third parties, as required by the *Construction Lien Act*, R.S.O. 1990, c. C-30, as amended.

9.12 Claim for Lien

If a claim for construction lien is filed or registered in respect of any Project, PMSP shall immediately notify IO by providing a copy of the lien claim. PMSP shall promptly take all necessary steps to cause the lien to be released and discharged forthwith and, if PMSP does not cause such lien to be released or discharged forthwith, IO shall have the right to pay all amounts necessary to obtain such release and discharge, and to deduct all amounts so paid from any amounts payable to PMSP under this Agreement. If a construction lien is perfected and a Statement of Claim is issued, PMSP will defend IO, the Client and Her Majesty the Queen in accordance with Article 15 (Legal Services).

ARTICLE 10 **PERFORMANCE MANAGEMENT**

10.1 Performance Management

PMSP acknowledges that PMSP's performance under this Agreement will be monitored on an ongoing basis and assessed by IO once each quarter and once annually as set out in this Agreement to ensure that the Services are delivered in accordance with this Agreement. The service expectations outlined in this Agreement are the minimum required level of performance against which PMSP's performance will be measured. The performance management framework to be used to assess PMSP's performance is detailed in this Article 10 and Schedule "B" attached hereto. PMSP's performance of the Services will be assessed within the following framework:

- (a) Key Performance Indicators ("KPIs"). KPIs are statistical measures of performance that shall be used to assess PMSP's achievement of performance expectations during each Fiscal Year. KPIs are categorized as Time Performance Indicators ("TPI's"), Cost Performance Indicators ("CPI's") and Quality Performance Indicators ("QPI's"). PMSP acknowledges that IO shall have the right from Fiscal Year to Fiscal Year to add KPIs and to alter and revise any of the requirements of any of the KPIs. IO shall only add KPIs and alter and revise any of the requirements of any of the KPIs following a collaborative process with PMSP, provided that IO reserves the right in its sole discretion to make the final determination with respect to the addition of KPIs and the alteration and revision of any of the requirements of any of the KPIs;
- (b) Balanced Score Cards. Balanced Score Cards are another type of statistical measure of performance that shall be used on a quarterly basis to evaluate PMSP's performance based on PMSP's Service delivery accomplishments and achievement of Balanced Score Card Criteria during the applicable Fiscal Year under consideration. Prior to the commencement of each Fiscal Year during the Term and any Extension Term, PMSP and IO shall collaboratively identify a number of Balanced Score Card Criteria for PMSP for such Fiscal Year. Such Balanced Score Card Criteria shall be aligned to IO's corporate and business objectives for such Fiscal Year. A weight will be attributed to each Balanced Score Card Criteria as determined by IO in its sole discretion based on the Balanced Score Card Criteria's relative importance to IO; and

- (c) Performance Metric Reporting Package. The Performance Metric Reporting Package outlined in Section 10.2 hereof specifies PMSP's obligation to report and demonstrate performance on a monthly basis with respect to the various matters specified in Section 10.2. PMSP shall be monitored and assessed with respect to its performance in fulfilling the requirements of the Performance Metric Reporting Package.

10.2 Performance Metric Reporting Package

PMSP agrees that on a monthly basis, PMSP shall be required to provide IO with a performance metric reporting package ("**Performance Metric Reporting Package**") reporting on and demonstrating performance with respect to the following:

- (a) Contingency management
- (b) Accounts payable
- (c) Cost estimates and actual costs as compared to the estimates
- (d) Program spend
- (e) Project Management of Projects
- (f) Project Charter creation
- (g) Management of Project Charter Change Forms
- (h) Project file audit check list
- (i) Planning and design completion
- (j) Change order costs
- (k) Compliance with monthly Project status report timelines
- (l) Vendor Performance Program score card completion
- (m) Resourcing

10.3 Reporting and Data

10.3.1 PMSP shall track, measure, monitor, create and submit accurate KPI, Balanced Score Card and Performance Metric reports to IO within the timeframes outlined in this Article 10 and Schedule "B". PMSP will implement and maintain throughout the Term and any Extension Term(s), adequate monitoring controls to ensure data integrity and the prompt detection and correction of data incompleteness and inaccuracies. The reports submitted by PMSP will be in a format suitable to IO, and in accordance with the performance management framework. IO reserves the right to modify KPI, Balanced Score Card and Performance Metric measures from time to time to facilitate alignment with IO's changing business needs. The KPI, Balanced Score Card and

Performance Metric reports generated by PMSP shall incorporate and be based on data that is available in PMIS as well as PMSP's own project management information system.

10.3.2 On a quarterly basis, PMSP shall submit all KPI and Balanced Score Card reports (year-to-date) along with explanations on performance status (as compared to the required targets), performance gaps and general trending and forecasting. KPI measures that are a part of IO's corporate goals and requirements must be reported on by PMSP on a monthly basis. The Performance Metric Reporting Package shall be submitted in accordance with Exhibit "B" (Reporting) of Schedule "A".

10.3.3 It is critical to IO that PMSP's reporting and data meet IO's standards and requirements and be provided in the format required by IO and in an accurate and timely manner. Accordingly, PMSP's failure to provide the required reports and data as required by this Agreement and IO's requirements shall constitute a Non-Conformance under this Agreement that will be subject to the remedies hereinafter described.

10.3.4 Upon receipt of the reports and data to be provided by PMSP pursuant to Sections 10.2 and 10.3.1 hereof, IO shall have ten (10) Business Days to review and approve or reject and request amendment(s) to any report. If IO rejects or requires the amendment of a report, it shall inform PMSP of the nature of the amendment and the rationale for the amendment. PMSP shall thereafter have five (5) Business Days to submit supporting documentation, clarification and amendments to the report, failing which IO reserves the right to record such failure as a Non-Conformance.

10.4 Assessing Performance

10.4.1 PMSP's performance will be validated and verified by IO on an ongoing basis and measured and assessed by IO once each quarter and once annually as set out in this Agreement. PMSP's performance shall be assessed based upon PMSP's achievement of KPIs and Balanced Score Card Criteria. Performance shall be assessed on an Assignment by Assignment basis and on an aggregate basis.

10.4.2 IO shall track and assess PMSP's performance in successfully achieving the Balanced Score Card Criteria on a quarterly basis, in conjunction with IO's quarterly business review process. IO shall identify for PMSP the measures expected by IO for PMSP to achieve the Balanced Score Card Criteria, as set out in Exhibit "B" to Schedule "B". IO shall keep PMSP reasonably informed of the results of IO's assessment in this regard. Prior to the end of the Fiscal Year for which the Balanced Score Card Criteria have been established, IO shall determine if PMSP has successfully achieved the Balanced Score Card Criteria. IO's determination in this regard shall be a determination of either a simple pass or fail in achieving the Balanced Score Card Criteria.

10.5 Exemption from KPI/Balanced Score Card Measures

PMSP may request that an Assignment be exempted from assessment under the KPI or Balanced Score Card framework. The Assignment exemption request, review and determination process is detailed in Exhibit "C" to Schedule "B".

10.6 Assignment Fee at Risk

10.6.1 PMSP acknowledges that a certain portion of PMSP's Assignment Fee will be at risk based on PMSP's performance against the KPIs that have been set for that Fiscal Year. [REDACTED]

10.6.2 PMSP's performance against the KPIs that have been set for the applicable Fiscal Year shall be assessed following conclusion of IO's Q4. As set out in Exhibit "A" to Schedule "B", PMSP's failure to achieve any one or more of the KPIs during the time period subject to assessment shall result in the loss by PMSP of the portion of the Assignment Fee at Risk as set out in Exhibit "A" to Schedule "B" (the "**KPI Remedy**"). IO shall issue the results of its assessment of PMSP's performance as against the KPIs within ten (10) Business Days following the end of IO's Q4, including the results of IO's determination of the KPI Remedy arising from such assessment. Such determinations by IO shall be final. In the event that such assessment results in a KPI Remedy, IO shall have the right to set-off the amount of the KPI Remedy as against amounts held back from milestone payments in accordance with Section 10.3. In addition, PMSP's failure to achieve any of the KPIs within such assessment period shall constitute a Non-Conformance under this Agreement.

10.6.3 The following will apply with respect to the calculation of the Assignment Fee at Risk:

- (a) The Assignment Fee included in each calculation event is the sum of all Assignment Fees paid to PMSP during the 12-month period being assessed. This includes all Assignment types, at any Assignment stage, and regardless of any exemptions to KPIs.
- (b) The Assignment Fee rate used shall be based on the Assignment Cost value at the time of calculation, as identified on the most current Assignment Project Charter or Project Charter Change Form.

10.7 Performance Incentive

Further to Section 10.4.2, if IO's determination of PMSP's performance on Balanced Score Card Criteria is "pass" (meaning that in IO's determination PMSP has successfully achieved the Balanced Score Card Criteria for such Fiscal Year), and subject to the terms of this Agreement, [REDACTED]

[REDACTED] For certainty, PMSP acknowledges and agrees that there shall be no carry over from Fiscal Year to Fiscal Year of any Performance Incentive that PMSP may have earned in any applicable Fiscal Year, as determined by IO in its sole discretion.

