

APPENDIX 4B

HANDBACK REQUIREMENTS

1. FACILITY HANDBACK

1.1 Facility Condition

On the Expiry Date, the Facility and each element comprising the Facility will be in a condition which is:

- (a) consistent with the Facility and each of the elements of the Facility having been designed and constructed in accordance with the applicable design life requirements set out in Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications] of this Agreement; and
- (b) consistent with Project Co having performed the Services and maintained the Facility in accordance with Schedule 4 [Services Protocols and Specifications].

1.2 Handback Survey

In conjunction with the preparation of the Annual Service Plan for the year commencing three years prior to the Expiry Date, Project Co and the Authority will conduct a joint inspection and survey of the Facility (the "**Handback Survey**").

1.3 Results of Survey

If the Handback Survey indicates that any element of the Facility will not be in a condition consistent with the Handback Requirements upon Project Co implementing the Plans over the remainder of the Term, within 60 days of completion of the Handback Survey Project Co will deliver to the Authority's Operating Period Representative in accordance with Sections 3.8 and 3.9 of Schedule 4 [Services Protocols and Specifications]:

- (a) Project Co's proposal as to the works (if any) (the "**Handback Works**") required to be carried out in respect of the Facility to satisfy the Handback Requirements as at the Expiry Date;
- (b) Project Co's proposal for the carrying out of the Handback Works (the "**Handback Works Plan**") over the remainder of the Term as part of the Annual Service Plan, Life Cycle Plan and the Five Year Maintenance Plan then in effect and describing the total works to be carried out as well as the method and schedule for carrying out such works; and
- (c) Project Co's calculation of the Handback Amount for the Facility.

The Authority's Operating Period Representative may, within 20 Business Days after receipt of the Handback Works and Handback Works Plan, review and comment on such plan in accordance with Section 3.9 of Schedule 4.

2. HANDBACK WORK

2.1 Performance of Handback Work

By agreement between the parties, or determination in accordance with the Dispute Resolution Procedure, of the Handback Works, the Handback Works Plan and the Handback Amount for the Facility, Project Co will:

- (a) within 10 Business Days of the agreement, or determination in accordance with the Dispute Resolution Procedure, deliver to the Authority a performance bond or letter of credit:
 - (1) issued by a financial institution listed on Schedule 1 of the *Bank Act* or a surety company authorized to carry out business in Saskatchewan;
 - (2) securing performance by Project Co of the Handback Works; and
 - (3) having a term which expires no sooner than two years after the Expiry Date, or other cash collateral acceptable to the Authority, acting reasonably, in an amount equal to the Handback Amount (the "**Handback Holdback**"); and
- (b) at its own cost and expense, carry out the Handback Works in accordance with the Handback Works Plan and Good Industry Practice, notwithstanding that the actual cost of the Handback Works may be higher than the Handback Amount.

2.2 Obligation of Project Co

Notwithstanding:

- (a) the agreement of the Authority's Operating Period Representative to any Handback Works, the Handback Works Plan or the Handback Amount;
- (b) the participation of the Authority's Operating Period Representative in the Handback Survey of the Facility; or
- (c) the complete or partial carrying out of the Handback Works,

Project Co will not be released from any obligation to conduct any other inspection or to perform any other works in accordance with this Agreement.

3. COMPLETION OF HANDBACK WORK

3.1 Further Inspection

Not later than six months prior to the Expiry Date, Project Co and the Authority will conduct a further joint inspection and survey of the Facility. Such inspection will confirm whether or not the condition of the Facility meets the Handback Requirements.

3.2 Notice from the Authority

On, or within five Business Days after, the Expiry Date, the Authority's Operating Period Representative will either:

- (a) issue to Project Co a handback certificate confirming completion of the Handback Works (the "**Handback Certificate**") and return the Handback Holdback to Project Co; or
- (b) notify Project Co of its decision not to issue the Handback Certificate:
 - (1) stating the reasons for such decision;
 - (2) setting out each respect in which the Handback Works have not been completed for the Facility or the Facility does not comply with the Handback Requirements; and
 - (3) stating the Authority's Operating Period Representative's estimate of the cost of completing all work required for the Facility to comply in all respects with the Handback Requirements.

3.3 Response from Project Co

Project Co may, within 30 days after receipt of the notice given in accordance with Section 3.2(b) of this Appendix by notice to the Authority's Operating Period Representative, object to any matter set out in the Authority's Operating Period Representative notice by:

- (a) giving details of the grounds of each such objection; and
- (b) setting out Project Co's proposals in respect of such matters.

3.4 Dispute

If it is agreed, or determined in accordance with the Dispute Resolution Procedure, that the Facility did not, at the Expiry Date, comply in all respects with the Handback Requirements:

- (a) Project Co will:
 - (1) complete any outstanding Handback Works within 60 days of the Expiry Date; and
 - (2) pay to the Authority no later than 60 days after the Expiry Date an amount, if any, equal to the estimated cost of completing any outstanding Handback Works (based on the cost estimate provided by the Authority's Operating Period Representative in accordance with Section 3.2(b)(3) unless otherwise agreed or determined in accordance with the Dispute Resolution Procedure) so that the Facility is in a condition which complies with the Handback Requirements. Upon payment being received in full by the Authority, the Authority will issue the Handback Certificate and return the Handback Holdback to Project Co and if such payment is not received from Project Co when due, the Authority may draw

any unpaid amounts against the Handback Holdback and release the balance of the Handback Holdback to Project Co.

3.5 End of Term Requirements

Not later than two years prior to the Expiry Date Project Co and the Authority will establish a joint working group to plan for the transition of the Services from Project Co to the Authority and the Handback of the Facility. In addition to participation in this working group, and in addition to Project CO's obligations under Section 14 of this Agreement, Project Co will:

- (a) assist the Authority in the planning and acquisition for maintenance supplies such that on Expiry, the Authority will have sufficient maintenance supplies and materials to perform the Services;
- (b) assist the Authority in training of personnel in the operations and maintenance of the Facility and delivery of the Services;
- (c) provide the Authority with copies of all hard copy and electronic maintenance records, plans, drawings, manuals, asset registry, reports and operating procedures related to the Facility and the Services;
- (d) provide the Authority with all data contained within the CMMS and BMS for the Facility in an electronic file format acceptable to the Authority;
- (e) allow the Authority to inspect and assess the condition of equipment, tools, machinery and vehicles related to delivery of the Services and offer such equipment, tools, machinery and vehicles for purchase by the Authority at fair market value or other reasonable arrangements negotiated between the parties;
- (f) arrange for the removal from the Facility of equipment, tools, machinery and vehicles, not forming part of the Facility, related to delivery of the Services that are not acquired or required by the Authority;
- (g) ensure all Sub-Contracts related to the Services contain termination clauses with no penalty to the Authority and that all Sub-Contracts may be novated at the request of the Authority;
- (h) assist the Authority in the transfer of all other licences and permits related to the Services from Project Co to the Authority; and
- (i) assist the Authority with other transition assistance as may be reasonably required to ensure a smooth transfer of operations with minimal disruption to Facility Users and operations of the Facility.