Notwithstanding the foregoing, PMSP acknowledges that PMSP shall not be entitled to earn a Performance Incentive if:

- (a) PMSP has failed to meet any of the KPI core objectives established by IO in its sole discretion as set out in Exhibit "A" to Schedule "B"; or

- (b) If PMSP has failed to achieve a minimum 75% score on the aggregate of its KPI results; or
- (c) PMSP is in default under this Agreement as set out in Section 14.1 hereof.

10.8 Remedies

10.8.1 PMSP acknowledges that KPI's, Balanced Score Card Criteria, Performance Metric Reports and Balanced Score Cards represent IO's fundamental performance expectations with respect to the Services. The remedies framework in this Section 10.8 shall be available to IO in the event of a failure on the part of PMSP to meet either KPI's or Balanced Score Card Criteria or in the event of any other Non-Conformance. PMSP acknowledges and agrees that IO shall have the right, in its sole discretion, to apply the remedies set out in this Section 10.8 for the duration of any Non-Conformance provided that, once the applicable Non-Conformance is remedied, IO shall not have the right to execute a remedy for that particular Non-Conformance. PMSP further acknowledges and agrees that IO shall have the right in its sole discretion to waive application of remedies or portions thereof if confirmed in writing by IO's Senior Vice-President.

10.8.2 Without prejudice to IO's rights under Article 14 hereof, the following chart sets out the remedies available to IO for the duration that a Non-Conformance exists:

Tier	Condition	Remedy
Tier 1	<p>Non-Conformances.</p> <p>Non-Conformances will be triggered where a PMSP Services delivery issue is identified relating to the process, practice or method of Services delivery by PMSP. Without limiting the foregoing, Non-Conformances are also defined as:</p> <ul style="list-style-type: none"> ○ A Non-Conformance identified in Exhibit "C" to Schedule "A" ○ A PMSP quality system audit finding ○ Inaccurate and/or incomplete reports provided to Clients or IO ○ Reporting and Data issue – see Section 10.3. ○ An adverse audit finding with respect to PMSP by IO ○ Failure to meet TPI, CPI or QPI performance ratings ○ Failure to meet legislative requirements - for example: orders to comply by the Ministry of Labour, or orders by Ministry of Environment etc. 	<p>Non-Conformance Action Plan.</p> <p>Non-Conformance Management in accordance with Section 4 of Exhibit "C" to Schedule "A".</p> <p>Application of Assignment Fee at Risk framework related to KPIs.</p>

Tier	Condition	Remedy
	<ul style="list-style-type: none"> ○ A default by PMSP as set out in Section 14.1. 	
Tier 2	Remedy from Tier 1 did not improve performance and/or issues identified in Tier 1 continue to exist.	<p>In addition to the Tier 1 remedies, PMSP may be put on formal notice of non-performance</p> <p>IO may reduce the number of Assignments given to PMSP by awarding such Assignments to other project management service providers or cancelling Assignments.</p>
Tier 3	Failure to meet KPIs	Assignment Fee at Risk regime shall apply and PMSP shall be subject to the loss of the portion of the Assignment Fee at Risk applicable to the Non-Conformance of the KPI or KPIs

10.9 Remedies Not Exhaustive

PMSP acknowledges and agrees that the remedies of IO set out in Section 10.8 hereof are not intended to be exhaustive or IO's sole recourse or remedy as a result of any such Non-Conformance, and shall not prevent or preclude IO from exercising any other remedy or recourse available to IO under this Agreement or under any Applicable Law as a result of any Non-Conformance.

ARTICLE 11 **DISTRIBUTION OF ASSIGNMENTS**

11.1 Quantity of Work

PMSP shall perform in the Awarded Zone, Assignments, between the assignment values of One Hundred Thousand Dollars (\$100,000) and Ten Million Dollars (\$10,000,000). PMSP expressly acknowledges and accepts that there is no representation, warranty or guarantee on the part of IO as to the number or quantity or the value of Assignments to be undertaken by PMSP in any year during the Term or any Extension Term of this Agreement or with respect to the number of Properties or Other Properties for which PMSP shall be required to perform Assignments and provide the Services under this Agreement. Where an Assignment to be undertaken in PMSP's Awarded Zone is assigned to another project management service provider with whom IO has entered into a contract,

the other project management service provider will be subject to substantially the same non-financial contractual terms as PMSP. PMSP shall be provided with the names of any other project management service provider(s) receiving an Assignment or Assignments in the Zone assigned to PMSP and the location of that Assignment or Assignments.

11.2 IO's Right to retain other Project Management Service Providers

Subject to Section 11.1, PMSP expressly acknowledges and accepts that IO reserves the right to engage the services of another project management service provider or providers to provide project management for Projects or conduct Studies located in the Awarded Zone at any time during the Term or any Extension Term of this Agreement. PMSP further acknowledges and accepts that, in the event of a failure on the part of PMSP to meet KPIs, or if PMSP fails to promptly rectify any default by PMSP under this Agreement in accordance with Article 14 (Default and Termination), or failure on the part of PMSP to satisfactorily address a Non-Conformance, one of the remedies available to IO as a consequence of such default is the right on the part of IO to allocate the obligation to perform Assignments and the Services in respect of Properties or Other Properties within the Awarded Zone to another project management service provider acceptable to IO in its discretion. In such event, PMSP acknowledges and accepts that IO shall have the right in its discretion to assign the obligation to perform Assignments and the Services for Properties or Other Properties within the Awarded Zone among PMSP and any other project management service provider or providers retained by IO as IO shall in its discretion determine, based on availability of the resources of PMSP and such other project management service provider(s).

11.3 Allocation of Assignments

11.3.1 PMSP acknowledges and agrees that all Assignments the costs of which are anticipated to be One Hundred Thousand Dollars (\$100,000) or less in the Awarded Zone shall not be assigned to or the responsibility of PMSP. PMSP further acknowledges that IO has retained PLMSP for the project management of Assignments the costs of which are anticipated to be One Hundred Thousand Dollars (\$100,000) or less. An Assignment initially assigned to PLMSP the value of which is subsequently determined to be One Hundred Thousand Dollars (\$100,000), may be re-assigned to PMSP, in which event, PMSP agrees to assume such Other Agreement(s) for the Assignment in accordance with Article 17 (Other Agreements) or to enter IO's prescribed form of agreement with contractor(s) that were retained by PLMSP to deliver the Assignment.

11.3.2 Notwithstanding Section 11.3.1, IO reserves the right, in its sole discretion, to assign Projects or Studies with estimated costs of One Hundred Thousand Dollars (\$100,000) or less to PMSP.

11.3.3 IO reserves the right to request proposals from the two service providers assigned to IO's Awarded Zones for the provision of Services related to Other Properties and/or the broader public service. PMSP shall respond to IO's request(s) for Services related to Other Properties and/or the broader public service by submitting for IO's approval, within the time frame specified in the request for Services, a written proposal for the Services. Such proposal shall include PMSP's Assignment Fee for carrying out the Services. If the proposal is accepted by IO, PMSP shall implement and provide the Services in accordance with the terms of this Agreement, IO's request for Service and the written proposal for the Services.

ARTICLE 12
INSURANCE

12.1 Insurance to be Obtained by PMSP

Throughout the Term and any Extension Term, PMSP shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Schedule “E”:

- (a) Commercial General Liability and Non-Owned Automobile Liability;
- (b) Errors and Omissions;
- (c) Automobile Liability;
- (d) Comprehensive Crime;
- (e) WSIB; and
- (f) Any other insurance that IO may reasonably require from time to time or that PMSP is required by any Applicable Laws to obtain and maintain.

12.2 No Limit on Liability

Notwithstanding any other provision of this Agreement, it is hereby agreed that the limits of liability specified in this Article 12 and Schedule “E” for insurance policies, shall in no way limit PMSP’s liability or obligations to IO under this Agreement.

12.3 Additional Insurance and Limits of Insurance

IO reserves the right to require PMSP to purchase such additional insurance coverage as IO may reasonably require from time to time. IO also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Services and any Assignment or contract value, industry standards, and availability of insurance) as IO may reasonably determine from time to time. Any additional costs of such additional and/or amended insurance shall be borne by IO (through Assignment Costs) and any cost savings resulting from the implementation of such additional and/or amended insurance shall be credited to and be for the account of IO.

12.4 Deductibles

PMSP is responsible and liable for the payment of all deductibles under the prescribed policies.

12.5 Insurance by PMSP’s Subcontractors

PMSP shall require that all of its subcontractors are covered by, or obtain, the insurance described in this Article 12. PMSP shall be solely responsible and liable for any damages which IO may suffer or incur as a direct result of PMSP’s failure to comply with the foregoing. If PMSP receives notice that

any of its subcontractors employed or engaged by or through PMSP is not covered by any insurance required by this Article 12 to be obtained (or caused to be obtained) by PMSP, PMSP shall:

- (a) ensure that such insurance coverage is put in place;
- (b) remove such subcontractor from the performance of the Services and ensure that such subcontractor does not perform any further part of the Services until after such insurance coverage is put in place; or
- (c) if the subcontractor cannot be covered by a particular policy as required by this Article 12, replace the subcontractor with a new subcontractor who can be covered by insurance required by this Article 12 or who can obtain the required insurance coverage; it being acknowledged by PMSP that the requirements and restrictions set forth in this Agreement regarding new and replaced subcontractors shall be complied with.

12.6 Evidence of Renewal of Insurance

PMSP shall provide to IO, no later than 10 (ten) Business Days following the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by PMSP pursuant to this Article 12, evidence of the renewal of each such policy satisfactory to IO, acting reasonably.

12.7 Additional Insureds

All insurance provided by PMSP, shall:

- (a) include IO and Her Majesty the Queen in Right of Ontario and any other party specified in Schedule “E” as Additional Insureds, including when required pursuant to any agreement relating to this Agreement to which PMSP is a party;
- (b) except with respect to the Errors and Omissions, Automobile Liability, Comprehensive Crime and WSIB specified in Section 12.1 and Schedule “E”, contain a waiver of subrogation as against IO, Her Majesty the Queen in Right of Ontario and their respective officials, directors, officers, employees, servants, consultants (other than Design Professionals) and agents;
- (c) contain a breach of warranty provision whereby a breach of a condition by PMSP will not eliminate or reduce coverage for any other insured; and
- (d) be primary insurance with respect to any similar coverage provided by any insurance obtained by IO or Her Majesty the Queen in Right of Ontario without any right of contribution of any insurance carried by IO.

12.8 Evidence of Insurance

Promptly following the execution of this Agreement, PMSP will provide IO with certificates of insurance or certified copies of policies, confirming that the insurances specified in this Article 12 and Schedule “E” have been obtained and are in full force and effect. If certificates of insurance are

provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to IO no later than 30 Days after the execution of this Agreement. Assignments will not be assigned to PMSP until the aforementioned certificates of insurance are received by IO.

12.9 PMSP Fails to Obtain Insurance

If PMSP fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Article 12, fails to furnish to IO a certified copy of each policy required to be obtained by this Article 12 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then IO shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of PMSP, and the cost thereof shall either, at IO's option, be payable by PMSP to IO on demand or be deducted by IO from the next payment or payments otherwise due to PMSP under this Agreement.

12.10 Insurance Lapses, Termination or Cancellation

If coverage under any insurance policy required to be obtained (or caused to be obtained) by PMSP should lapse, be terminated or be cancelled, then, if directed by IO, all Services by PMSP shall immediately cease until satisfactory evidence of renewal is produced.

12.11 Endorsements

Except as noted in Schedule "E", all insurance provided by PMSP shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) Days prior written notice by registered mail, at the address specified, to IO. For certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer. All insurance provided by PMSP shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) Days prior written notice by registered mail, at the address specified, to IO.

12.12 Insurance Not to be Invalidated

With respect to insurances described in Section 12.1(a) and (b), breach of any of the terms or conditions of the policies required to be provided by PMSP, or any negligence or wilful act or omission or false representation by an insured under such policies, shall not invalidate the insurance with respect to IO, Her Majesty the Queen in Right of Ontario or any other insured, but only to the extent that such breach is not known to such parties.

12.13 Quality of Insurers

All policies of insurance to be obtained (or caused to be obtained) by PMSP in accordance with this Article 12 shall be issued by financially sound insurers acceptable to IO acting reasonably, and, where required by statute, licensed to insure such risk in the Province of Ontario.

12.14 Capacity of Insurers

To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:

- (a) a Financial Strength Rating of not lower than “A-” for three out of the previous five years but not lower than “B” at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A. M. Best Company (Best); or
- (b) a Long-Term Financial Strength Rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (S&P); or
- (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to IO, acting reasonably, with respect to the insurances required by this Article 12.

12.15 Insurance to be Acceptable to IO

All policies of insurance to be obtained (or caused to be obtained) by PMSP in accordance with this Article 132 shall be in form and substance satisfactory to IO and its insurance advisors, acting reasonably.

12.16 Umbrella and/or Excess Policies

To achieve the minimum limits for any type of insurance required under Schedule “E”, it shall be permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

12.17 PMSP Not Released

Neither failure to comply nor full compliance by PMSP with the insurance provisions of this Article 132 shall relieve PMSP of its liabilities and obligations under this Agreement.

12.18 Insurance to be provided by General Contractors

PMSP shall require all General Contractors to maintain in full force and effect the insurance that is required to be maintained by General Contractors under each construction contract entered into by PMSP with a General Contractor. Notwithstanding use of IO’s prescribed form of agreement, PMSP

shall ensure the insurance policies maintained by the General Contractor names IO and Her Majesty the Queen in Right of Ontario as additional insureds.

Prior to the commencement of any work on a Project by any General Contractor, PMSP shall ensure that the insurance required to be maintained by a General Contractor engaged in respect of the Project is in place and shall obtain a certificate with respect to the insurance maintained by such General Contractor, certified by an authorized representative of the insurer. IO will consider in concert with PMSP alternative approaches to insurance.

12.19 Insurance to be provided by Consultants and Design Professionals

PMSP shall require all Consultants and Design Professionals to maintain in full force and effect the insurance that is required to be maintained by Consultants and Design Professionals under each contract for services entered into by PMSP with a Consultant or Design Professional. Notwithstanding use of IO's prescribed form of agreement, PMSP shall ensure the insurance policies maintained by the Consultant and Design Professional names IO and Her Majesty the Queen in Right of Ontario as additional insureds.

Prior to the commencement of any work on a Project by any Consultant or Design Professional, PMSP shall ensure that the insurance required to be maintained by all Consultants and Design Professionals engaged in respect of such Project is in place and shall obtain a certificate with respect to each such Consultant's or Design Professional's policy, certified by an authorized representative of the insurer.

ARTICLE 13 **INDEMNITIES AND RELEASE**

13.1 Indemnification by PMSP

13.1.1 PMSP shall indemnify and hold harmless IO, Her Majesty the Queen in Right of Ontario, and their respective agents, appointees, directors, officers and employees from and against all claims, demands, losses, expenses, costs, damages, actions, suits or proceedings that arise out of or attributable to PMSP's performance of the Contract. Nothing in this Article 13 (Indemnities and Release), shall limit any claim that IO, Her Majesty the Queen in Right of Ontario, may have under the insurance coverage to be provided under Article 12 (Insurance).

13.1.2 PMSP shall at all times, both during the Term and any Extension Term, defend IO and Her Majesty the Queen in Right of Ontario for all actions commenced in respect of the Services on behalf of IO and Her Majesty the Queen in Right of Ontario, until such time as IO advises that it will act on its own behalf, as set out in Article 15 (Legal Services) hereof.

13.1.3 Notwithstanding any other provisions herein, PMSP shall continuously protect the Projects, the Tenants and third party landlords' property and the adjacent property from damage, injury or loss arising in connection with the Services to be provided pursuant to this Agreement. PMSP shall repair at its own expense any damage, injury or loss to the Projects, the Tenants' or third party landlords' property or adjacent property caused by its negligence or willful acts or omissions or the negligence or willful acts or omissions of its agents, employees, servants or anyone else for whom PMSP is responsible.

13.2 Release of IO and Her Majesty by PMSP

PMSP acknowledges and agrees that IO, its directors, appointees, officers, servants, agents and employees and Her Majesty the Queen in Right of Ontario shall not be liable for, and PMSP hereby releases and forever discharges IO, its officers, directors, appointees, servants, agents and employees and Her Majesty the Queen in Right of Ontario from and against any and all claims, demands, losses, costs, expenses, damages, liabilities, actions, suits, debts and obligations whatsoever arising out of the Services performed or required to be performed by PMSP under this Agreement, including but not limited to any incidental, direct, indirect, special or consequential damages incurred or suffered by PMSP or any third party, provided that such release shall not apply to the extent that any claims, demands, losses, costs, expenses, damages, liabilities, actions, suits, debts and obligations result from the negligence of IO, its directors, appointees, officers, servants, agents and employees.

ARTICLE 14 **DEFAULT AND TERMINATION**

14.1 Events of Default by PMSP

In the event of PMSP:

- (a) neglecting or failing to perform the Services in a timely manner in accordance with this Agreement; or
- (b) refusing or failing to pay monies owing in full or in part, to any of its employees, suppliers, contractors or subcontractors as required by any Applicable Law or the terms of any applicable contracts entered into pursuant to which such payments are required to be made; or
- (c) disregarding pertinent laws, regulations, by-laws or ordinances of governing authorities; or
- (d) failing to perform any of its obligations under this Agreement; or
- (e) failing to provide a Performance Action Plan as required pursuant to Section 14.2, or, having provided a Performance Action Plan in accordance with that Section, failing to observe and comply with the requirements of such Performance Action Plan; or
- (f) failure by PMSP in two (2) consecutive years to achieve satisfactory KPI ratings, in IO's sole and absolute discretion;

such an act or omission constitutes a default by PMSP under this Agreement, for which IO reserves the right to give written notice to PMSP of such default and prescribe a time within which PMSP shall rectify such default. Where PMSP fails to rectify its default, in IO's opinion, within the time prescribed by IO, IO further reserves the right to immediately terminate this Agreement, upon giving written notice of termination to PMSP.

14.2 Performance Action Plan

14.2.1 In the event of a failure by PMSP to perform any of its obligations under this Agreement (including without limitation, any of the reporting obligations of PMSP outlined in this Agreement), IO shall have the right (but not the obligation) to provide written notice to PMSP giving PMSP five (5) Days to provide IO with a performance action plan (“**Performance Action Plan**”), which shall, at a minimum, include a summary of the issues raised by IO, an analysis of the root causes of the issues and the risks arising from the issues, the steps that will be undertaken by PMSP to address the issues and specific timeframes for such steps. IO shall have ten (10) Days following its receipt of the Performance Action Plan to review the Performance Action Plan and to advise PMSP of its approval of the Performance Action Plan, or its disapproval of same, and the reasons for such disapproval. In the event that IO advises PMSP of its disapproval of the Performance Action Plan, PMSP shall have five (5) Days from IO’s written notice of disapproval to revise and re-submit the Performance Action Plan to IO, which revised and re-submitted plan shall address the issues raised by IO in its notice of disapproval of the Performance Action Plan. IO shall have ten (10) Days following its receipt of the revised and re-submitted Performance Action Plan to review and issue its approval or disapproval of the revised and re-submitted Performance Action Plan. The foregoing process shall continue until IO is in receipt of a Performance Action Plan which is acceptable to and approved by IO. PMSP covenants and agrees to observe and comply with the terms and provisions of the Performance Action Plan approved by IO, including without limitation complying with all of the timelines, if any, contained in such approved Performance Action Plan.

14.2.2 PMSP shall be in default of this Agreement if PMSP fails to provide a Performance Action Plan, or a revised Performance Action Plan addressing the issues of disapproval of any Performance Action Plan submitted by PMSP, within the foregoing timeframes, or if, having provided a Performance Action Plan which is approved by IO, PMSP fails to observe and comply with the terms and provisions of the Performance Action Plan approved by IO within thirty (30) Days following written notice given by IO to PMSP that PMSP is in breach of its obligation to comply with the terms and provisions of the Performance Action Plan approved by IO.

14.3 IO’s Right of Termination

Notwithstanding Section 21.14 and Sections 14.1 and 14.2 hereof, IO reserves the right to immediately terminate this Agreement, upon giving written notice of termination to PMSP, in the event that:

- (a) PMSP is adjudged bankrupt, insolvent, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of PMSP’s insolvency; or
- (b) PMSP assigns or purports to assign any of its rights, duties or obligations pursuant to this Agreement, or any monies due hereunder, without the prior written approval of IO as required pursuant to Section 21.18 hereof; or
- (c) PMSP sells or conveys the whole or substantially the whole of its assets without the prior written consent of IO; or
- (d) PMSP engages in any conduct which IO, acting reasonably, deems to be fraudulent or which constitutes unlawful or criminal activity.

14.4 IO's Right of Termination for Security Reasons

Notwithstanding Section 21.14 and Sections 14.1 and 14.2 hereof, IO reserves the right to terminate this Agreement, without liability, cost or penalty, and without prejudice to any other rights or remedies under the Agreement or at law or in equity, upon giving written notice of termination to PMSP, if any Security Clearance Check performed in accordance with this Agreement discloses a security problem that is not resolved to the satisfaction of IO within ten (10) Days following receipt of written notice of such problem from IO. Without limiting the foregoing a finding on a Security Clearance Check that is incompatible with ensuring any of the achievement of the following objectives is a security problem:

- (a) PMSP's ability to provide the Services in accordance with the Agreement;
- (b) The safety of IO's directors, officers, appointees, employees, agents, consultants or subcontractors, as well as the subcontractor's directors, officers, employees, agents, consultants or subcontractors, IO's clients and their directors, officers, appointees, employees, agents, consultants or subcontractors, as well as the subcontractor's directors, officers, employees, agents, consultants or subcontractors and the public;
- (c) The reputation of or public confidence in IO;
- (d) The security of IO's financial assets and revenue;
- (e) The security of any real property owned, controlled or managed by IO; and
- (f) The security, confidentiality or integrity of IO's Confidential Information and the integrity of any other materials held by IO.

14.5 IO's Right of Suspension

Notwithstanding Sections 14.1, 14.2 and 14.3 hereof:

- (a) any default by PMSP under Section 14.1 hereof that is not rectified by PMSP within the time prescribed by IO for PMSP to rectify such default;
- (b) any failure by PMSP to provide a Performance Action Plan, or a revised Performance Action Plan addressing the issues of disapproval of any Performance Action Plan submitted by PMSP, within the timeframes set out in Section 14.2.1, or any failure of PMSP to observe and comply with the terms and provisions of a Performance Action Plan approved by IO pursuant to Section 14.2.2 hereof; or
- (c) any failure on the part of PMSP to meet KPIs;

shall entitle IO, upon giving written notice to PMSP, to suspend the whole or part of the Services and to carry out the Services itself in whole or in part or to reassign the Services in whole or in part as set out in Section 14.6 hereof and to deduct the costs thereby incurred by IO and the cost of all loss and damages suffered by IO in connection therewith from any payment then and thereafter due to PMSP, without prejudice to any other right or remedy IO may have as a consequence of such

failure or default. The suspension of the Services as contemplated by this Article does not operate so as to relieve or discharge PMSP from any obligation under this Agreement or imposed upon PMSP by law, except the obligation to complete the physical execution of that portion of the Services so suspended.

14.6 IO's Right to retain another Project Management Service Provider

PMSP acknowledges and agrees that:

- (a) any default by PMSP under Section 14.1 hereof that is not rectified by PMSP within the time prescribed by IO for PMSP to rectify such default;
- (b) any failure by PMSP to provide a Performance Action Plan, or a revised Performance Action Plan addressing the issues of disapproval of any Performance Action Plan submitted by PMSP, within the timeframes set out in Section 14.2.1, or any failure of PMSP to observe and comply with the terms and provisions of a Performance Action Plan approved by IO pursuant to Section 14.2.2 hereof; or
- (c) any failure on the part of PMSP to meet KPIs;

shall entitle IO to engage the services of another project management service provider or providers to perform the Services in respect of Properties within the Awarded Zone and to remove the obligation to perform the Services with respect to such Properties from PMSP.

14.7 IO's Right to Terminate

IO may elect to terminate this Agreement at any time, without cause, in whole or in part, by providing at least six (6) months' prior written notice to PMSP, and without any claim or liability to PMSP, including without limitation, all direct and indirect losses including any loss of anticipated profit, occasioned by or arising out of early termination of this Agreement.

14.8 Termination Without Prejudice

Termination or expiry of this Agreement shall be without prejudice to any right (including any right of indemnity) of the Parties accruing prior to the date of expiry or termination and shall not exclude any remedy either Party may have at law or in equity by reason of the default, breach or non-observance by either Party of the provisions hereof.

14.9 PMSP's Deliveries on Termination

PMSP shall, forthwith after termination or expiry of this Agreement, deliver to IO the following:

- (a) All originals and copies of Records, including without limitation, agreements with contractors, subcontractors, books of account, vouchers, invoices, stored and active Project files, Reference Documents, Record Drawings (to the extent available), Software (with the exception of Software developed by or for PMSP to which PMSP retains the copyright), databases, data-permits, licenses, warranties, guarantees and other applicable materials related to this Agreement and which are in the possession

of or under the control of PMSP. IO acknowledges that PMSP may retain record copies of the foregoing as required by its internal procedures, insurers or professional regulators, subject to the confidentiality obligations set out in this Agreement;

- (b) An assignment to and in favour of IO or as IO may direct in writing of all active, in force contracts entered into by PMSP with any contractors or subcontractors of PMSP and any third parties with respect to the Services to be provided under this Agreement, and an assignment to and in favour of IO of all outstanding warranties and guarantees in effect in respect of the Properties;
- (c) Notice to all affected parties of the assignment referred to in Section 14.9(b) hereof; and
- (d) All materials and supplies for which PMSP has been paid by IO and which were purchased in accordance with this Agreement.

PMSP shall co-operate fully in communicating all applicable assignments and in ensuring the prompt delivery to IO of such materials.

14.10 PMSP Right to Terminate and Suspend

PMSP may terminate this Agreement at any time, without cause, in whole or in part, by providing at least twelve (12) months' prior written notice to IO, and without any claim or liability to IO including without limitation, all direct and indirect losses including any loss of anticipated profit, occasioned by or arising out of the early termination of this Agreement. If termination is exercised under this provision, PMSP agrees to continue to accept Project Charters for Assignments for nine (9) months' following the date upon which notice of termination was given to IO.

If after giving IO sixty (60) Days' notice of IO's failure to pay, payment has not been made by IO, PMSP may suspend work on an Assignment.

ARTICLE 15 **LEGAL SERVICES**

15.1 PMSP to Arrange Legal Services

All legal services and transactions (including but not limited to legal services required on a regular and repeated basis, such as legal document preparation for Projects) shall be arranged by PMSP and PMSP shall retain legal counsel as it deems appropriate or when directed to do so by IO. PMSP shall pay the costs, expenses, fees and disbursements of all such legal counsel.

15.2 PMSP to Defend Claims

Where any claim, action, suit or proceeding (including any inquiry or investigation) arising out of or attributable to PMSP's provision of the Services is brought or instituted against PMSP and/or IO and/or MEDEI and/or Her Majesty the Queen in Right of Ontario and PMSP is obligated under Article 13 (Indemnities and Release) to indemnify IO, PMSP shall assume responsibility for the defence of such claim and shall promptly retain legal counsel who shall be satisfactory to IO to

represent IO and MEDEI and/or Her Majesty the Queen in Right of Ontario (where applicable). PMSP shall pay all costs, expenses, fees and disbursements of such legal counsel.

15.3 PMSP to Advance Claims

PMSP shall initiate and advance claims, actions, suits and proceedings against third parties engaged by PMSP and/or their insurers as necessary to enforce PMSP's and/or IO's and HMQ's rights with respect to the Services or when directed to do so by IO, provided that IO shall only have the right to direct PMSP to do so if IO is not to be made whole or if IO is not satisfied with the efforts made by PMSP to enforce PMSP's and/or IO's and HMQ's rights with respect to the Services. IO reserves the right to give PMSP written notice requiring PMSP to commence or advance claims and PMSP shall promptly commence or advance any such claims when required to do so by IO. PMSP shall pay the costs, expenses, fees and disbursements of all legal and other services incurred in connection with all such claims launched or advanced by PMSP unless PMSP has rectified the matter in respect of which IO has required PMSP to commence any such claim to IO's satisfaction at PMSP's cost.

15.4 Legal Costs

All legal costs, expenses, fees and disbursements incurred by PMSP in respect of legal services acquired by PMSP to protect its own interests in any legal proceeding are to be borne solely by PMSP. All legal costs incurred by PMSP in respect of defending and/or advancing any claim, action, suit or proceeding (including any inquiry or investigation) pursuant to Sections 15.2 and 15.3 are to be borne solely by PMSP.

15.5 PMSP's Legal Services

All legal services and proceedings arranged by PMSP shall be undertaken by a member in good standing of the Law Society of Upper Canada, in accordance with the Law Society's Rules of Professional Conduct. In the event that any steps undertaken in connection with such legal proceedings are performed by a law clerk or paralegal, IO requires that such law clerk or paralegal be directly supervised by a member in good standing of the Law Society of Upper Canada, in accordance with the Law Society's Rules of Professional Conduct, with the member of the Law Society of Upper Canada to be the solicitor of record for all such proceedings (excluding any such proceedings commenced in any Small Claims Court). The use of paralegal services to undertake any such proceedings (other than Small Claims Court proceedings) without the supervision of a member in good standing of the Law Society of Upper Canada is not permitted.

15.6 Judgments and Costs

All judgment monies awarded to IO and/or Her Majesty the Queen in Right of Ontario shall be for IO's account, except for costs as specified in Section 15.4. In the event that costs are awarded in respect of a claim for which PMSP has paid the legal fees associated with such claim, such costs shall be for the benefit of PMSP. PMSP shall confer and consult with IO with respect to all significant decisions or developments arising during the defence of any such claims. In the event that costs are awarded in respect of a claim for which IO has paid the legal fees associated with such claim, such costs shall be for the benefit of IO.

15.7 Enforcement of Judgments

Prior to actively enforcing any judgment obtained through legal action, PMSP shall obtain the prior written approval of IO's General Counsel or his/her delegate. Active enforcement includes but is not limited to seizures under the *Execution Act*, R.S.O. 1990, c.E-24, as amended, actions under the Federal Bank Act or any powers of sale.

15.8 Notification of Claim

PMSP shall promptly provide IO's General Counsel or his/her delegate, with copies of any notices, pleadings and other formal court documentation, including any legal opinions, related to claims, actions, suits and proceedings arising from or out of the performance of the Services or this Agreement, regardless of whether IO, HMQ and/or MEDEI is a defendant or plaintiff. In any claims, actions, suits and proceedings, regardless of whether IO, HMQ and/or MEDEI is a defendant or plaintiff, PMSP shall confer and consult with IO's General Counsel with respect to all significant decisions or developments arising during any such proceedings, including litigation strategy, proposed settlements, counterclaims and cross-claims, and provide copies of all relevant documentation.

15.9 IO's Right to Retain Counsel

In any legal proceeding where PMSP is obligated under Article 13 (Indemnities and Release) to indemnify IO and Her Majesty the Queen in Right of Ontario in respect of any claim, IO reserves the right to retain other counsel to act on its behalf, and PMSP shall be liable to pay or shall cause to be paid the fees and disbursements for such other counsel, if:

- (a) IO, on the advice of its counsel, determines that a Conflict of Interest exists which makes representation by counsel chosen by PMSP inadvisable; or
- (b) PMSP has not assumed the defence of such claim within a reasonable time period, in IO's opinion, after receiving notice thereof; or
- (c) Retention of such other counsel has been agreed to by PMSP.

15.10 No Settlement

No settlement of any claim, action, suit or proceeding shall be made without the prior written consent of IO. IO agrees that, if any claim, action, suit or proceeding is subject to PMSP's liability or professional errors and omissions insurance and the insurer confirms in writing to IO that the insurer will cover one hundred percent (100%) of the cost of the claim, action, suit or proceeding, and that IO shall be made whole in respect of the matter for which the claim, action, suit or proceeding has been commenced, then the consent of IO to the settlement of any such claim, action, suit or proceeding shall not be required.

15.11 Reports to IO

PMSP shall ensure that the lawyers undertaking or overseeing litigation on behalf of IO, provide monthly reports to IO's General Counsel or his/her delegate on the status of all litigation files.

No later than five (5) Business Days after the end of each month PMSP shall deliver a litigation report to IO's General Counsel or his/her delegate as detailed in Exhibit "B" to Schedule "A". The litigation report shall provide a status update on all litigation matters set out in the following categories:

- (a) Construction liens; and
- (b) All other litigious claims (reports in this category shall be provided directly to IO's General Counsel by the litigation counsel retained by PMSP).

15.12 Complaints

If complaints regarding the professional conduct of the lawyers involved in litigation are lodged with the Law Society of Upper Canada, PMSP shall notify IO's General Counsel immediately and disclose the relevant information related to the complaint to such General Counsel.

15.13 Conflict of Interest Declarations

PMSP shall ensure that the lawyers who are retained by PMSP shall provide PMSP with a Conflict of Interest declaration listing any potential or actual Conflict of Interests. PMSP shall provide a copy of such declaration to IO prior to the lawyers commencing work on any matters in order for IO to make a determination pursuant to Section 15.9(a).

ARTICLE 16 **TAXES**

16.1 Value Added Tax/Harmonized Sales Tax (HST)

The Services purchased hereunder are subject to the Harmonized Sales Tax (HST).

16.2 Intentionally Deleted.

16.3 PMSP's Responsibility

PMSP is responsible to collect and remit to the appropriate authorities all applicable taxes related to the Services under this Agreement and Other Agreements.

16.4 PMSP to Pay Taxes

PMSP covenants and agrees that, at all times during the Term and any Extension Term of this Agreement, PMSP shall pay all taxes payable by it to the relevant Government Authorities and shall keep all such taxes in good standing. PMSP further covenants and agrees that it shall at all times fully comply with the requirements of all applicable tax statutes, shall file all returns required to be filed under such statutes and shall pay all taxes due and payable under such statutes in accordance with the requirements of such statutes. PMSP consents to the relevant Government Authorities releasing the tax payer information described in this Section to IO as necessary for the purpose of verifying compliance by PMSP with all applicable tax statutes.

ARTICLE 17
OTHER AGREEMENTS

17.1 IO's Right to Enter into Other Agreements

Subject to Section 11.1, IO reserves the right to enter into Other Agreements for any of the Services or for any Assignment.

17.2 Assignment of Other Agreements

Subject to the terms and conditions of the specific individual Other Agreements in effect, IO or PLMSP reserves the right to assign any Other Agreements then in effect to PMSP. PMSP agrees to accept the novation of Other Agreements, assuming the liabilities and receiving the rights and benefits, for which existing service providers agree to the novation. PMSP shall maintain the assigned Other Agreements until their respective expiry dates, subject to early termination for cause in accordance with the terms of such Other Agreements. Upon the assignment of such Other Agreements, IO will not be liable to PMSP or any third party in respect of such Other Agreements.

17.3 Other Agreements Not Assigned

For those Other Agreements that, pursuant to their terms and conditions, cannot be or will not be assigned to PMSP, PMSP shall act on behalf of IO in managing and administering such Other Agreements, and arrange for the performance of all covenants, duties and obligations of IO pursuant to such Other Agreements, in effect during the Term or any Extension Term of this Agreement, insofar as such performance is consistent with the terms of this Agreement and any subsequent instructions received from time to time from IO. This responsibility includes but is not limited to making all payments to third parties pursuant to such Other Agreements and ensuring that the standards and requirements of such Other Agreements are maintained.

ARTICLE 18
AUDIT

18.1 IO's Right to Audit

IO reserves the right to inspect, audit and make copies of the books, records, receipts, vouchers, accounts, computer financial systems and Records (including computer disks, tapes and other repositories of data) and memoranda of PMSP relating to the performance of the Services under this Agreement at any time during the Term or any Extension Term, and up to seven (7) years following the Expiration or termination of this Agreement. IO and its designated representatives shall be afforded access to PMSP's employees during any such audit, as reasonably required by IO. PMSP shall provide such access in Ontario to IO within two (2) Business Days of receiving written notice from IO. PMSP shall fully co-operate with IO and its designated representatives to facilitate any inspection or audit undertaken by or on behalf of IO under this Agreement.

18.2 IO's Right to Audit with respect to Projects

IO reserves the right to inspect and audit the Assignments and all books, records, receipts, vouchers, accounts, computer financial systems and records (including computer disks, tapes and other

repositories of data) and memoranda maintained by PMSP with respect to all Assignments or with respect to an individual Assignment at any time without prior notice to PMSP.

18.3 PMSP to Co-operate

Where required by IO, PMSP shall provide explanations, comparative analysis and background and substantiating documentation in respect of the Services.

ARTICLE 19 **REPORTING**

19.1 Monthly and Quarterly Reports

19.1.1 Not later than the fifth (5th) Business Days after the end of each monthly operating cycle of IO as the same may be established and modified by IO from time to time, PMSP shall deliver to IO all reports for such operating month as set out in the Contract and Exhibit "B" - Reporting to Schedule "A".

19.1.2 Not later than the fifteenth (15th) Business Day after the end of each quarterly operating reporting cycle of IO as the same may be established and modified by IO from time to time, PMSP shall deliver to IO all reports for such operating quarter and for the portion of the Fiscal Year most recently ended as set out in the Contract and Exhibit "B" - Reporting to Schedule "A".

PMSP agrees that the Monthly Reports and the Quarterly Reports shall reflect the Services and Assignments performed by or in process during the month or quarter in respect of which the Reports are provided, and PMSP's latest estimates in connection with such Assignments which shall be updated at the end of the respective reporting period.

19.1.3 All such reports shall be in such form and detail as is required from time to time by IO. IO shall have the right in its sole discretion from time to time to change the form, format or detail of any such reports. In addition IO may from time to time require other reports and analyses and PMSP shall submit such other reports and analyses as promptly as practicable after IO's request. PMSP shall provide all such reports and analyses and shall provide any amendment to the form, format or detail of the reports required by IO from time to time at no additional cost, charge or fee.

19.1.4 Notwithstanding any term or provision of the Contract to the contrary, PMSP acknowledges and agrees that IO shall have the right in its sole and absolute discretion to change the content and frequency of reports to be provided by PMSP under the Contract at any time or times without any right on the part of PMSP for any additional fees or costs.

ARTICLE 20
INSPECTIONS AND RECTIFICATION

20.1 IO's Inspection Rights

IO, and whomever IO requires to be in attendance, shall be entitled to inspect Projects and the Services at any time and PMSP shall provide immediate access with proper facilities for such inspection.

20.2 Testing and Inspections

Where testing, approval or inspection of the Services or any Assignment by Government Authorities is required in accordance with this Agreement or Applicable Laws, PMSP shall promptly arrange and facilitate such testing, approval or inspections and the correction, completion and clearance of all issues and matters of non-conformity arising therefrom.

20.3 PMSP to Correct Deficiencies

If, upon examination by IO or any Client where applicable, or any Government Authority, any part of the Services or any Project is found to be deficient or otherwise not in accordance with this Agreement, PMSP shall promptly correct, re-examine and reinstate the Services or cause to be corrected, re-examined or reinstated the Project at PMSP's sole expense, and PMSP shall not be entitled to recover such costs from IO or Her Majesty the Queen in Right of Ontario.

ARTICLE 21
GENERAL PROVISIONS

21.1 Disclaimer of Partnership

Each of PMSP and IO expressly disclaims any intention to create a partnership or joint venture. Nothing in this Agreement shall constitute PMSP or IO as the agent of the other. Each of PMSP and IO covenants with the other that it will not, at any time, allege or claim that a relationship of partnership, joint venture or agency was or is created hereby. Nothing in this Agreement shall constitute PMSP and/or IO as partners or joint venturers nor constitute PMSP or IO as the agent of the other.

Except as expressly provided otherwise in this Agreement, neither PMSP nor IO shall, or shall represent that it has, any authority to act for or on behalf of the other.

21.2 First Nations and Heritage Management

If at any time during the performance of the Services, PMSP becomes aware of any interest, issues or concerns on the part of any First Nations with respect to a Project, or discovers any circumstances or matters that may trigger any issues or concerns on the part of any First Nations, PMSP shall promptly inform IO in writing and shall cooperate with IO in any resulting consultation process with the affected First Nation.

PMSP shall coordinate with IO in order to comply with any applicable Ontario Government heritage policies or directives in connection with the delivery of the Services.

21.3 Restriction on Third Party Agreements

PMSP agrees not to enter into an agreement with any contractor, subcontractor or any other third party with whom PMSP contracts in connection with providing the Services by which they agree to cooperate in the presentation of a claim for payment against IO, where payment to the contractor, subcontractor or other third party with whom PMSP contracts in connection with providing the Services of any claim against PMSP is conditional on recovery from IO. PMSP acknowledges that any such agreement would undermine the required arm's-length relationship and constitute a Conflict of Interest.

21.4 Intellectual Property

21.4.1 IO acknowledges and agrees that, as between IO and PMSP, PMSP owns all right, title and interest, including all Intellectual Property Rights in and to PMSP Intellectual Property. IO does not acquire any right, title or ownership interests of any kind whatsoever, express or implied, in PMSP Intellectual Property other than the licenses granted to IO herein. PMSP will identify to IO in writing, no less frequently than once per calendar year all PMSP Intellectual Property and any third party software that is: (a) incorporated into any IO Intellectual Property or other deliverables provided by PMSP to IO pursuant to this Agreement, or (b) used by PMSP in the performance of the Services.

21.4.2 PMSP hereby grants to IO during the Term a fully paid-up, royalty free, irrevocable, non-exclusive, assignable and transferable license in and to the PMSP Intellectual Property, solely: (a) for use in connection with the receipt of Services, (b) for disclosure to other governments and agencies for information purposes and as necessary in connection with Services, and (c) in connection with the transition of all or any aspect of Services to IO or any other service provider in accordance with the provisions of this Agreement.

Without limiting the foregoing, the license granted to IO above includes the right to sub-license to, or otherwise authorize the use of PMSP Intellectual Property by, any contractor engaged by IO solely for the purposes of carrying out a contract for services or goods to or for IO. In any such case, where such PMSP Intellectual Property comprises trade secrets or secrets or other confidential material, IO shall furthermore require the contractor not to disclose PMSP Intellectual Property except as may be necessary to carry out the contract for IO. If IO requires and PMSP grants IO access to any third party software licensed by PMSP, PMSP's license from such third party shall permit such access by IO.

21.4.3 PMSP acknowledges and agrees that, as between PMSP and IO, IO owns all right, title and interest, including all Intellectual Property Rights, in and to the IO Intellectual Property. PMSP does not acquire any right, title or ownership interests of any kind whatsoever, express or implied, in the IO Intellectual Property, other than the licenses granted herein. To give effect to the intent of this Section 21.4.3, and to the extent that PMSP may be entitled to claim any ownership interest in any of the IO Intellectual Property, PMSP hereby agrees to assign, and does hereby assign, to IO any and all of PMSP's right, title and interest, including all Intellectual Property

Rights, in and to the Intellectual Property that is developed by PMSP or any of its subcontractors during the Term for IO as part of the Services pursuant to paragraph (b) of the definition of “**IO Intellectual Property**”. PMSP acknowledges and agrees that it has or shall obtain from each individual working for PMSP a waiver of such individual’s moral rights in and to the Intellectual Property that is developed by PMSP or any of its subcontractors during the Term for IO as part of the Services pursuant to paragraph (b) of the definition of “**IO Intellectual Property**”. During and after the Term, PMSP shall from time to time as and when requested by IO and at IO’s expense, execute all papers and documents and perform all other acts necessary or appropriate, in the sole and absolute discretion of IO, to evidence IO’s ownership of and to protect, maintain and register the IO Intellectual Property and the Intellectual Property Rights therein.

21.4.4 IO hereby grants to PMSP, subject to the terms and conditions of this Agreement, a non-exclusive, fully paid-up license, during the Term, to use the IO Intellectual Property that is provided or made available by IO to PMSP for the sole purpose of providing Services. The license to PMSP may not be assigned or transferred without the prior written consent of IO, not to be unreasonably withheld.

21.4.5 The Parties acknowledge and agree that there may be instances in which the Parties have: (i) jointly contributed to the development of Intellectual Property which is not IO Intellectual Property or PMSP Intellectual Property and (ii) not otherwise documented in writing that such Intellectual Property is owned by PMSP or IO. The Parties agree that any such Intellectual Property (“**Joint Property**”) shall be jointly owned by IO and PMSP and each Party shall have an unrestricted right, both during and after the Term, to use the Joint Property for any purpose without any obligation to account to the other Party in respect of such use unless otherwise agreed in writing by the Parties. Without limiting the foregoing, either Party may exercise its rights in Joint Property, including its right to licence the Joint Property to any third Person hereunder, without the consent of the other Party. Each Party shall, and does hereby, convey to the other all rights, title and interest necessary to give full effect to such joint ownership of the Joint Property.

21.4.6 Notwithstanding any other provision of this Agreement, IO shall have the unrestricted rights to use any deliverables that are provided by PMSP to IO as part of or in connection with the Services including the right to make such deliverables available for public use, whether for a fee or otherwise, and the right to transfer and/or sell such deliverables.

21.4.7 PMSP represents and warrants that the provision of the Services shall not infringe or induce the infringement of any Intellectual Property Rights of any Persons.

21.5 Non-Solicitation by PMSP for both IO clients and IO employees

PMSP covenants and agrees that it will not hire or retain the services of any employees or previous employee of the Ontario Public Service where to do so constitutes a breach by such employee or previous employee of either Section 22 or Part 3 of the Conflict of Interest or Post-Service Directive for Public Officials and Public Servants, as same may be amended from time to time.

A breach of Section 22 or Part 3 of the Conflict of Interest and Post-Service Directive for Public Officials and Public Servants by PMSP shall entitle IO to terminate this Agreement, in addition to any other remedies that IO has in this Agreement, in law or in equity.

21.6 Force Majeure

Neither party will be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by an event of Force Majeure, provided the non-performing party is without fault in causing such default or delay and such default or delay could not have been prevented by reasonable precautions and could not reasonably be circumvented by the non-performing party through the use of alternate sources, work around plans or other means. In such event the non-performing party will be excused from further performance or observance of the obligations so affected for as long as the event of Force Majeure prevails and such party continues to use reasonable commercial efforts to recommence performance or observation whenever and to whatever extent possible without delay. Any party so delayed in its performance will promptly notify the other party and describe at a reasonable level of detail the event of Force Majeure causing such delay.

21.7 Survival

All provisions of this Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination. The representations and warranties of PMSP contained in this Agreement shall survive the execution and delivery of this Agreement.

21.8 Ontario Fair Wage Policy

PMSP covenants and agrees to comply with the requirements of the Ontario Fair Wage Policy in connection with the performance of the Services under this Agreement.

21.9 Toronto Stock Exchange Requirements

If PMSP is publicly traded on the Toronto Stock Exchange (“**TSX**”), PMSP shall confirm to IO on an annual basis that it is in good standing with the TSX and the Ontario Securities Commission (“**OSC**”) and that it is in compliance with all the instruments, rules and regulations of such. If PMSP is publicly traded on an exchange other than the TSX, it shall confirm to IO on an annual basis its compliance with the equivalent disclosure and procedure obligations as required by the jurisdiction governing the exchange on which PMSP is listed. All annual confirmations to be provided by PMSP under this Section shall be made in writing by the Chief Executive Officer or Chief Financial Officer of PMSP.

21.10 Health and Safety

21.10.1 In performing the Services, PMSP shall comply with all applicable federal, provincial and local laws, by-laws, rules and regulations and ordinances relating to health and safety, environmental protection and similar matters. In providing the Services, PMSP shall ensure the safety and protection of the environment and all persons on the Properties.

21.10.2 PMSP shall manage all Hazardous Materials, including managing qualified third parties managing Hazardous Materials, and shall take the necessary action to assure full compliance with Hazardous Waste Laws in connection with the performance of the Services.

21.10.3 PMSP acknowledges that it has reviewed the Field Guide and all current IO and Ontario government policies and procedures concerning environmental matters, including the Class Environmental Assessment Process For IO Realty Activities, and those that pertain to the monitoring, containment, handling, removal and disposal of asbestos, PCB's, ozone depleting substances and other Hazardous Materials. PMSP shall ensure that the Services are provided in compliance with all such policies and procedures on environmental matters as amended from time to time. Further, PMSP shall adhere to all rules, regulations and legislation detailing compliance with the Workplace Hazardous Material Information System.

21.10.4 PMSP shall immediately notify IO of any communication, written or otherwise, from or to any environmental authorities in connection with the Services. All incident reporting or other communication with environmental authorities shall be carried out in full consultation with IO.

21.10.5 PMSP shall ensure that all of its staff are properly qualified and trained in all safety procedures and the use of safety and protective equipment.

21.10.6 In respect to Projects, PMSP shall adequately monitor the Properties or Other Properties, where applicable, such that it is in a position to advise IO of any and all environmental issues or concerns that may adversely involve or impact upon the value of the Properties or other Properties or the provision of the Services. In the event IO becomes aware of environmental issues at any property, IO shall promptly notify PMSP of the nature and location of such environmental issues; however, the failure of IO to so notify PMSP shall not relieve PMSP of its obligations.

21.10.7 PMSP shall maintain occupational health and safety records, and provide information and reports to IO as required.

21.10.8 It is the intention of IO to coordinate Projects so that PMSP or another third party is the constructor for such Projects for the purpose of the *Occupational Health and Safety Act* R.S.O. 1990, c. O-1 (hereinafter referred to in this Section 21.10 as the "Act") and the regulations thereunder.

21.10.9 PMSP shall maintain overall control of activities regarding Occupational Health and Safety management, coordinate and control construction activities in the buildings and at multi-building sites, and establish appropriate safeguards to protect health and safety:

- (a) manage General Contractors and other contractors' and subcontractors' access to buildings, in conjunction with building security measures;
- (b) where multiple parties are undertaking work in a building, promptly identify, communicate and resolve issues related to scheduling/coordinating of construction activities with any PLMSP undertaking work in such building, and any other project management service providers;
- (c) act as the single point of contact, designate a third party engaged by PMSP as the single point of contact, or confirm the name of the third party engaged by PLMSP or other IO project management service provider, with authorities having jurisdiction

with respect to the submission of documentation required by them, such as Notices of Projects and related information;

- (d) provide orientation, training and updates to General Contractors and other contractors and subcontractors granted access to the site;
- (e) maintain copies of communications, reports and orders received as a result of visits by authorities having jurisdiction;
- (f) obtain regular feedback from the designated contact with authorities, where applicable, health and safety personnel and workers to identify issues; and
- (g) resolve issues related to construction coordination and other aspects of occupational health and safety.

21.10.10 Where PMSP is the constructor on any Project, PMSP shall, where a Notice of Project is required, file a Notice of Project with the Ontario Ministry of Labour designating PMSP as the constructor and PMSP shall perform the duties of the constructor in accordance with the Act and the regulations thereunder. Subject to Section 21.10.13 all project management and administrative costs associated with performing the obligations contained herein shall be included in Assignment Fees.

21.10.11 Where a third party engaged by PMSP (including, but not limited to General Contractors, Consultants, Design Professionals or suppliers) is the constructor, PMSP shall ensure that such third party performs the duties of the constructor under the Act and the regulations thereunder. Furthermore, PMSP shall ensure that PMSP and all other General Contractors, Consultants, Design Professional or suppliers of PMSP shall fully cooperate with the constructor or with any third party retained to perform the duties of the constructor to ensure compliance with the Act. All duties outlined in this Subsection 21.10.11 shall be included in Assignment Fees.

21.10.12 IO shall not be designated as the constructor in the Notice of Project form, as prescribed by the Act, without the prior written consent of IO.

21.10.13 A person may be employed by PMSP, at PMSP's sole cost, to ensure compliance with appropriate health and safety matters.

21.11 Freedom of Information and Protection of Privacy

PMSP acknowledges that IO is bound by the provisions of the *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”), R.S.O. 1990, c.F-31, as amended, and the regulations thereunder. PMSP will respect the intent and spirit of FIPPA as amended from time to time, in the course of providing the Services pursuant to this Agreement.

Prior to the Commencement Date, PMSP shall designate a person to be responsible for records management, access to information and protection of privacy matters.

PMSP and IO acknowledge and agree that all records as defined under FIPPA, that are created or maintained in the course of providing the Services shall become and remain the property of IO,

subject to Section 21.4, and that such records are or will be under IO's "control" within the meaning of Section 10(1) of FIPPA.

If a request is made to PMSP under FIPPA for access to records generated or maintained in the course of providing the Services, such request must be directed to IO, together with copies of all responsive records in the custody or under the control of PMSP, within five (5) Business Days of receipt of the request.

If a request is made to IO under FIPPA for access to records generated or maintained in the course of providing the Services, PMSP must provide all responsive records in its custody or under its control to IO, within five (5) Business Days of being directed to do so by IO.

The cost associated with the search, preparation, processing and copying of records for disclosure shall be in accordance with FIPPA and its regulations, as amended, and such costs shall be paid by IO at PMSP's cost with no additional mark-up or fees.

21.12 Confidentiality

PMSP agrees to ensure that PMSP, its partners, directors, officers, employees, agents and volunteers, shall both during and following the Term and any Extension Term of this Agreement, maintain the confidentiality and security of all Confidential Information which is the property of IO or any Client Ministry that become in the possession or under the control of PMSP pursuant to this Agreement. PMSP agrees that PMSP, its partners, directors, employees, agents and volunteers, shall not directly or indirectly disclose or use, either during or following the Term or any Extension Term of this Agreement, except where required by Applicable Laws or to perform the Services under this Agreement, any Confidential Information belonging to IO or any Client Ministry, without first obtaining the written consent of IO for such disclosure or use.

Notwithstanding use of IO's prescribed form of agreements, PMSP shall ensure that all agreements between PMSP and any General Contractors, Consultants, Design Professionals or other third party service providers with whom PMSP contracts in connection with delivery of the Services contain confidentiality provisions similar to that contained in this Article.

Upon request by IO, PMSP shall return all Confidential Information and ensure that all copies and any portions thereof are also returned with no copy kept by PMSP.

PMSP will keep separate from all of its other records and databases all Confidential Information that is provided to it pursuant to this Agreement.

PMSP will not place or intermingle nor will it permit any person to place or intermingle any data or records in any form whatsoever with or into the same database as the Confidential Information.

The Confidential Information will be kept by PMSP in a physically secure location and PMSP will ensure that access to such Confidential Information is restricted to employees of PMSP who have been specifically authorized to have such access.

PMSP will implement and maintain measures to ensure the security and integrity of the Confidential Information to protect it against loss, alteration, destruction, and access by unauthorized persons, by selecting and maintaining the most appropriate products, tools and procedures.

Notwithstanding that PMSP may have instituted adequate and effective security measures, IO reserves the right to require PMSP to institute certain other security measures that in the opinion of IO would be adequate and effective to ensure the security and integrity of the Confidential Information.

In addition, PMSP agrees to be bound by the provisions of this Article where data containing Confidential Information is transferred outside of Ontario.

PMSP acknowledges that any information or documents provided by it to IO may be released pursuant to the provisions of FIPPA. This acknowledgement shall not be construed as a waiver of any right to object to the release of any information or documents.

21.13 Conflict of Interest

PMSP and any of its advisors, partners, directors, officers, employees, agents and volunteers shall not engage in any activity or provide any services to IO where such activity or the provision of such services creates a Conflict of Interest (actually or potentially in the sole opinion of IO) with the provision of the Services pursuant to this Agreement. PMSP acknowledges and agrees that it shall be a Conflict of Interest for it to use Confidential Information relevant to the Services where IO has not specifically authorized such use.

PMSP shall disclose to IO in writing and without delay any actual or potential situation that may be reasonably interpreted as either a Conflict of Interest or a potential Conflict of Interest.

21.14 Dispute Resolution

In the event of any dispute or claim arising between IO and PMSP, either Party shall give the other Party written notification of such dispute or claim within ten (10) Business Days of the dispute or cause of action arising.

Where the dispute or claim cannot be resolved between the Parties through their written communications within ten (10) Business Days of receipt of notification, senior management representatives of both Parties shall meet within twenty (20) Business Days of the receipt of notification at a mutually convenient location within Ontario. The Parties will attempt in good faith to negotiate a resolution of the dispute or claim.

If through the meeting the dispute or claim cannot be resolved to the satisfaction of both Parties, either Party may require that the matter be arbitrated in accordance with the *Arbitration Act*, 1991, s.o. 1991, c-17, as amended and subject to the provisions below.

The following terms and conditions apply to an arbitration:

- (a) an arbitrator will be jointly appointed by the Parties within five (5) Business Days of the meeting;

- (b) if the Parties fail to jointly appoint an arbitrator, the appointment will be referred to the appropriate court to appoint an arbitrator;
- (c) within twenty (20) Business Days of the appointment of an arbitrator, the arbitrator will resolve the dispute or claim;
- (d) the cost of each arbitration will be shared equally between the Parties, unless the arbitrator decides otherwise;
- (e) the arbitrator shall not alter, amend or otherwise change the terms and conditions of this Agreement;
- (f) upon the commencement of any court action by either Party, the jurisdiction of the arbitrator will cease; and
- (g) any award or decision made by the arbitrator is final and binding upon the Parties and may be enforced in the same manner as a judgment or order under the *Arbitration Act*, 1991, s.o. 1991, c-17, as amended. However, nothing herein prevents a Party challenging in court a decision of the arbitrator on a question of mixed law and fact, law or jurisdiction.

PMSP shall continue to perform this Agreement in accordance with the instructions of IO, notwithstanding any dispute, arbitration or any legal action initiated by either or both of the Parties.

In the event of any dispute or claim arising between PMSP and any Tenant or third party landlord in respect of this Agreement, IO may, if requested by the Parties to the dispute, act as a mediator in resolving such dispute or claim.

21.15 Letter of Credit

21.15.1 PMSP shall obtain at its cost and deliver to IO on or before the date of execution of this Agreement by PMSP an irrevocable and unconditional standby, demand letter of credit issued by a Schedule 1 Canadian chartered bank in favour of IO (the “**Letter of Credit**”) which shall be held by IO as security:

- (a) for the satisfactory performance by PMSP of its obligations under the Contract, including but not limited to PMSP’s payment obligations to Consultants, General Contractors, Design Professionals, suppliers and any other third parties with whom PMSP contracts in connection with the performance of the Services under this Agreement; and
- (b) for PMSP’s indemnification of IO, Her Majesty the Queen in Right of Ontario, and their respective agents, appointees, directors, officers and employees from and against all claims, demands, losses, expenses, costs, damages, actions, suits or proceedings that arise out of or are attributable to PMSP’s performance of the Contract.

21.15.2 The Letter of Credit shall contain the following terms and conditions:

- (a) shall be for the amount of [REDACTED] and shall be maintained by PMSP for the period commencing on the Commencement Date until the expiration of the Term and all Extension Terms of this Agreement, failing which IO shall have the right to demand for payment upon the full amount of the Letter of Credit;
- (b) shall provide that any breach of or default by PMSP under this Agreement that is not cured to IO's satisfaction in accordance with the terms of this Agreement will allow IO to draw upon and demand for payment of a portion of or the full amount of the Letter of Credit upon presentation of a demand for payment by IO;
- (c) shall be transferable by IO without the consent of PMSP to an agent, delegate or Ministry of Her Majesty the Queen in Right of Ontario upon notice to the issuer of the Letter of Credit and the term "IO" shall be deemed to include any such transferee, from time to time;
- (d) shall be payable at a bank in the Province of Ontario;
- (e) shall provide for IO to be paid on sight;
- (f) shall provide that it shall continue in full force and effect and shall not be waived, released, discharged, impaired or affected by reason of the release or discharge of PMSP in any receivership, bankruptcy, insolvency, winding-up or other creditors' proceedings including, without limitation, any proceedings under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies Creditors' Arrangement Act* (Canada) or the surrender, disclaimer, repudiation or termination of this Agreement in any such and all Extension Terms, or earlier termination proceedings and shall continue with respect to the periods prior thereto and thereafter as if the Agreement had not been surrendered, disclaimed, repudiated or terminated; and
- (g) shall contain such further provisions required by IO and its solicitors, acting reasonably.

21.15.3 IO shall provide prior written notice to PMSP of IO's intention to draw upon and demand for payment any portion of or the full amount of the Letter of Credit.

21.16 Changes

This Agreement may be modified or amended only by an instrument in writing signed by IO and PMSP.

21.17 Section Headings

The insertion into this Agreement of headings and the inclusion of the Table of Contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

21.18 Assignment

PMSP shall not assign this Agreement or any part thereof, or any monies due or about to become due to PMSP under the provisions of this Agreement, without IO's prior written approval, which shall be within IO's sole, absolute and unfettered discretion.

IO reserves the right to assign this Agreement, in whole or in part, upon two (2) months' prior written notice to PMSP. As of the effective date of such assignment, IO shall have no further obligation or liability in respect of this Agreement.

21.19 Notices

Any notices, direction or other communication required to be given by either Party to the other shall be conclusively deemed to have been given on the same day that it is transmitted by facsimile or delivered personally, or five (5) Business Days after such notice, direction or communication is mailed in a postage prepaid envelope addressed as follows:

to IO at:

Infrastructure Ontario
1 Dundas Street West
Suite 2000
Toronto, Ontario
M5G 2L5

Attention: Senior Vice-President, Asset Management
Telecopier No: (416) 327-3376

and to PMSP at:

304 The East Mall, Suite 900,
Toronto, Ontario
M9B 6E2

Attention: Mr. Justin Sharp, SVP
Telecopier No: (416) 207-4754

21.20 No Public Communication

Any publicity or press release with respect to this Agreement shall be within the sole discretion of IO. PMSP shall obtain prior written approval of IO before making any information public with regard to this Agreement, both before and after expiry or termination of this Agreement.

21.21 Workplace Safety and Insurance Act

Prior to the Commencement Date and as a condition precedent to receiving its first payment on account of the Assignment Fee, PMSP shall provide a certificate of clearance from the Workplace Safety and Insurance Board (Ontario) as evidence of compliance with all requirements of the

Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, as amended, including payments due thereunder. PMSP shall provide such certificates on each anniversary date of the Commencement Date or as otherwise requested by IO from time to time during the Term and any Extension Term of this Agreement.

21.22 Entire Agreement

The Contract, including this Agreement, and any agreements, instruments and other documents contemplated to be entered into between the parties hereto by this Agreement constitute the entire agreement between the parties hereto pertaining to the project management services to be provided by PMSP hereunder and supersede all prior agreements, understandings, negotiations and discussions whether oral or written, with respect thereto, and there are no other warranties or representations and no other agreements between the Parties hereto in connection with the project management services provided for herein except as specifically set forth in the Contract.

21.23 No Waiver

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

21.24 Severability

If any provisions contained in this Agreement or application to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

21.25 Authority

Each individual signing this Agreement on behalf of a Person which is an entity represents that such individual is an officer or director or other representative of that Person acting within the actual authority granted by the Person or who is otherwise authorized to execute this Agreement on behalf of such Person.

21.26 Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respect as an Ontario contract. The Parties agrees to attorn to the jurisdiction of the courts of the Province of Ontario for the conduct of any legal proceedings under and/or related to this Agreement and/or the Services to be provided by PMSP under this Agreement.

21.27 Time of the Essence

Time shall be of the essence of this Agreement.

21.28 Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the Parties hereto and their respective successors and permitted assigns and shall enure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns pursuant to the terms and conditions of this Agreement.

21.29 Counterpart Execution

The Parties agree that this Agreement may be signed in counterpart and transmitted by telecopier, facsimile or other electronic means and that the reproduction of signatures by way of telecopier, facsimile or other electronic means in counterpart will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.

[Execution Page Follows]

IN WITNESS WHEREOF the Parties have executed this Agreement.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF ECONOMIC DEVELOPMENT
EMPLOYMENT AND INFRASTRUCTURE AS
REPRESENTED BY ONTARIO
INFRASTRUCTURE AND LANDS
CORPORATION**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

**SNC-LAVALIN OPERATIONS &
MAINTENANCE INC.**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation.