

PROJECT AGREEMENT

for the Surrey Memorial Hospital Project

FRASER HEALTH AUTHORITY

and

**INTEGRATED TEAM SOLUTIONS SMH PARTNERSHIP,
a general partnership of**

FED (ITS) SMH INC.

and

**FED (ITS) SMH LIMITED PARTNERSHIP,
formed under the laws of Manitoba**

Dated: December 15, 2010

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PROJECT AGREEMENT

THIS AGREEMENT dated as of December 15, 2010 is entered into:

BETWEEN:

FRASER HEALTH AUTHORITY
(the "Authority")

AND:

INTEGRATED TEAM SOLUTIONS SMH PARTNERSHIP, a general partnership of **FED (ITS) SMH INC.** and **FED (ITS) SMH LIMITED PARTNERSHIP**, formed under the laws of Manitoba ("Project Co")

WHEREAS:

- A. pursuant to the amended and restated request for proposals dated June 10, 2010 and the Competitive Selection Process provided for therein, the Authority has selected Project Co to design, build, finance, maintain and perform life cycle rehabilitation on the Facility; and
- B. the rights and obligations between the parties will be governed by the terms and conditions set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the capitalized terms will have the meanings set out in Schedule 1 [Definitions and Interpretation]. Certain words and expressions are defined within the schedules hereto and such definitions will apply, unless the context otherwise requires, in all other parts of this Agreement whether or not Schedule 1 [Definitions and Interpretation] contains a cross-reference to such definitions.

1.2 Interpretation

This Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1 [Definitions and Interpretation].

1.3 Schedules

The schedules hereto and the terms set out therein will be deemed fully a part of this Agreement.

2. GENERAL PROJECT TERMS

2.1 Term and Termination

The term of this Agreement (the "**Term**") will commence on the Effective Date and will continue to the Expiry Date unless earlier terminated:

- (a) by the Authority at any time in its discretion, and at the convenience of the Authority, by notice stating that termination is for convenience pursuant to this Section 2.1(a);
- (b) by the Authority pursuant to Section 6.6 if the Authority elects not to re-instate the Project after receipt of a Reinstatement Plan;
- (c) by either party pursuant to Section 6.7 in connection with insufficient insurance;
- (d) by Project Co pursuant to Section 6.8 in connection with the economic reinstatement test during construction;
- (e) by either party pursuant to Section 6.9 in connection with uncollectible Insurance Receivables;
- (f) by the Authority pursuant to Section 6.15(a) or 6.15(c)(2) in connection with a Principal Insured Risk becoming Uninsurable;
- (g) by either party pursuant to Section 8.4(c) or 8.4(e) in connection with a Relief Event;
- (h) by either party pursuant to Section 8.6(c) or 8.6(d) in connection with a Force Majeure Event;
- (i) by the Authority pursuant to Section 12.4 in connection with a Project Co Event of Default; or
- (j) by Project Co pursuant to Section 13.3 in connection with an Authority Event of Default.

Unless otherwise specified, the Termination Date for such earlier terminations will be the date notice of termination is given by one party to the other party in accordance with this Agreement. Except as referred to in this Section 2.1, neither party will have the right to terminate this Agreement.

2.2 Document Deliveries

Concurrently with the execution and delivery of this Agreement,

- (a) the Authority will deliver to Project Co the documents described in Section 3 of Schedule 18 [Completion Documents]; and
- (b) Project Co will deliver to the Authority the documents described in Section 2 of Schedule 18 [Completion Documents].

2.3 Assumption of Risk

Except to the extent expressly allocated to the Authority or otherwise provided for under this Agreement, all risks, costs and expenses in relation to the performance by Project Co of its obligations under this Agreement are allocated to, and accepted by, Project Co as its entire and exclusive responsibility.

2.4 Opportunities

Except as expressly provided in this Agreement, or as may be specifically agreed in writing between the Authority and Project Co during the Term, the Authority reserves the right to all commercial and other opportunities for, or related to, the Project and the Lands.

2.5 General Duty of Project Co to Mitigate

In all cases where Project Co is entitled to receive from the Authority any compensation in addition to the payments described in Section 3.1(a), costs, damages or extensions of time, Project Co will use all reasonable efforts to mitigate such amount required to be paid by the Authority to Project Co under this Agreement, or the length of the extension of time. Upon request from the Authority, Project Co will promptly submit a detailed description, supported by all such documentation as the Authority may reasonably require, of the measures and steps taken by Project Co to mitigate and meet its obligations under this Section 2.5.

2.6 General Duty of Authority to Mitigate

In all cases where the Authority is entitled to receive from Project Co any compensation, costs or damages, but not in any other case, the Authority will use all reasonable efforts to mitigate such amount required to be paid by Project Co to the Authority under this Agreement, provided that such obligation will not require the Authority to:

- (a) take any action which is contrary to the public interest, as determined by the Authority in its discretion;
- (b) undertake any mitigation measure that might be available arising out of its status as a public body, but which measure would not normally be available to a private commercial party; or
- (c) alter the amount of any Deductions it is entitled to make in accordance with Schedule 8 [Payments].

The Authority will have no obligation to mitigate, implied or otherwise, except as set out in this Section 2.6 or as otherwise expressly set out in this Agreement. Upon request from Project Co, the Authority will promptly submit a detailed description, supported by all such documentation as Project Co may reasonably require, of the measures and steps taken by the Authority to mitigate and meet its obligations under this Section 2.6.

2.7 Representatives

Project Co and the Authority will each have a Design Representative and a Construction Representative, appointed in accordance with and with the rights and responsibilities set out in Schedule 2 [Design and

Construction Protocols], and an Operating Period Representative, appointed in accordance with and with the rights and responsibilities set out in Schedule 4 [Services Protocols and Specifications]. A party may in its discretion appoint the same person to two or all three of its Representative positions.

2.8 Key Individuals

Attached as Schedule 17 [Key Individuals] is a list of persons (the "**Key Individuals**") that Project Co will utilize in undertaking the Design and the Construction, as described in that Schedule. With respect to each of the Key Individuals:

- (a) Project Co will use all reasonable efforts to retain the Key Individuals to perform the duties for the period described in Schedule 17 [Key Individuals]; and
- (b) if for any reason a Key Individual resigns or is otherwise unavailable to perform the duties described in Schedule 17 [Key Individuals] then Project Co will use all reasonable efforts to retain a replacement with similar expertise and experience to the unavailable Key Individual, satisfactory to the Authority acting reasonably, and Project Co will not replace such Key Individual without the Authority's consent, acting reasonably.

No later than 12 months prior to Service Commencement, Project Co will notify the Authority of the name and qualifications of the person designated by Project Co to be the "General Manager" or equivalent as of the start of the Operating Period, and such person will from the date of such notice also be a Key Individual for the purposes of Section 2.8(b) above.

2.9 Naming

The Authority will have the exclusive right to name the Facility and any parts thereof.

2.10 Signs

Subject to Section 6.19 of Schedule 2 [Design and Construction Protocols], Project Co will not erect or maintain any signs on the Lands or in the Facility without the written consent of the Authority. Project Co acknowledges that the Authority will generally require that signage on its premises after Service Commencement display only the name and logo of the Authority and that it is unlikely that the Authority will consent to any signage containing the name of Project Co or any Project Contractor or Sub-Contractor after Service Commencement.

3. AUTHORITY'S GENERAL OBLIGATIONS

3.1 Payments

Subject to Project Co meeting the requirements for payment set out in this Agreement, the Authority will pay Project Co amounts expressly provided for herein, including:

- (a) the Construction Period Payments and the Service Payments as set out in Schedule 8 [Payments];
- (b) the Termination Payments as set out in Schedule 9 [Compensation on Termination];

- (c) amounts owing under Section 6 (Insurance, Damage and Destruction);
- (d) amounts owing under Section 7 (Changes, Minor Works and Innovation Proposals);
- (e) amounts owing under Section 8 (Supervening Events); and
- (f) amounts owing under Section 9 (Indemnities and Limits on Liabilities and Remedies);

in accordance with the provisions of this Agreement.

3.2 Limitation on Payments

Other than the payments expressly provided for herein, Project Co will have no right to any further payment from the Authority in connection with the Design, the Construction, the Services or otherwise in connection with the Project.

3.3 Provision of Lands

The Authority will make the Lands available for the Project in accordance with Schedule 7 [Lands] and the parties' rights and obligations in respect of the Lands are set out in such Schedule.

3.4 Representations and Warranties

The Authority represents and warrants to Project Co, as of the Effective Date, that:

- (a) the Authority is a regional health board under the *Health Authorities Act* (British Columbia) and the Authority has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Agreement;
- (b) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of the Authority, and this Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms, subject to limitations by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and subject to availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (c) all required third party consents to the execution by the Authority of, and performance of its obligations under, this Agreement have been received;
- (d) it has the rights and interest in and to the Lands, in each case free and clear of all encumbrances, restrictions or limitations except the Encumbrances and any which do not adversely affect, financially or otherwise, the Licence and the ability of Project Co to

conduct the Design or Construction or provide the Services as contemplated by this Agreement;

- (e) the parcels or interests comprising the Lands permit the grant of the Licence by the Authority and the conduct by Project Co of the Design and the Construction and the provision by Project Co of the Services as contemplated by this Agreement; and
- (f) to the extent the Authority's chief project officer for the Project Has Knowledge, there are no facts or information relating to the Project or Disclosed Data which the Authority has intentionally not disclosed to Project Co and which, if learned by Project Co, would reasonably be expected to materially affect Project Co's evaluation of the risks Project Co is assuming pursuant to this Agreement.

4. PROJECT CO'S GENERAL OBLIGATIONS

4.1 General Obligations Re: Project

Subject to and in accordance with the provisions of this Agreement, Project Co will:

- (a) carry out the Design and the Construction; and
- (b) perform the Services.

4.2 Records and Reports

Project Co will, at its own cost and expense, retain and maintain the records and reports referred to in Schedule 14 [Records and Reports] in accordance with such Schedule and in a form that is capable of audit by the Authority. Project Co will:

- (a) make all such records available to the Authority for inspection and copying (at the Authority's expense) during normal business hours upon reasonable notice; and
- (b) upon request from the Authority provide the Authority with electronic copies of any such records as soon as reasonably practicable.

4.3 No Other Business

Project Co will not engage in any business or activity other than the business or activities conducted for the purpose of the Project or otherwise expressly permitted hereunder.

4.4 Project Co Persons

Project Co will, as between itself and the Authority, be responsible for, and not relieved of its obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence and wilful misconduct of each Project Co Person and all references in this Agreement to any act, omission, breach, default, non-compliance, negligence or wilful misconduct of Project Co will be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence or wilful misconduct committed by a Project Co Person.

4.5 Use of Sub-Contractors

Without prejudice to Section 4.4, the Authority acknowledges that Project Co may carry out the Design, the Construction and the Services by contracting such obligations to Project Contractors who in turn may contract all or part of their obligations under any Project Contract to one or more Sub-Contractors. In respect of the Project, Project Co will not contract with, or allow any of its Project Contractors or any Sub-Contractors to contract with, any Person that is a Restricted Person. Notwithstanding the use of Project Contractors or Subcontractors, Project Co:

- (a) will not be relieved or excused from any of its obligations or liabilities under this Agreement; and
- (b) will remain principally liable to the Authority for the due observance and performance of all the covenants, obligations, agreements and conditions of this Agreement that are to be observed and performed by Project Co.

4.6 Material Contracts

Project Co will not:

- (a) terminate, or agree to or permit the termination of, all or any material part of any Material Contract except:
 - (1) as required to do so by the Authority pursuant to the provisions of this Agreement; or
 - (2) if there is an event of default under a Project Contract and Project Co terminates it in order to prevent or cure a Project Co Event of Default;
- (b) make, or agree to or permit the making of:
 - (1) any material amendment of any Material Contract, other than amendments (whether made by change order or otherwise) that are the direct and reasonable consequence of a Change; or
 - (2) any departure by any party from any material provision of any Material Contract;
- (c) permit any Material Contract Party to assign or transfer to any Person any of such Material Contract Party's rights or obligations under a Material Contract other than by way of a Sub-Contract that is not a subcontract of all or substantially all of the obligations under the Material Contract or by way of assignment by way of security by a Material Contract Party; or
- (d) enter into, or permit the entering into of, any Material Contract other than those entered into on or before the Effective Date,

unless Project Co has, at its earliest practicable opportunity, submitted to the Authority notice of the proposed course of action (and any relevant documentation) and the Authority has consented to such course of action, such consent not to be unreasonably withheld or delayed. The Authority will give or

deny such consent within: (i) 10 Business Days of receipt of such notice and all relevant documentation, if Project Co is seeking to terminate a Material Contract and such Material Contract may, in accordance with its terms, be terminated immediately; and (ii) 30 Business Days of receipt of such notice and all relevant documentation in all other cases, and if the Authority fails to give or deny its consent within such time periods it will be deemed to have given its consent.

4.7 Costs of Request for Consent

If Project Co requests consent to a proposed course of action pursuant to Section 4.6, Project Co will pay, without duplication, the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Project Co will make a payment to the Authority in the amount of \$15,000 (Index Linked) against its obligations under this Section 4.7. After the Authority renders its decision, the Authority will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 4.7 and Project Co will promptly pay such amount to the Authority.

4.8 Replacement Material Contract

If any Material Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise), unless the goods, services or rights which were the subject matter of such Material Contract are no longer reasonably required for the Project:

- (a) Project Co will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and
- (b) if the Authority and the relevant Material Contract party had entered into a Material Project Contractor Collateral Agreement with respect to the replaced Material Contract, Project Co will forthwith enter into, or cause the replacement Material Contract Party to enter into, a Material Project Contractor Collateral Agreement.

4.9 Delivery of Amended Material Contracts

If at any time any amendment is made to any Material Contract, or a replacement Material Contract (or any agreement which materially affects the interpretation or application of any Material Contract) is entered into, Project Co will deliver to the Authority a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

4.10 Project Co's Representations and Warranties

Project Co represents and warrants to the Authority that:

- (a) Project Co is a general partnership duly created and validly existing under *The Partnership Act* (Manitoba) and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;

- (b) ITS Inc. is a duly incorporated and validly existing company under *The Corporations Act* (Manitoba) and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;
- (c) ITS LP is a limited partnership duly created and validly existing under *The Partnership Act* (Manitoba) and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;
- (d) ITS GP Inc., general partner of ITS LP, is a duly incorporated and validly existing company under *The Corporations Act* (Manitoba) and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;
- (e) the information set out in Schedule 12 [Project Co's Ownership Information] is true and correct and, except as set out in Schedule 12 [Project Co's Ownership Information], there is as at the date of this Agreement no outstanding offer, agreement or other arrangement pursuant to which:
 - (1) any Person is obligated to subscribe for or take by means of transfer or by conversion any form of investment, security or voting rights in Project Co or either of the Partners; or
 - (2) the partnership agreement governing Project Co will be amended or otherwise altered;
- (f) the execution and delivery of this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary partnership and corporate action on the part of Project Co and the Partners, as applicable, and this Agreement has been duly executed and delivered by the Partners on behalf of Project Co and constitutes a legal, valid and binding obligation of Project Co enforceable in accordance with its terms, subject to limitations by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and subject to availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (g) all required third party consents to the execution by Project Co of, and performance of its obligations under, this Agreement have been received, other than the Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project; and

- (h) it has carefully reviewed the whole of this Agreement, including the Design and Construction Protocols, the Design and Construction Specifications, the Services Protocols and Specifications and all applicable Laws, and has taken all steps it considers necessary to satisfy itself that nothing contained herein inhibits or prevents Project Co from performing and completing the Design, the Construction and the Services in accordance with this Agreement in a good and safe manner in accordance with Good Industry Practice so that Project Co achieves and satisfies the requirements of this Agreement.

The representation and warranty of Project Co in Section (h) is included only for the purpose of allowing the Authority to rely on it for the purpose of defending or contesting any action brought against the Authority pursuant to this Agreement or any claim by Project Co for damages, extensions of time, additional compensation or any other relief arising pursuant to this Agreement and the Authority may not rely on such representation and warranty for the purpose of bringing any action against Project Co or for the purposes of terminating this Agreement.

4.11 Disclosed Data

It is Project Co's responsibility to have conducted its own analysis and review of the Project and, before the execution of this Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project. Subject to Section (e) of the definition of Compensation Event and the Authority's obligations set out in Schedule 7 [Lands], Project Co will not be entitled to and will not make (and will ensure that no Project Contractor or Sub-Contractor makes) any claim against the Authority or any Authority Indemnified Persons, whether in contract, tort or otherwise including any claim in damages, for extensions of time or for additional payments under this Agreement on the grounds:

- (a) of any misunderstanding or misapprehension in respect of the Disclosed Data;
- (b) that the Disclosed Data was incorrect or insufficient; or
- (c) that incorrect or insufficient information relating to the Disclosed Data was given to it by any Person other than the Authority,

nor will Project Co be relieved from any obligation imposed on or undertaken by it under this Agreement on any such ground.

4.12 Responses to the Authority Inquiries

Unless otherwise specified in this Agreement, Project Co will respond in writing to all written inquiries received from the Authority as soon as reasonably practicable and in any event within 10 Business Days of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require.

5. FINANCING OF THE PROJECT

5.1 Compliance with Senior Financing Agreements

Project Co will keep the Senior Financing Agreements in good standing and will ensure that none of the terms and conditions of the Senior Financing Agreements will prevent Project Co from performing its obligations under this Agreement. If at any time Project Co receives a notice that an "event of default", any event entitling the Senior Lenders to enforce any security or any other similar event has occurred under the Senior Financing Agreements, Project Co will forthwith deliver to the Authority a copy of such notice.

5.2 Changes to Senior Financing Agreements

Project Co will not without the written consent of the Authority, not to be unreasonably withheld, or delayed, terminate, amend assign or otherwise modify the Senior Financing Agreements, or waive or exercise any of its rights under the Senior Financing Agreements or enter into any replacement Senior Financing Agreement or any agreement which affects the interpretation or application of any Senior Financing Agreements if such action would:

- (a) adversely affect Project Co's ability to perform its obligations under this Agreement; or
- (b) have the effect of increasing any liability or potential liability of the Authority other than as contemplated in the Financial Model.

If at any time any amendment is made to any Senior Financing Agreement or Project Co enters into any replacement Senior Financing Agreement (or any agreement which affects the interpretation or application of any Senior Financing Agreement), Project Co will deliver to the Authority a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

5.3 Consent Required for Refinancing

Except for:

- (a) an Exempt Refinancing; or
- (b) a Planned Refinancing that does not:
 - (1) adversely affect Project Co's ability to perform its obligations under this Agreement; or
 - (2) have the effect of increasing any liability or potential liability of the Authority (unless the Authority is specifically compensated for such liability or potential liability to the reasonable satisfaction of the Authority), except for an increase in the principal amount of all funding for the Project committed under the Senior Financing Agreements that results directly from the proposed Planned Refinancing that is within (i) the "Maximum Permitted Increase to Principal Amount of Senior Debt" for such Planned Refinancing set out in Schedule 19

[Planned Refinancing], and (ii) the limits for such increase expressly disclosed by Project Co to the Authority in the information referred to in Section 5.4(d)(1),

Project Co will not enter into any Refinancing without the consent of the Authority, not to be unreasonably withheld or delayed. Without limitation, it will be reasonable for the Authority to withhold consent if such Refinancing occurs before Service Commencement, has a material adverse effect on Project Co's ability to perform its obligations under this Agreement, increases any liability or potential liability of the Authority (unless the Authority is specifically compensated for such liability or potential liability) or is with a Restricted Person.

5.4 Refinancing Process

If Project Co intends to undertake a Qualifying Refinancing or a Planned Refinancing, Project Co will notify the Authority of such intention at least 120 days (or such later date agreed by the Authority, acting reasonably) before the anticipated completion date of such Refinancing and will include with such notice all applicable information then available to Project Co (including any of the information set out below in this Section 5.4 if and to the extent available to Project Co at that time). Project Co will keep the Authority informed of the progress of the proposed Refinancing, will provide the Authority with additional information as it is available, and will consult with and reasonably take into account the views of the Authority during the Refinancing process. Without limiting the foregoing, as soon as reasonably available, and in any event no later than 30 days (or such later date agreed by the Authority, acting reasonably) before the anticipated completion date of such Refinancing, Project Co will provide to the Authority (not necessarily all at the same time):

- (a) all proposed revisions to the Senior Financing Agreements;
- (b) a copy of the proposed updated Financial Model both before and after the Refinancing;
- (c) the basis for the assumptions and calculations used in the proposed updated Financial Model;
- (d) particulars of:
 - (1) any increase in the principal amount of all funding for the Project committed under the Senior Financing Agreements that will result from the proposed Refinancing;
 - (2) the nature (and estimated amount if reasonably capable of being calculated or estimated) of any other potential increase in the liability of the Authority, including on early termination of this Agreement, that would be reasonably likely to arise from the proposed Refinancing;
 - (3) any effect on Project Co's ability to perform its obligations under this Agreement;
 - (4) the terms of the proposed Refinancing;
 - (5) the lenders and other parties proposed to be involved in the proposed Refinancing; and

- (6) the financing instruments to be used to carry out the proposed Refinancing and their key attributes (especially as to those attributes that would or could affect the liability of the Authority on any early termination of this Agreement);
- (e) a statement setting out Project Co's estimate of the resulting Refinancing Gain (if any in the case of a Planned Refinancing), including the Authority's share thereof expressed in terms of:
 - (A) the payment described in Section 5.6(a) (Payment to the Authority) (including the estimated timing of receipt thereof by the Authority); and
 - (B) the reduction of Service Payments described in Section 5.6(b) (Payment to the Authority);
- (f) a schedule for implementation of the proposed Refinancing including the principal milestones and proposed dates for the achievement of such milestones (including the estimated date for closing of the proposed Refinancing); and
- (g) a description of any effect on Project Co's ability to perform its obligations under this Agreement or any increase in any liability or potential liability of the Authority.

Project Co will promptly provide all other documents and information related to the proposed Refinancing as the Authority may reasonably request. If any change is proposed to the information provided to the Authority pursuant to the above, including information referred to in Sections 5.4(a) to 5.4(g), Project Co will promptly (and in any event not less than 5 Business Days before the completion date of the proposed Refinancing) provide the Authority with full details of the change. Project Co will only proceed with a Qualifying Refinancing or a Planned Refinancing in accordance with the information provided to the Authority in accordance with this Section 5.4 and in compliance with the other applicable provisions of this Section 5.

5.5 The Authority's Share of Refinancing Gain

The Authority will be entitled to receive a 50% share of any Refinancing Gain arising from a Qualifying Refinancing or a Planned Refinancing. The Authority's share will be calculated as at the time of each Qualifying Refinancing or Planned Refinancing as the case may be.

5.6 Payment to the Authority

The Authority may elect to receive its share of any Refinancing Gain as:

- (a) a single payment, in accordance with Section 10.1 (Lump Sum Payments), in an amount no greater than any Distribution made by Project Co arising as a result of the Refinancing;
- (b) a reduction, in accordance with Section 10.3 (Adjustments to Service Payments), in the Service Payments over the remainder of the Term; or
- (c) a combination of (a) and (b).

5.7 Calculation of Refinancing Gain

The Authority and Project Co will negotiate in good faith the basis and method of calculation of the Refinancing Gain and payment of the Authority's share of the Refinancing Gain, taking into account how the Authority has elected to receive its share of the Refinancing Gain pursuant to Section 5.6 and the profile of the Refinancing Gain. The Refinancing Gain will be calculated after taking into account the reasonable and proper professional costs that Project Co directly incurs in relation to the Refinancing and, if applicable, the Authority's costs that Project Co pays pursuant to Section 5.8. If the Authority and Project Co are unable to agree on the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the Dispute will be determined in accordance with the Dispute Resolution Procedure.

5.8 The Authority's Expenses

Project Co will pay the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with a consent under Section 5.2 or 5.3. At the time of the request for such consent, Project Co will make a payment to the Authority in the amount of \$50,000 (Index Linked) against its obligations under this Section 5.8. After the Authority renders its decision, the Authority will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 5.8 and Project Co will promptly pay such amount to the Authority. The amounts payable under this Section 5 are payable even if the Refinancing Gain is determined to be zero.

5.9 Audit Rights

The Authority will have unrestricted rights of audit at any time (whether before or after the applicable event) over any proposed Financial Model, books, records and other documentation (including any aspect of the calculation of any Refinancing Gain) used in connection with any Refinancing or any other matter for which Project Co requires consent from the Authority under this Section 5.

6. INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverage

Subject to Section 6.15(b), each of Project Co and the Authority will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, insurance for the Project as set out in Schedule 5 [Insurance Requirements].

6.2 Agreement Not Affected by Damage or Destruction

Except as otherwise expressly provided, the partial destruction or damage or complete destruction by fire or other casualty of the Facility will not permit either party to terminate this Agreement or entitle Project Co to surrender possession of the Facility or to demand any increase in any amounts payable to Project Co under this Agreement and all of the provisions of this Agreement, including Section 8 (Supervening Events) will continue to apply.

6.3 Project Co's Obligations - Damage or Destruction

Subject to Section 6.4, and without prejudice to Section 8, if all or any part of the Facility is damaged or destroyed, Project Co will repair, replace or restore the part of the Facility so damaged or destroyed in accordance with the Design and Construction Specifications subject only to:

- (a) applicable Laws; and
- (b) the Authority agreeing to pay to Project Co:
 - (1) the amount, if any, by which the cost of such repair, replacement or restoration exceeds the maximum amount of insurance coverage required under this Agreement for such risk (which for greater certainty is the maximum amount of coverage prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements]); or
 - (2) if no insurance coverage is required under this Agreement for such risk, an amount equal to the total costs of such repair, replacement or restoration,

and if the Authority agrees, the Authority will pay such amounts promptly upon receipt of one or more invoices from Project Co. indicating that such amounts are due and payable by Project Co. in connection with such repair, replacement or restoration.

For the purposes of this Section 6.3, the maximum amount of insurance coverage is (1) in respect of insurance required to be obtained by Project Co, the full amount of coverage required under this Agreement for such risk prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements] or (2) in respect of insurance required to be obtained by the Authority, the full amount of applicable Insurance Proceeds and applicable Insurance Receivables plus any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements]).

6.4 Project Co's Obligations - Material Damage or Destruction

If the Facility suffers damage or destruction that is likely to cost more than \$5 million (Index Linked) to repair, replace and restore:

- (a) Project Co will, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Facility or to facilitate the continued provision of the Services to other parts of the Facility), provide the Authority with a draft plan (the "**Draft Reinstatement Plan**") for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, replace and restore the damaged or destroyed portions of the Facility and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under (d) below;
- (b) as soon as reasonably practicable and in any event within 21 days after the delivery of the Draft Reinstatement Plan, the Authority:

- (1) will provide Project Co with any comments it may have on the Draft Reinstatement Plan; and
 - (2) if it has decided that the Facility is not required to be reinstated in the same form as prior to the damage or destruction, will issue a Preliminary Change Instruction to that effect;
- (c) as soon as reasonably practicable and in any event within 14 days after receipt of the Authority's comments pursuant to Section 6.4(b)(1), Project Co will deliver to the Authority a revised plan (the "**Reinstatement Plan**") amending the Draft Reinstatement Plan to reasonably take into account the comments received from the Authority and those changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalised) with the person effecting the Reinstatement Works; and
- (d) the Reinstatement Plan will set out in as much detail as is reasonable in the circumstances:
- (1) the identity of the person, or (if Project Co is seeking competitive tenders) persons intended, to effect the Reinstatement Works;
 - (2) the terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Facility is reasonably expected to become fully operational again and the Services to be fully provided);
 - (3) the impact that implementation of the Reinstatement Plan will have on the revenues of Project Co under this Agreement and on the payment obligations of Project Co under the Project Contracts, including in respect of Life Cycle Requirements;
 - (4) the total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works; and
 - (5) the impact of any Change requested by the Authority as part of the reinstatement.

Thereafter, unless a party elects to terminate this Agreement (in accordance with the provisions of Section 6.6, 6.7, 6.8 or 6.9 or otherwise), Project Co will repair, replace or restore the Facility, subject to applicable Laws.

6.5 Financial Model Update

Upon delivery of the Reinstatement Plan, Project Co will amend the Financial Model based on the following assumptions:

- (a) that the Reinstatement Plan will be effected in accordance with its terms;

- (b) that the payments under the Senior Financing Agreements (including any amendments agreed between Project Co and the Senior Lenders in connection with the Reinstatement Plan in respect of which a consent request has been submitted to the Authority) to be paid during the period of the Reinstatement Plan will be met without any rescheduling; and
- (c) that payments in respect of any Change comprised in the Reinstatement Plan will be determined in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals],

and will deliver the updated Financial Model to the Authority for its approval, not to be unreasonably withheld or delayed.

6.6 Authority Election Not to Reinstale

The Authority may, by notice to Project Co within 30 days after receipt of the Reinstatement Plan, terminate this Agreement and pay compensation to Project Co in accordance with Section 2 of Schedule 9 [Compensation on Termination].

6.7 Insufficient Insurance

If:

- (a) the Facility is completely or substantially destroyed;
- (b) the cost to repair, replace or restore the Facility exceeds the maximum amount of insurance coverage (which for greater certainty is the maximum amount of coverage prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements]) required under this Agreement for the risk that caused the destruction; and
- (c) neither the Authority nor Project Co has agreed to pay the amount by which the cost to repair, replace or restore the Facility exceeds the Insurance Proceeds and Insurance Receivables with respect to such destruction,

at any time on or after 30 days after delivery of the Reinstatement Plan to the Authority, either party may, by notice to the other party, terminate this Agreement, in which case:

- (d) if:
 - (1) the Authority has failed to obtain insurance coverage in accordance with Schedule 5 [Insurance Requirements] and Sections 6.14 and 6.15 do not apply;
 - (2) the Authority has not deposited an amount equal to the insurance proceeds that would have been payable with the Insurance Trustee in accordance with Section 6.7(g)(2), and
 - (3) the amount of such insurance proceeds would have been sufficient to repair, replace or restore the Facility,

the Authority will pay compensation to Project Co in accordance with Section 2 of Schedule 9 [Compensation on Termination];

- (e) in any other case:
- (1) the Authority will pay compensation to Project Co in accordance with Section 5 of Schedule 9 [Compensation on Termination]; and
 - (2) if the Authority is required to obtain insurance coverage in accordance with Schedule 5 [Insurance Requirements] and the Authority has failed to obtain such insurance and Sections 6.14 and 6.15 do not apply, the Authority will also, but without duplicating payment of any item payable in accordance with Section 5 of Schedule 9 [Compensation on Termination], pay Project Co an amount equal to the insurance proceeds that would have been payable under the relevant policies in respect of such insurance had such insurance been obtained.

For the purpose of Section 6.7(b), the reference to the maximum amount of insurance coverage is:

- (f) in respect of insurance required to be obtained by Project Co, the full amount of coverage prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements]; and
- (g) in respect of insurance required to be obtained by the Authority,
 - (1) the full amount of applicable Insurance Proceeds and applicable Insurance Receivables plus any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements], plus
 - (2) in the event and to the extent that the Authority has failed to obtain such insurance in accordance with Schedule 5 [Insurance Requirements] and Sections 6.14 and 6.15 do not apply, an amount equal to the insurance proceeds that would have been payable under the relevant policies in respect of such insurance had such insurance been obtained in accordance with Schedule 5 [Insurance Requirements], provided the Authority deposits with the Insurance Trustee an amount equal to such insurance proceeds for application of such amount for the same purposes as the insurance.

6.8 Economic Reinstatement Test During Construction

If prior to the Service Commencement Date the Facility suffers damage or destruction that is likely to cost more than \$5 million, Index Linked, to repair, replace and restore, and on the forecast Service Commencement Date following such reinstatement there would be a breach of the Loan Life Cover Ratio test contained in Section 15.1(28) of the Senior Financing Agreements, Project Co may, by notice to the Authority, terminate this Agreement in which case the Authority will pay compensation to Project Co in accordance with Section 5 of Schedule 9 [Compensation on Termination].

6.9 Uncollectible Insurance Receivables

If at any time while Project Co is relieved of its obligations under Sections 6.3 or 6.4 by reason of the Relief Event described in Section (f) of the definition of Relief Event in Schedule 1 [Definitions and Interpretation]:

- (a) Project Co has complied with its obligations hereunder with respect to such Relief Event; and
- (b) notwithstanding such compliance by Project Co collection of the applicable Insurance Receivables is not possible using all reasonable efforts,

either party may, by notice to the other party, terminate this Agreement, in which case the Authority will pay compensation to Project Co in accordance with Section 5 of Schedule 9 [Compensation on Termination].

6.10 Application of Insurance Proceeds If No Termination

Unless a party has terminated this Agreement (including pursuant to Section 6.6, 6.7, 6.8 or 6.9), the Authority and Project Co will cause all:

- (a) applicable Insurance Proceeds which either has received;
- (b) applicable Insurance Proceeds which either is entitled to receive;
- (c) amounts which the Authority has agreed to pay as contemplated in Section 6.3(b); and
- (d) amounts which the Authority or Project Co has agreed to pay to cover the amount by which the cost to repair, replace or restore the Facility exceeds the Insurance Proceeds and Insurance Receivables with respect to complete or substantial destruction,

to be applied to the reinstatement of the Facility in accordance with the terms of this Agreement.

6.11 Application of Insurance Proceeds In Case of Termination

If a party has terminated this Agreement pursuant to Section 6.6, 6.7 or 6.8:

- (a) any Insurance Proceeds received prior to the Termination Payment Date by either Project Co or the Authority in respect of damage to the Facility and not already applied to the repair of such damage will first be applied towards the Termination Payment and any Insurance Proceeds remaining after such application will be paid to the Authority; and
- (b) on the Termination Payment Date, Project Co will assign to the Authority the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

6.12 Standards of Replacement, Repair or Reconstruction

Any replacement, repair, or reconstruction of the Facility or any part thereof pursuant to the provisions of Sections 6.3 or 6.4 will be made or done in compliance with the Design and Construction Protocols and the Design and Construction Specifications, subject to any agreement made between the Authority and Project Co to revise the Design and Construction Protocols or the Design and Construction Specifications as they pertain to any replacement, repaired or reconstructed Facility.

6.13 Mitigation

Project Co and the Authority will take all reasonable steps to mitigate the effects of any risks or claims covered by this Section 6 (including minimizing the amount of any costs and expenses which might result).

6.14 Risks Becoming Uninsurable

Each party will, forthwith upon Having Knowledge, notify the other if a Principal Insured Risk becomes or is expected to become Uninsurable. If both parties agree or it is determined in accordance with the Dispute Resolution Procedure that the relevant Principal Insured Risk is or is about to become Uninsurable and that the Principal Insured Risk being Uninsurable is not and will not be caused by the actions or omissions of Project Co or any Project Co Person or the Authority or any Authority Person contrary to Section 5.10 of Schedule 5 [Insurance Requirements], then the parties together with their respective insurance advisors will meet to discuss the means by which such Principal Insured Risk should be managed (including considering the feasibility of self-insurance by either or all parties).

6.15 Consequences of Risks Becoming Uninsurable

If the requirements of Section 6.14 are satisfied but the parties cannot agree within 20 Business Days on how to manage a Principal Insured Risk that becomes Uninsurable (the "**Uninsurable Risk**"):

- (a) if the Uninsurable Risk is third party liability, if and for so long as the Uninsurable Risk is Uninsurable, the Authority may by notice to Project Co terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 5 of Schedule 9 [Compensation on Termination];
- (b) if the Uninsurable Risk is not third party liability or if (and for as long as) the Authority has not terminated this Agreement under Section 6.15(a), then this Agreement will continue, but neither Project Co nor the Authority will be obligated by this Agreement to maintain insurance in respect of the Uninsurable Risk and references in this Agreement to the insurance required by this Section 6 (Insurance, Damage and Destruction) or Schedule 5 [Insurance Requirements] will be construed accordingly. In such event the Service Payments will thereafter be adjusted in accordance with Section 10.3 (Adjustments to Service Payments) by agreement of the parties acting reasonably or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in Project Co's insurance cost as a result of Project Co not having to insure against the Uninsurable Risk; and

- (c) subject to Section 6.16, on the occurrence of the Uninsurable Risk the Authority will either:
- (1) pay to Project Co an amount equal to the insurance proceeds that would have been payable directly to Project Co under the relevant policies in respect of the Uninsurable Risk had the relevant insurance continued to be available and in effect, and this Agreement will continue; or
 - (2) by notice to Project Co, terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 5 of Schedule 9 [Compensation on Termination],

except that the Authority may not in any such case terminate this Agreement pursuant to Section 6.15(c)(2) if Project Co releases the Authority from all obligations under Section 6.15(c)(1) and deposits with the Insurance Trustee an amount equal, in the reasonable opinion of the Authority, to the insurance proceeds, and all amounts in respect of deductibles and waiting periods that would have been the responsibility of Project Co under Section 5.7 of Schedule 5 [Insurance Requirements], that would have been payable in respect of the Uninsurable Risk that occurred had the relevant insurance continued to be available and in effect.

6.16 Third Party Liability Insurance as an Uninsurable Risk

If this Agreement is terminated pursuant to Section 6.15(c)(2) and at the date of such termination third party liability is an Uninsurable Risk, and if:

- (a) there is an outstanding third party claim against Project Co at the Termination Date; or
- (b) following the Termination Date a third party claim is subsequently made against Project Co in respect of an event or circumstance that occurred before the Termination Date,

which in either case would have been covered by the third party liability insurance that either the Authority or Project Co would have been required to carry had that risk not been an Uninsurable Risk, then the Authority will pay to Project Co the amount for which Project Co becomes liable in respect of such claim in addition to the compensation payable pursuant to Section 6.15(c)(2).

6.17 Subrogation

If the Authority makes any payment to Project Co pursuant to Section 6.15(c)(1) or Section 6.16, then the Authority, to the extent of the amount paid, will be subrogated to Project Co's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

6.18 Continuing Attempts to Insure Uninsurable Risks

When there is an Uninsurable Risk for which Project Co or the Authority, as applicable is responsible to obtain insurance under Schedule 5 [Insurance Requirements] Project Co or the Authority, as applicable, will approach the insurance market on a regular basis and in any event at regular intervals of no longer than six months to establish whether the Uninsurable Risks remain Uninsurable.

6.19 Uninsurable Risks Becoming Insurable

Where a risk that was previously an Uninsurable Risk ceases to be so and either party becomes aware or is informed by the other party that this is the case, the party responsible for obtaining the insurance under Schedule 5 [Insurance Requirements], will forthwith take out, maintain and pay for or cause to be taken out, maintained and paid for insurance in accordance with the requirements of this Agreement in respect of the risk, and in any case:

- (a) Sections 6.14, 6.15, 6.16 and 6.18 will no longer apply to the risk so long as it is not an Uninsurable Risk; and
- (b) the Service Payments will be adjusted pursuant to Section 10.3 (Adjustments to Service Payments) by agreement of the parties acting reasonably or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became insurable, to reflect any increase in Project Co's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk.

7. CHANGES, MINOR WORKS AND INNOVATION PROPOSALS

7.1 Changes Required by the Authority

The Authority may require Changes in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

7.2 Innovation and Value Engineering

Project Co may submit an Innovation Proposal for consideration by the Authority in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

7.3 Minor Works

The Authority may require Minor Works in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

8. SUPERVENING EVENTS

8.1 Supervening Events

If:

- (a) a Compensation Event, Relief Event or Excusing Event occurs, Project Co may; or

(b) a Force Majeure Event or Eligible Change in Law Event occurs, either party may, apply for relief from its obligations, extensions of time, claim compensation or claim a termination right under this Agreement to the extent provided in this Section 8 (Supervening Events). The “**Applicant**” means the party making such application.

8.2 Procedures Upon the Occurrence of a Supervening Event

The following procedure will apply if a Supervening Event occurs:

- (a) as soon as practicable, and in any event within five Business Days after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 (Supervening Events), the Applicant will give to the other party a notice (“**Supervening Event Notice**”) identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant’s claim;
- (b) within 10 Business Days after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, give to the other party:
 - (1) additional details, including available supporting documentation, in support of its claim; and
 - (2) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by Project Co, if it is the Applicant, as a result of the Supervening Event;
- (c) from time to time thereafter the Applicant will notify the other party if at any time it receives or becomes aware of any further information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;
- (d) a party may make multiple but not duplicative claims in respect of a Supervening Event and both parties may make claims in respect of the same Supervening Event;
- (e) where the Authority is claiming the benefit of an Eligible Change in Law Event, Project Co will provide the Authority information reasonably requested in order to make its claim;
- (f) the Applicant must demonstrate:
 - (1) it could not have avoided such occurrence or the consequences of the Supervening Event by steps which it might reasonably be expected to have taken provided that, in the case of the Authority, the Authority is not required to take any steps that are referred to in Sections 2.6(a), 2.6(b) or 2.6(c);

- (2) if applicable, the Supervening Event caused or will cause the Applicant to incur a Direct Loss, a delay in the Project Schedule or the need for relief from other obligations under this Agreement; and
- (3) in the case of Project Co, it has complied with its mitigation obligations pursuant to Section 2.5 and in the case of the Authority, it has complied with its mitigation obligations pursuant to Section 2.6;
- (g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to this Agreement, any Material Contract or any Senior Financing Agreement as a result of the Supervening Event; and
- (h) the parties will meet within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event and if the parties, within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, either party may refer the question of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) above have been satisfied or the extent of relief or compensation to which the affected party is entitled, for resolution in accordance with the Dispute Resolution Procedure.

8.3 Project Co's Entitlements Upon Occurrence of a Compensation Event

Subject to Section 8.12, if at any time a Compensation Event has occurred and Project Co has given the Authority a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by the Authority) under this Agreement arising from any delay or failure in performing any of its obligations under or in connection with this Agreement;
- (b) the Service Payments will be calculated as if the Compensation Event had not occurred based on the reasonably expected performance of Project Co, except that Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom;
- (c) the Authority will pay to Project Co compensation in respect of a Compensation Event calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following (without duplication):
 - (1) any Direct Losses (including the amount of any applicable insurance deductibles and calculated without netting out Insurance Receivables) resulting from the Compensation Event;
 - (2) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting from the Compensation Event; and

(3) the Service Payments payable to Project Co, taking into account the deductions pursuant to Section 8.3(b) above; and

(4) Avoidable Costs,

except that:

(5) applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom; and

(6) no Indirect Losses will be taken into consideration.

(d) concurrent with the first payment of any compensation by the Authority under Section 8.3(c), Project Co will assign to the Authority its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim); and

(e) if the Compensation Event occurs prior to the Service Commencement Date, the Project Schedule will be amended and the Target Service Commencement Date, the Longstop Date and the dates for move-in as set out in the Facility Move-in Schedule will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Compensation Event, but the Expiry Date will not be extended.

8.4 Project Co's Entitlements Upon Occurrence of a Relief Event

Subject to Section 8.12, if at any time a Relief Event has occurred and Project Co has given the Authority a Supervening Event Notice related thereto:

(a) Project Co is relieved from any liability or consequence (including termination by the Authority, except as provided for in this Section 8.4) under this Agreement arising from any delay or failure in performing any of its obligations under this Agreement, except that, with respect to a Relief Event occurring after Service Commencement, nothing will affect any entitlement of the Authority to make Deductions and the Authority will only be obligated to make Service Payments to the extent that the performance or other criteria for Service Payments are met in accordance with the applicable provisions of this Agreement notwithstanding the Relief Event;

(b) if the Relief Event occurs prior to the Service Commencement Date:

(1) the Project Schedule will be amended and the Target Service Commencement Date, the Longstop Date and the dates for move-in as set out in the Facility Move-in Schedule will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Relief Event, but the Expiry Date will not be extended;

- (2) for the period that Service Commencement is delayed to a date after the Target Service Commencement Date as a result of one or more of the Relief Events described in (b), (c) or (h) of the definition of Relief Event the Authority will pay to Project Co an amount equal to the Senior Debt Service Amount for such period less the aggregate of:
- (A) applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Relief Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement; and
 - (B) such portion of each ED Opening Payment not attributable to the cost of the delivery of the ED Opening Services for such period;
- (3) concurrent with the first payment of any amount by the Authority pursuant to Section 8.4(b)(2), Project Co will assign to the Authority its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim);
- (c) if the Relief Event, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice is delivered by the Applicant, either party may at any time so long as such Relief Event is, or such effect is, continuing and subject to Section 14.2, terminate this Agreement by notice to the other party;
- (d) if the Authority gives notice to Project Co under Section 8.4(c) terminating this Agreement, Project Co will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue, in which case Project Co's rights to relief under this Section 8.4 in respect of the Relief Event will cease and the Authority's termination notice will be deemed null and void;
- (e) if Project Co gives notice to the Authority under Section 8.4(c) terminating this Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue. If the Authority gives Project Co such response then:
- (1) Project Co's termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
 - (2) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;
 - (3) at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing, the Authority may terminate this Agreement by notice to Project Co; and

- (4) Project Co may at any time so long as the Supervening Event referred to in Section 8.4(e)(2) is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 8.4(c) terminate this Agreement by notice to the Authority;
- (f) if this Agreement is terminated pursuant to this Section 8.4, Project Co will be entitled to compensation on such termination in accordance with Section 5 of Schedule 9 [Compensation on Termination]; and
- (g) Deductions made while Project Co is entitled to relief under this Section will not be counted for the purposes of Sections 11.1(b) or 12.1(h) or Sections 6.7 or 6.8 of Schedule 4 [Services Protocols and Specifications].

8.5 Project Co's Entitlements Upon Occurrence of an Excusing Event

Subject to Section 8.12, if during the Operating Period an Excusing Event has occurred and Project Co has given the Authority a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by the Authority) under this Agreement arising from any delay or failure in performing any of its obligations; and
- (b) the Service Payments will be calculated as if the Excusing Event had not occurred based on the reasonably expected performance of Project Co, except that Avoidable Costs and applicable Insurance Proceeds and Insurance Receivables and insurance proceeds which Project Co would have recovered if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom.

8.6 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Section 8.12, If at any time a Force Majeure Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto:

- (a) the Applicant is relieved from any liability or consequence (including termination by the Authority except as provided for in this Section 8.6) under this Agreement arising from any delay or failure in performing any of its obligations under this Agreement, except that nothing will affect any entitlement of the Authority to make Deductions and the Authority will only be obligated to make Service Payments to the extent that the performance or other criteria for Service Payments are met notwithstanding the Force Majeure Event;
- (b) if the Applicant is Project Co and the Force Majeure Event occurs prior to the Service Commencement Date, the Project Schedule will be amended and the Target Service Commencement Date, the Longstop Date and the dates for move-in as set out in the Facility Move-in Schedule will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Force Majeure Event, but the Expiry Date will not be extended;

- (c) if a Force Majeure Event occurs and it, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice is delivered by the Applicant, either party may at any time so long as such Force Majeure Event is, or such effect is, continuing, terminate this Agreement by notice to the other party;
- (d) if Project Co gives notice to the Authority under Section 8.6(c) terminating this Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue. If the Authority gives Project Co such response then:
 - (1) Project Co's termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
 - (2) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date the Force Majeure Event first occurred;
 - (3) at any time so long as the Compensation Event referred to in Section 8.6(d)(2) is continuing, the Authority may terminate this Agreement by notice to Project Co; and
 - (4) Project Co may at any time so long as the Compensation Event referred to in Section 8.6(d)(2) is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 8.6(c), terminate this Agreement by notice to the Authority;
- (e) if this Agreement is terminated pursuant to Section 8.6(c) or Sections 8.6(d)(3) or 8.6(d)(4), Project Co will be entitled to compensation on such termination in accordance with Section 5 of Schedule 9 [Compensation on Termination]; and
- (f) Deductions made while Project Co is entitled to relief under this Section 8.6 will not be counted for the purposes of Sections 11.1(b) or 12.1(h) or Sections 6.7 or 6.8 of Schedule 4 [Services Protocols and Specifications].

8.7 Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event

Subject to Section 8.12, if at any time an Eligible Change in Law Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto:

- (a) subject to Section 8.7(c), in the case of a Relevant Change in Law, Project Co will be entitled to compensation for Direct Losses and the Service Payments will be increased or decreased to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Services;
- (b) subject to Section 8.7(c), in the case of a Discriminatory Change in Tax Law Project Co or the Authority will be entitled to compensation for any revenue loss or revenue gain for Project Co and any Partner (as the case may be) and the Service Payments will be

increased or decreased to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Services;

- (c) subject to Section 8.7(d) with respect to Allowable Capital Expenditures, any compensation payable or increase or decrease in the Service Payments in respect of an Eligible Change in Law Event will be calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had such Eligible Change in Law Event not occurred and taking into consideration the following (without duplication):

- (1) any Direct Losses (calculated without netting out Insurance Receivables) resulting from the Eligible Change in Law Event;
- (2) any net increase or decrease in the costs of Project Co performing the Services resulting from the Eligible Change in Law Event; and
- (3) the Service Payments payable to Project Co,

except that:

- (4) Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom; and
- (5) no Indirect Losses will be taken into consideration other than as set out in Section 8.7(b) above,

and concurrent with the first payment of any compensation by the Authority under this Section 8.7(c), Project Co will assign to the Authority its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim); and

- (d) in the case of a Relevant Works Change in Law:

- (1) subject to Section 8.7(c), the Service Payments will be increased or decreased to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Services as a direct result of the Allowable Capital Expenditure in respect of such Relevant Works Change in Law; and
- (2) Project Co will be entitled to compensation from the Authority in an amount calculated by reference to the table set forth below as the Authority's share of the Allowable Capital Expenditure in respect of such Relevant Works Change in Law, taking into account the different applicable amounts of the Authority's share when the aggregate amount of such Allowable Capital Expenditures causes the Cumulative Allowable Capital Expenditure to be in more than one of the applicable provisions of such table:

Column 1	Column 2	Column 3	Column 4
Cumulative Allowable Capital Expenditure	Project Co share of Allowable Capital Expenditure (as a % of the incremental Allowable Capital Expenditure)	Authority's Share (as a % of the incremental Allowable Capital Expenditure)	Maximum cumulative Project Co share of the Cumulative Allowable Capital Expenditure
Applicable to the first [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Applicable to the next [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Applicable to the next [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Applicable to the next [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Applicable to amounts over [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(e) in the case of an Input Tax Recoverability Change in Law:

- (1) the Authority will pay Project Co, and Project Co will be entitled to, any Additional Irrecoverable Tax resulting from the Input Tax Recoverability Change in Law; and
- (2) Project Co will pay the Authority, and the Authority will be entitled to, any Additional Recoverable Tax resulting from the Input Tax Recoverability Change in Law,

but in each case only to the extent necessary to leave Project Co in no better or worse position than before the Tax Recoverability Change in Law.

8.8 Parties' Entitlements Upon Occurrence of a Change in Law

Without limiting Section 8.7:

- (a) if compliance by Project Co with a Change in Law is outside the scope of, or inconsistent with, Project Co's obligations under this Agreement, or would mean a change in Project Co's obligations under this Agreement or a change in the scope or manner of carrying out the Project, such Change in Law will be deemed to constitute a Change having effect from the time of such event except that Project Co will not be entitled to any payment or other compensation other than as set out in Section 8.5 or Section 8.7;

- (b) except as otherwise provided in this Agreement, including in Section 8.5 and Section 8.7, Project Co will not be entitled to any other payment or compensation or relief in respect of any Change in Law or the consequences thereof; and
- (c) nothing in Section 8.7 will be interpreted as relieving Project Co of its obligation, following any and all Changes in Law, to perform its obligations under this Agreement in compliance with all Laws.

8.9 Labour Disputes

If Project Co Has Knowledge of an actual or potential labour dispute that may affect any of the Design, the Construction or the Services, Project Co will promptly:

- (a) give notice thereof to the Authority, including all relevant information related to the dispute of which Project Co Has Knowledge;
- (b) take all reasonable steps to mitigate the effects of such labour dispute on the performance of any of the Design, the Construction or the Services including by applying for relief to appropriate tribunals or courts; and
- (c) if not already received, apply for an essential services designation pursuant to Part 6 of the *Labour Relations Code* (British Columbia) for the facilities, productions and services that will be affected by the labour dispute.

Project Co acknowledges that if the labour dispute involves workers of a Project Contractor or Sub-Contractor, or of anyone employed by or through them, the Authority will not be required to provide any facilities, space or assistance in the Facility or on the Lands for the purposes of such workers or any applicable union.

8.10 Payments in Respect of Supervening Events

Payments between the parties and any adjustments to Service Payments in respect of Supervening Events will be made in accordance with Section 10 (Lump Sum Payments and Service Payment Adjustments).

8.11 Supervening Events Mitigated by Change

Nothing in this Agreement will limit the right of the Authority to perform or mitigate its obligations in respect of Supervening Events by requiring a Change or Changes.

8.12 Delay in Notification

If the Supervening Event Notice or any required information is provided by an Applicant to the other party after the dates referred to in Section 8.2 (Procedures Upon the Occurrence of a Supervening Event), then without prejudice to any other rights or remedies of the other party under this Agreement:

- (a) the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Agreement to the extent that the amount thereof was increased or

the ability to mitigate was adversely affected as a result of such delay in providing such notice or information; and

- (b) if the period of delay is 6 months or more, the rights of the Applicant with respect to the applicable Supervening Event will be of no further force or effect.

8.13 Equivalent Project Relief

The parties acknowledge that Project Co will share with the Project Contractors, who will in turn share with Sub-Contractors, in accordance with the Project Contracts, certain benefits to Project Co derived from the rights of Project Co under, and subject to the obligations and limitations under, this Agreement including rights of Project Co under Section 8 (Supervening Events) (such rights, as qualified by such obligations and limitations, are in this Section collectively "**Project Co's Rights**"). Accordingly:

- (a) any circumstance affecting a Project Contractor or a Sub-Contractor which, if such circumstance had affected Project Co directly would have given rise to a claim by Project Co pursuant to Project Co's Rights will, for the purpose of this Agreement, be deemed to be a circumstance affecting Project Co in respect of which Project Co may claim under and subject to Project Co's Rights; and
- (b) amounts claimed by the Project Contractor or Sub-Contractor against Project Co in respect of any circumstance referred to in Section 8.13(a) above may be claimed by Project Co against the Authority under and subject to Project Co's Rights, but whether or not the Authority is liable for such amounts will be determined under this Agreement as if the circumstance had affected Project Co directly,

provided that:

- (c) all such claims will be made and administered by Project Co and no Project Contractor or Sub-Contractor will have any rights against the Authority, including under this Section 8.13;
- (d) in no event will the liability of the Authority under this Section 8.13 be greater than it would have been if Project Co had been directly affected by the circumstance referred to in Section 8.13(a) above; and
- (e) in no event will the Authority be liable under this Section 8.13 for any Direct Losses or other compensation that the Authority would not have been liable for if Project Co had been directly affected by the circumstance referred to in Section 8.13(a) above.

9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

9.1 Project Co's Obligation to Indemnify

Project Co will indemnify and keep the Authority and each Authority Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with:

- (a) any loss of or physical damage to property or assets of the Authority or any Authority Indemnified Person, or any claim made by one or more third parties (including for loss of

or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any Authority Indemnified Person, arising by reason of any:

- (1) negligent act or omission of Project Co;
 - (2) wilful misconduct of Project Co; or
 - (3) non-compliance by Project Co with any of the provisions of this Agreement or any document, instrument or agreement delivered to the Authority as required under this Agreement;
- (b) breach of any representation or warranty by Project Co under this Agreement;
- (c) any Project Co Hazardous Substances; or
- (d) breach by Project Co of, or non-compliance by Project Co with, Permits or Laws, or the failure of Project Co to obtain all necessary Permits in accordance with this Agreement,

except to the extent caused, or contributed to, by non-compliance by the Authority with any provision of this Agreement or any document, instrument or agreement delivered to Project Co as required under this Agreement or any negligent act or omission, or any wilful misconduct, of the Authority or any Authority Person. For greater certainty, Section 4.4 applies to this Section 9.1. This Section 9.1 may be relied upon by the Authority Indemnified Persons and may be enforced directly by any of them against Project Co in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and Project Co.

9.2 Conduct of Third Person Claims

This Section 9.2 will apply to the conduct of claims made by a third Person against a party having or claiming to have with respect to such third Person claim, the benefit of an indemnity or a right to compensation under this Agreement. The party having, or claiming to have, the benefit of the indemnity or right to compensation is referred to as the "**Beneficiary**" and the party from whom the indemnity or compensation is sought is referred to as the "**Indemnifier**". Accordingly, subject to the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement:

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;
- (b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

- (c) in defending any claim described in Section 9.2(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by or compensation from the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;
- (d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.2(b) the indemnifier will:
- (1) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (2) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and
 - (3) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- (e) the Beneficiary may take conduct of any defence, dispute, compromise or appeal of the claim and of any incidental negotiations if:
- (1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.2(b) ; or
 - (2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 9.2(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (3) the Indemnifier fails to comply in any material respect with Section 9.2(d) above.
- In the case of (3) above the Beneficiary may pay or settle any claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Agreement. Otherwise the Beneficiary will not pay or settle such claims without the consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;
- (f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 9.2(b) above applies. On receipt of such notice the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 9.2(f) (for the sake of clarity, for reasons other than as provided in Sections 9.2(e)(2) or 9.2(e)(3)),

then the Indemnifier will be released from any liability under its indemnity under Section 9.1 or its obligation to provide compensation, as the case may be; and

- (g) in response to any claim of infringement or alleged infringement of the Intellectual Property rights of any Person, Project Co may replace such infringing or allegedly infringing item provided that:
 - (1) the replacement is performed without additional cost to Authority; and
 - (2) the replacement has at least equal quality performance capabilities when used in conjunction with the Facility.

9.3 General Obligation to Pursue Third Person Recovery

If a party (the "**Paying Party**") has paid to the other party (the "**Receiving Party**") an amount in respect of any indemnity, Supervening Event or other liability hereunder (a "**Liability Payment**"), and the Receiving Party has a *bona fide* claim for recovery of any such Liability Payment from a third Person or under any insurance required pursuant to this Agreement, the Receiving Party will:

- (a) as directed by the Paying Party either:
 - (1) promptly make all reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or
 - (2) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party's cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and
- (b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:
 - (1) an amount equal to the sum recovered (or of the value of the recovery whether by discount, credit, saving, relief or otherwise) less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and
 - (2) the Liability Payment,

provided that the Paying Party will be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the Receiving Party in respect of the fact, matter or circumstance giving rise to the Liability Payment.

For greater certainty, the above reference to a "third Person" will not include, in the case where the Authority is the Paying Party, Project Co and Project Co Persons and their respective employees, directors, officers and agents and will not include, in the case where Project Co is the Paying Party, the Authority and the Authority Indemnified Persons.

9.4 Waiver of Remedies

No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

9.5 Remedies Cumulative

Subject to Sections 9.6, 9.7 and 9.8:

- (a) the rights and remedies of the parties under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise;
- (b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and
- (c) no single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.6 Limitation on Authority's Remedies

The Authority's remedies in respect of any failure by Project Co:

- (a) to achieve Service Commencement by the Target Service Commencement Date or the Longstop Date will be limited to the Authority's rights pursuant to Section 12.4 (Authority Termination Right) and Section 11.2 (Delay Costs) of Schedule 2 [Design and Construction Protocols]; and
- (b) to perform the Services in accordance with this Agreement will be limited to Deductions in accordance with Schedule 8 [Payments],

provided that nothing in this Section 9.6 will limit the Authority's right to:

- (c) claim, on or after a termination of this Agreement, costs, losses, damages and expenses suffered or incurred by the Authority as a result of rectifying or mitigating the effects of any breach of this Agreement by Project Co except to the extent recovered by the Authority under this Agreement or taken into account to reduce any compensation payable by the Authority pursuant to Schedule 9 [Compensation on Termination];
- (d) make a claim for indemnification pursuant to Section 9.1;
- (e) deliver to Project Co a Dispute Notice or a notice of default or termination pursuant to Section 12 and pursue all remedies in respect thereof; or
- (f) pursue any other express remedy available to the Authority under this Agreement or any equitable remedy, including injunctive relief and specific performance.

9.7 Limitation on Project Co's Remedies

To the extent Project Co has claimed for relief or compensation for a Supervening Event, pursuant to Section 8, Project Co may not make any further claim against the Authority for costs, losses, damages or expenses incurred by Project Co, or for any other relief, in respect of any such events provided that nothing in this Section 9.7 will limit Project Co's right to:

- (a) deliver to the Authority a Dispute Notice or a notice of default or termination pursuant to Section 13 (Authority Events of Default) and pursue all remedies in respect thereof; or
- (b) pursue any other express remedy available to Project Co under this Agreement or any equitable remedy, including injunctive relief and specific performance.

9.8 Limits on Monetary Compensation

Every right to claim compensation or indemnification or reimbursement under this Agreement will be construed so that recovery is without duplication to any other amount recoverable under this Agreement. Neither party will be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Agreement.

9.9 No Liability for Indirect Losses

Unless specifically allowed in this Agreement, neither party to this Agreement will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party.

9.10 Authority's Right of Set Off

The Authority may set off any amounts owing by Project Co to the Authority under this Agreement against payments due by the Authority to Project Co under this Agreement provided that in respect of Termination Payments payable under Sections 3 or 5 of Schedule 9 [Compensation on Termination] such set off will be only to the extent that after any such amount has been set off, such Termination Payment made would be an amount not less than the Senior Debt.

9.11 Project Co's Right of Set Off

Project Co may set off any amounts owing by the Authority to Project Co under this Agreement against any payments due by Project Co to the Authority under this Agreement.

9.12 Undisputed Amounts and Interest on Disputed Amounts

A party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Agreement but any disputed portion or amount will not be payable until the Dispute is resolved in accordance with the Dispute Resolution Procedure.

If payment of any amount payable under this Agreement is delayed while the matter is in Dispute, upon resolution of the Dispute, interest will be payable on any amount determined payable pursuant to the Dispute Resolution Procedure and will be calculated at the Prime Rate compounded monthly from the time such amount became payable under this Agreement until paid.

9.13 Interest on Overdue Amounts

If payment of any amount payable under this Agreement is not made when due (including Termination Payments payable pursuant to Schedule 9 [Compensation on Termination]), interest will be payable on such amount at the Default Rate and will be calculated from the date due under this Agreement until paid, compounded monthly. The party to whom payment is owed and overdue will notify the other party at least monthly of the overdue amount and the accrued interest on that amount.

10. LUMP SUM PAYMENTS AND SERVICE PAYMENT ADJUSTMENTS

10.1 Lump Sum Payments

To the extent a party:

- (a) is entitled to payment from the other party under this Agreement, including in respect of a Change under Section 7 (Changes, Minor Works and Innovation Proposals), a Supervening Event under Section 8 (Supervening Events) or an indemnification claim under Section 9 (Indemnities and Limits on Liabilities and Remedies); or
- (b) is entitled to share in a benefit and to receive payment from the other party under this Agreement, including in respect of a Refinancing Gain under Section 5 (Financing of the Project), Innovation Proposal under Section 7 (Changes, Minor Works and Innovation Proposals) or Eligible Change in Law Event under Section 8 (Supervening Events),

subject to Section 10.3, the affected or entitled party may make written demand for such payments from time to time after being entitled to payment and in respect of any Direct Losses, after such Direct Losses have been incurred and in respect of any shared benefit, after receipt by the other party of the shared benefit, and such payments will be due and payable within 30 days of delivery of written demand supported by all relevant information.

10.2 Financing of Lump Sum Payment Amounts

If by the terms of this Agreement the Authority is obligated to compensate, reimburse or otherwise pay Project Co in a lump sum payment, at the Authority's request Project Co will use all reasonable efforts to obtain the financing required to make such payment on the best terms reasonably available and, to the extent that Project Co is able to obtain such financing, there will be a corresponding increase made to the Service Payments in accordance with Section 10.3 (Adjustments to Service Payments). The Authority will:

- (a) promptly pay to Project Co an amount equal to the reasonable out-of-pocket expenses incurred by Project Co in seeking such financing provided that the Authority approved such expenses prior to Project Co incurring them; and
- (b) provide concurrent interim financing of any expenditures and costs to be incurred by Project Co until the earlier of the date on which such financing is obtained or payment is made pursuant to Section 10.1 (Lump Sum Payments).

The Authority acknowledges that the Senior Lenders have no obligation to provide the financing referred to in this Section 10.2 or to subordinate or share their security.

10.3 Adjustments to Service Payments

If either party gives notice to the other party that it wishes the parties to consider whether an entitlement to payment under this Agreement is more efficiently effected by adjustments (both increases and decreases) to Service Payments, or if this Agreement requires that an entitlement be effected by such adjustments:

- (a) within 10 Business Days after such notice or after the determination that Service Payments are required to be adjusted, Project Co will give notice to the Authority of the proposed adjustments to be made to the Service Payments to achieve the objectives and outputs set out in Section 10.3(b). Such proposed adjustments will be ascertained by entering the relevant cost adjustments and losses into the Financial Model with effect from the relevant date determined in accordance with Section 10.3(c);
- (b) the adjustments to the calculation of the Service Payments will be determined so that upon comparing the output of the Financial Model as at the adjustment date (after updating the Financial Model to reflect actual performance to date) before and after the proposed adjustments to Service Payments, and taking into account the impact of such adjustments on the economics of the Project as reflected in the Financial Model, the timing of liability for taxation and the time when the adjustments to the Service Payments will take effect, such comparison of the output from such Financial Model shows that:
 - (1) the Equity IRR in respect of equity subscribed in and Junior Debt advanced to Project Co in accordance with the Financial Model prior to the Service Payment adjustment will be unchanged except to the extent required to reflect:
 - (A) any material change in the risk profile of the Project arising in connection with the circumstance giving rise to the adjustment; or
 - (B) any benefit to the parties including in connection with a Refinancing Gain or Innovation Proposal; and
 - (2) Project Co would not, by reason of the effect of the occurrence of the adjustment or the consequential change in cash flow during the Term as shown in the Financial Model (as adjusted), be placed, in respect of any of the Senior Financing Agreements, in a position worse than it would have been in if the change had not occurred;
- (c) the relevant date for adjustments to the Service Payments is:
 - (1) in the case of an adjustment occurring before the Service Commencement Date, the Service Commencement Date, unless otherwise agreed or specified in Schedule 6 [Changes, Minor Works and Innovation Proposals]; or

- (2) in the case of an adjustment occurring after the Service Commencement Date, the start of the next Payment Period in the Financial Model falling after the completion or implementation of the adjustments is achieved;
- (d) if within 10 Business Days after Project Co gives notice of the proposed adjustments the parties agree that the entitlement to payment should be effected by adjustments to the Service Payments, or if this Agreement requires that the entitlement be effected by such adjustments, the parties will implement such adjustments and update the Financial Model accordingly; and
- (e) if completion or implementation of the adjustments is delayed beyond the scheduled date for completion or implementation by reference to which the Financial Model has been re-run in accordance with this Section 10.3 other than delay resulting from an audit under Section 10.4, the date of adjustment to the Service Payments payable by the Authority will be delayed by a period equal to the delay in the completion or implementation of the required adjustments.

10.4 Audit of Financial Model

Prior to implementing any adjustments to the Service Payments contemplated in Section 10.3, the Authority may, at its own expense, review and audit the revised Financial Model prepared by Project Co and Project Co will provide such information as is reasonably required by the Authority to conduct such audit.

11. AUTHORITY'S STEP-IN RIGHTS

11.1 Authority's Step-in Rights

If:

- (a) the Authority reasonably considers that a breach by Project Co of any obligation under this Agreement or an Event:
 - (1) is likely to create an immediate and serious threat to the health or safety of any Facility User, any property, the environment or the reputation, integrity of, or public confidence in, the Facility or any operations related to the Facility; or
 - (2) is prejudicial to the ability to carry on Authority Activities and the Intended Uses to a material degree; or
- (b) Project Co accumulates Deductions of:
 - (1) \$21,000 (Index Linked) or more in any month or \$120,000 (Index Linked) or more in any six consecutive month period, in relation to the Help Desk Services;
 - (2) \$24,000 (Index Linked) or more in any month or \$126,000 (Index Linked) or more in any six consecutive month period, in relation to either the Housekeeping and Waste Management Services or the Plant Services; or

- (3) \$17,000 (Index Linked) or more in any month or \$120,000 (Index Linked) or more in any six consecutive month period, in relation to the Utility Services

then the Authority, acting reasonably may either:

- (c) if it considers that there is sufficient time and that it is likely that Project Co will be willing and able to provide assistance, require Project Co by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs including, if applicable due to breach of any Project Contract or Sub-Contract, suspension of the Project Contractor or Sub-Contractor, and Project Co will use all reasonable efforts to comply with the Authority's requirements as soon as reasonably practicable; or
- (d) if it considers there is not sufficient time, or that Project Co is not likely to be willing and able to take the necessary steps, take such steps as it considers are appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs and to ensure performance of the relevant Services to the standards required by this Agreement (or as close as possible to those standards as the circumstances permit). The Authority will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with Project Co's performance of its obligations under this Agreement.

Project Co will ensure that the provisions contained in all applicable Sub-Contracts will not prevent or inhibit the Authority from exercising its rights under this Section 11.

11.2 Authority's Rectification Rights

If the Authority gives notice to Project Co under Section 11.1(c) and Project Co either:

- (a) does not confirm, within five Business Days of such notice, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to the Authority to mitigate, rectify and protect against such circumstances that the Authority may, within a further five Business Days, accept or reject, acting reasonably; or
- (b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as the Authority, acting reasonably, will stipulate,

then the Authority may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of Project Co to provide the relevant Services, but only for so long as the circumstances referred to in Section 11.1(a) subsist. If the circumstances referred to in Section 11.1(a) no longer subsist or Project Co has proposed a plan acceptable to the Authority, acting reasonably, for mitigating, rectifying and protecting against the circumstances that caused the Deductions thresholds set out in Section 11.1(b) to have been reached, any suspension of the right and obligation of Project Co to provide any Services will cease and such right and obligation will once again be in full force and effect.

11.3 Notice of Facility Change

The Authority will notify Project Co of any Facility Change which the Authority intends to make pursuant to the exercise of the Authority's rights under Section 11.1(d) or Section 11.2 and provide Project Co a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Facility Change. In making such Facility Change, the Authority will reasonably consider comments received in a timely manner from Project Co on the proposed Facility Change.

11.4 No Effect on Project Co's Design and Construction Responsibility

The exercise by the Authority of any of its rights under this Section 11 will not reduce or affect in any way Project Co's responsibility under Section 4.1 of Schedule 2 [Design and Construction Protocols].

11.5 Allocation of Costs for Authority Actions

To the extent that any of the circumstances set out in Section 11.1 arise as a result of any breach by Project Co of its obligations under this Agreement, then Project Co will pay the Authority the amount of all direct costs and expenses reasonably incurred by the Authority in exercising its rights under Section 11.1 or Section 11.2 and an additional mark-up of 20% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, any actions of the Authority under Sections 11.1 and 11.2 will constitute a Compensation Event.

12. PROJECT CO EVENTS OF DEFAULT

12.1 Project Co Events of Default

For the purposes of this Agreement, "**Project Co Event of Default**" means any of the following events or circumstances:

- (a) the occurrence of a Project Co Material Breach that is not remedied in accordance with Section 12.3 including in accordance with the program for remediation under that Section, or the occurrence of a Project Co Material Breach for which a program for remediation has not been produced by Project Co in accordance with Section 12.3;
- (b) the occurrence of a Project Co Insolvency Event;
- (c) Project Co abandons the Project, other than pursuant to its right to suspend performance under Section 13.3 (Project Co's Options) or due to a Supervening Event;
- (d) Service Commencement does not occur on or before the Longstop Date;
- (e) at any time after 12 months prior to the Longstop Date it is finally determined pursuant to the Dispute Resolution Procedure that the Service Commencement Date is not reasonably expected to occur on or before the Longstop Date;
- (f) Project Co breaches Section 16.1 or a Change in Control occurs which is prohibited by Section 16.2;

- (g) at any time after the Service Commencement Date Project Co breaches its obligations under this Agreement (other than as a consequence of a breach by the Authority of its obligations under this Agreement) which results in the criminal conviction or a conviction under the *Workers Compensation Act* (British Columbia) against Project Co or any Project Co Person or the Authority (an “**H&S Conviction**”) except that:
- (1) an H&S Conviction of Project Co, a Project Co Person or the Authority will not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Project Co Person is terminated or Project Co takes such other action against each such Project Co Person as is acceptable to the Authority acting reasonably; and
 - (2) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 12.1(g) the Authority will:
 - (A) act in a reasonable and proportionate manner having regard to such matters as the gravity of the offence and the identity of the person committing the act leading to the H&S Conviction; and
 - (B) give all due consideration, where appropriate, to action other than termination of this Agreement; or
- (h) Project Co accumulates Deductions of \$2,200,000 (Index Linked) or more in any 12 consecutive month period during the Operating Period; or
- (i) if such consent is required under Section 5.3 (Consent Required for Qualifying Refinancing), Project Co carries out a Refinancing without the Authority’s consent,

unless caused by non-compliance by the Authority with any provision of this Agreement or any document, instrument or agreement delivered to Project Co as required under this Agreement or any negligent act or omission, or any wilful misconduct, of the Authority or any Authority Person.

12.2 Notification

Project Co will notify the Authority of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Co Event of Default, in either case promptly when Project Co Has Knowledge of its occurrence.

12.3 Project Co Material Breach Cure and Remedial Program

After the occurrence of a Project Co Material Breach and while it is subsisting, the Authority may serve a notice on Project Co specifying in reasonable detail the type and nature of the Project Co Material Breach and:

- (a) Project Co will remedy such Project Co Material Breach referred to in such notice (if it is continuing) within 20 Business Days of such notice; or
- (b) if either the Authority (as set out in its notice) or Project Co reasonably considers that a Project Co Material Breach cannot reasonably be remedied within 20 Business Days of such notice, Project Co will deliver to the Authority within 10 Business Days of such notice a reasonable program (set out, if appropriate, in stages) for remedying the Project Co Material Breach. The program will specify in reasonable detail the manner in, and the latest date by, which the Project Co Material Breach is proposed to be remedied.

If Project Co puts forward a program in accordance with Section 12.3(b), the Authority will have 10 Business Days from receipt of the program within which to notify Project Co that the Authority, acting reasonably, does not accept the program, failing which the Authority will be deemed to have accepted the program. If the Authority notifies Project Co that it does not accept the program as being reasonable, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such five Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Project Co Material Breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with the Dispute Resolution Procedure.

12.4 Authority Termination Right

If:

- (a) a Project Co Material Breach is not remedied before the expiry of the period referred to in Section 12.3(a) and no program has been put forward by Project Co under Section 12.3(b);
- (b) Project Co puts forward a program pursuant to Section 12.3(b) which has been accepted by the Authority (including after agreement under Section 12.3 to amendments to the program) or has been determined to be reasonable pursuant to the Dispute Resolution Procedure and Project Co fails to achieve any material element of the program or the end date for the program, as the case may be;
- (c) any program put forward by Project Co pursuant to Section 12.3(b) is rejected by the Authority as not being reasonable, and, if such rejection is disputed by Project Co, the Dispute Resolution Procedure does not find against that rejection; or
- (d) any Project Co Event of Default other than a Project Co Material Breach occurs,

then the Authority may (if the Project Co Event of Default continues unwaived and unremedied), subject to the terms of the Lenders' Remedies Agreement, terminate this Agreement by notice to Project Co. The right of the Authority to terminate this Agreement under this Section 12.4 is in addition, and without prejudice, to any other right which the Authority may have in connection with Project Co's defaults hereunder.

For the purposes of Section 12.4(b), if Project Co's performance of the program is adversely affected by the occurrence of a Supervening Event or a breach by the Authority of its obligations under this Agreement, then, subject to Project Co complying with the mitigation and other requirements in this Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

12.5 The Authority's Costs

Project Co will reimburse the Authority for all reasonable costs incurred by the Authority in exercising any of its rights (including any relevant increased administrative expenses and actual legal expenses) under this Section 12 (Project Co Events of Default).

13. AUTHORITY EVENTS OF DEFAULT

13.1 Authority Events of Default

For the purposes of this Agreement, "**Authority Event of Default**" means any of the following events or circumstances:

- (a) a failure by the Authority to pay any amount due and owing to Project Co under this Agreement on the due date (which amount is not being disputed in good faith) and the Authority has not remedied such failure to pay within 10 Business Days' of notice from Project Co;
- (b) except as provided for in Section 13.1(a), a breach, or series of breaches, by the Authority of any term, covenant or undertaking to Project Co, or any representation or warranty made by the Authority to Project Co in this Agreement is incorrect when made, the consequence of which:
 - (1) has an adverse effect on the performance of the Design, the Construction or the Services; or
 - (2) results in any provision of this Agreement being unenforceable against the Authority,

and as a result thereof Project Co is reasonably likely to be materially deprived of the benefit of this Agreement;

- (c) if any material part of the Facility, the portion of the Lands on which the Facility is situated, or any interest in Project Co or any Partner is expropriated by any Governmental Authority and as result thereof Project Co is reasonably likely to be materially deprived of the benefit of this Agreement; or
- (d) if a Governmental Authority requires a sum of money to be set aside or otherwise paid pursuant to Section 48 of the *Hospital Act* (British Columbia) with the result that Project Co does not have sufficient funds to fulfill its obligations under Section 6.3 or 6.4 and the

Authority does not pay a like sum to Project Co within five Business Days of demand therefor in order for Project Co to carry out such obligations;

- (e) if the Guarantee is or becomes, or is held to be, unenforceable, invalid, void or otherwise ceases to be in full force and effect; or
- (f) the Authority breaches Section 16.4 (Limitations on Assignment of Project by Authority).

13.2 Notification

The Authority will notify Project Co of the occurrence, and details, of any Authority Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to an Authority Event of Default, in either case promptly on the Authority Having Knowledge of its occurrence.

13.3 Project Co's Options

After the occurrence of an Authority Event of Default and while an Authority Event of Default is continuing, Project Co may, at its option exercise one or more of the following, as applicable:

- (a) in respect of the Design and the Construction prior to the Service Commencement Date, suspend performance by it of its obligations under this Agreement until such time as the Authority has demonstrated to the reasonable satisfaction of Project Co that it will perform and is capable of performing its obligations under this Agreement and the Target Service Commencement Date, the Longstop Date and the dates for move-in as set out in the Facility Move-in Schedule will be extended by the time such suspension is in effect;
- (b) in the case of an Authority Event of Default under Section 13.1(a), suspend performance by it of its obligations under this Agreement until the Authority has remedied such Authority Event of Default and the Target Service Commencement Date, the Longstop Date and the dates for move-in as set out in the Facility Move-in Schedule will be extended by the time such suspension is in effect and such additional time as may be reasonably required to return to normal operations following such suspension;
- (c) in the case of an Authority Event of Default under Sections 13.1(a), 13.1(b) or 13.1(c), serve notice on the Authority of the occurrence specifying details of such Authority Event of Default and if the relevant matter or circumstance has not been rectified or remedied by the Authority or otherwise within 20 Business Days of such notice (or in the case of an Authority Event of Default under Section 13.1(b) or 13.1(c) such longer period as is reasonably required for the Authority to rectify or remedy such Authority Event of Default as long as the Authority is diligently pursuing such rectification or remedy), Project Co may serve a further notice on the Authority terminating this Agreement with immediate effect; or
- (d) in the case of an Authority Event of Default under Section 13.1(d), 13.1(e) or 13.1(f), terminate this Agreement by notice to the Authority.

13.4 Project Co's Costs

The Authority will reimburse Project Co for all reasonable costs incurred by Project Co in exercising any of its rights (including any relevant increased administrative expenses, interest expenses during construction and actual legal and other expenses) under this Section 13 (Authority Events of Default).

14. PROCEDURE ON TERMINATION

14.1 Compensation on Termination

If this Agreement is terminated pursuant to its terms, the Authority will pay compensation to Project Co in accordance with Schedule 9 [Compensation on Termination].

14.2 Transfer to the Authority of Assets, Contracts, etc.

On or promptly after the Termination Date:

- (a) if prior to the Service Commencement Date:
 - (1) in so far as any transfer will be necessary to fully and effectively transfer property to the Authority, Project Co will transfer to, and there will vest in, the Authority (or any New Project Co as may be appointed by the Authority) free from all financial encumbrances:
 - (A) such part of the Facility as has been constructed on or has become affixed to the Lands; and
 - (B) all construction materials on-hand to be affixed to the Lands or otherwise used in the Facility; and
 - (2) if the Authority so elects:
 - (A) the construction plant and equipment will remain available to the Authority or the New Project Co for the purposes of completing the Design and Construction; and
 - (B) all other Project related plant and all materials on or near the Lands will remain available to the Authority or the New Project Co for the purposes of completing the Design and Construction,

subject to payment by the Authority of the Design-Builder's reasonable charges, and
- (b) if the Authority so elects, Project Co will cause any or all of the Project Contracts to be novated or assigned to the Authority, provided that:
 - (1) Project Co will not be obligated to assign to the Authority any of Project Co's rights to claim against the applicable Project Contractor that arose under such Project Contract prior to the date of such novation or assignment; and

- (2) if termination occurs under Section 13.3 (Project Co's Options) the consent of the applicable Project Contractor will be required;
- (c) Project Co will, or will cause any Material Contract Party to, offer to sell to the Authority at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Material Contract Party and reasonably required by the Authority in connection with the operation of the Facility or the provision of the Services;
- (d) Project Co will deliver to the Authority (to the extent not already delivered to the Authority):
 - (1) all existing designs, plans and other documents produced in connection with the Facility and in the control of Project Co;
 - (2) one complete set of existing "as built drawings" showing all alterations made to the Facility since the commencement of operation of the Facility; and
 - (3) one complete set of existing up to date maintenance, operation and training manuals for the Facility,
 subject to reasonable generally applicable third party licensing terms;
- (e) Project Co will use all reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Agreement and included in the Facility but not previously assigned or licensed to the Authority are assigned, licensed or otherwise transferred to the Authority;
- (f) to the extent permitted by Law, Project Co will assign to the Authority (or any New Project Co as may be appointed by the Authority) all Permits;
- (g) Project Co will deliver to the Authority all records required to be kept by Project Co hereunder (Project Co having the right to retain copies thereof) unless such documents are:
 - (1) required by Law to be retained by Project Co or a Project Contractor or Sub-Contractor, in which case complete copies will be delivered to the Authority; or
 - (2) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Design, the Construction or the Services will be delivered to the Authority no later than the Termination Payment Date; and
- (h) return to the Authority all Confidential Information of the Authority within the possession or control of Project Co or any Project Contractor or Sub-Contractor.

Project Co will ensure that provision is made in all applicable contracts to ensure that the Authority will be in a position to exercise its rights, and Project Co will be in a position to comply with its obligations, under this Section 14.2 without additional payment or compensation to any Person.

14.3 Transitional Arrangements

Project Co will:

- (a) on request by the Authority, for a period not to exceed three months after the Termination Date:
 - (1) co-operate fully with the Authority and any successor providing to the Authority services in the nature of any of the Services or any part of the Services to achieve a smooth transfer of the manner in which the Authority obtains services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of Facility Users; and
 - (2) continue to provide the Services or any part of the Services required by the Authority and the Authority will pay to Project Co a reasonable price for such services determined with reference to Project Co's price for such Services prior to the Termination Date;
- (b) subject to Section 14.3(a), as soon as practicable following the Termination Date remove from the Lands all property of Project Co or any Project Co Person that is not acquired by the Authority pursuant to Section 14.2 (or not belonging to the Authority) and if it has not done so within 60 days after any notice from the Authority requiring it to do so the Authority may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of Project Co;
- (c) subject to Section 14.3(a), on the Termination Date deliver to the Authority:
 - (1) all keys, access codes or other devices required to operate the Facility in the control of Project Co; and
 - (2) any Project Intellectual Property required to be delivered by Project Co pursuant to Section 14.2(e);
- (d) subject to Section 14.3(a), as soon as practicable after the Termination Date, vacate, and cause the Project Co Persons to vacate, those parts of the Facility and of the Lands over which Project Co has control and occupation and will leave such parts of the Lands and the Facility in a safe, clean and orderly condition; and
- (e) comply with all requirements of Appendix 4B [Handback Requirements].

14.4 Project Co to Cooperate

If the Authority wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiry of this Agreement, Project Co will prior to the Expiry Date co-operate with the Authority fully in such competition process including by:

- (a) providing any information in Project Co's control or possession which the Authority may reasonably require to conduct such competition except that information which is commercially sensitive to Project Co or a Project Co Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of Project Co or a Project Co Person give that competitor a competitive advantage over Project Co or the Project Co Person and thereby prejudice the business of Project Co or the Project Co Person); and
- (b) assisting the Authority by providing any participants in such competition process with access to the Lands and the Facility provided such access does not affect the Services in a way that results in any reduction in Service Payments.

Project Co will be entitled to reimbursement for all reasonable out of pocket expenses and internal costs incurred in connection with the foregoing services.

15. DISPUTE RESOLUTION

15.1 Procedure

Except as otherwise provided in this Agreement, any Dispute will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in Schedule 13 [Dispute Resolution Procedure].

15.2 Undisputed Amounts

A party will pay any undisputed portion of any disputed amount to the other party in accordance with this Agreement but any disputed portion or amount will not be payable until the Dispute is resolved as aforesaid.

16. ASSIGNMENT/CHANGE IN CONTROL

16.1 Limitations on Assignment of Project by Project Co

Project Co will not assign, transfer or otherwise dispose of any interest in this Agreement or a Project Contract except:

- (a) as security, substantially in a form approved by the Authority, acting reasonably, prior to its grant for any loan made to Project Co under any Senior Financing Agreement and provided the Senior Lenders enter into the Lenders' Remedies Agreement;
- (b) in connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement; or

- (c) otherwise:
 - (1) prior to the day (the “**Transfer Restriction Date**”) that is one year after the Service Commencement Date, with the written consent of the Authority, which may be given or withheld in the Authority’s discretion, and
 - (2) after the Transfer Restriction Date, with the written consent of the Authority, which will not be unreasonably withheld or delayed,

provided that in the case of an assignment under 16.1(b) or 16.1(c) above the assignee assumes all the obligations of Project Co under this Agreement.

16.2 Limitations on Change in Control

No Change in Control of Project Co will be permitted (whether by Project Co or otherwise) to occur except:

- (a) in connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Lenders’ Remedies Agreement;
- (b) arising from any bona fide open market transaction in any shares or other securities of Project Co or of any Partner or of any Holding Company of a Partner effected on a recognized public stock exchange; or
- (c) otherwise:
 - (1) prior to the Transfer Restriction Date, with the written consent of the Authority, which may be given or withheld in the Authority’s discretion; and
 - (2) after the Transfer Restriction Date, with the written consent of the Authority, which will not be unreasonably withheld or delayed.

16.3 Factors Authority May Consider

In determining whether to provide its consent under Section 16.1(c) or 16.2(c), and without limiting the Authority’s discretion thereunder, it will be reasonable for the Authority to refuse its consent if:

- (a) the proposed assignee or the new party in control of Project Co, as the case may be, or any of their Affiliates, is a Restricted Person;
- (b) the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of the Authority, not sufficiently creditworthy taking into account the nature of the obligations under this Agreement; or
- (c) the assignment or Change in Control could, in the reasonable opinion of the Authority, have a material adverse effect on the Authority or the Project.

16.4 Limitations on Assignment of Project by Authority

The Authority will not assign, transfer or otherwise dispose of any interest in this Agreement unless:

- (a) the Province of British Columbia confirms that the Guarantee will remain in full force and effect notwithstanding such action; and
- (b) the assignee assumes all the obligations of the Authority under this Agreement.

16.5 Costs of Request for Consent

If Project Co requests consent to an assignment, transfer or disposition pursuant to Section 16.1 or to a Change in Control pursuant to Section 16.2, Project Co will pay the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Project Co will make a payment to the Authority in the amount of \$35,000 (Index Linked) against its obligation under this Section 16.5. After the Authority renders its decision, the Authority will either refund any over payment or invoice Project Co for any additional amounts owing under this Section 16.5 and Project Co will promptly pay such amount to the Authority.

17. GENERAL

17.1 Confidentiality

- (a) Subject to Section 17.1(b), each party will hold in confidence any Confidential Information received from the other party, except that this Section 17.1 will not restrict:
 - (1) Project Co from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement and provided further that Project Co may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement:
 - (A) provide to the Senior Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and
 - (B) provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Project Co to perform (or to cause to be performed) its obligations under this Agreement; and
 - (2) the Authority from disclosing or granting access to such information to any provincial ministry, Partnerships British Columbia Inc. and any other Governmental Authority which requires the information in relation to the Project;

- (b) Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
- (1) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
 - (2) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
 - (3) to the extent any Person is required to disclose such Confidential Information by Law, including without limitation, a disclosure required under the *Freedom of Information and Protection of Privacy Act* (British Columbia);
 - (4) to the extent consistent with any Authority's policy concerning the Authority's Confidential Information, the details of which have been provided to Project Co in writing prior to the disclosure; or
 - (5) that the Authority may be entitled to receive from Project Co pursuant to this Agreement for the operation, maintenance or improvement of the Facility in the event of, or following, termination of this Agreement.
- (c) Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 17.1(a) and that the other party will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a), subject, in the case of a claim for any such remedy against the Authority, to the provisions of the *Crown Proceeding Act* (British Columbia).

17.2 Personal Information

Project Co will, and will require Project Contractors and Sub-Contractors to, only collect, hold, process, use, store and disclose Personal Information:

- (a) with the prior consent of the Authority; or
- (b) to the extent necessary to perform Project Co's obligations under this Agreement and in circumstances where the Authority itself could collect, hold, process, use, store and disclose Personal Information if the Authority itself performed the Services.

In accordance with applicable Laws, including the *Freedom of Information and Protection of Privacy Act* (British Columbia) as if the provisions of such Laws applied directly to Project Co, the Project Contracts and Sub-Contractors.

Project Co acknowledges that it is a "service provider" as defined in the *Freedom of Information and Protection of Privacy Act* (British Columbia).

Project Co will allow the Authority on reasonable notice to inspect the measures of Project Co and its Project Contractors and Sub-Contractors to protect Personal Information.

The Authority may from time to time provide guidance to Project Co on the requirements of this Section 17.2, including the circumstances set out in Section 17.2(b). For greater certainty, the provisions of this Section 17.2 that refer to the *Freedom of Information and Protection of Privacy Act* (British Columbia) will apply to the Design-Builder and its Sub-Contractors only to the extent necessary to fulfil the Authority's obligations under the *Freedom of Information and Protection of Privacy Act* (British Columbia).

17.3 Public Communications

Unless expressly provided in this Agreement or otherwise required by any Law (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the consent of the other party (which will not be unreasonably withheld or delayed). The parties will comply with Schedule 16 [Communication Roles].

17.4 Law of Agreement

This Agreement will be deemed to be made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.

17.5 Attornment

For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of British Columbia and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

17.6 Entire Agreement, Waivers and Consents in Writing

This Agreement and the instruments and documents to be executed and delivered pursuant to it constitute the entire agreement between the parties, expressly superseding all prior agreements and communications (both oral and written) between any of the parties hereto with respect to all matters contained herein or therein, and except as stated herein or the instruments and documents to be executed and delivered pursuant hereto, contains all the representations and warranties of the respective parties. In addition:

- (a) no waiver of any provision of this Agreement; and
- (b) no consent required pursuant to the terms of this Agreement,

is binding or effective unless it is in writing and signed by the party providing such waiver or consent.

17.7 Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

if to the Authority:
 Fraser Health Authority
 Sherbrooke Centre
 260 Sherbrooke Street
 New Westminster, B.C. V3L 3M2

Attention: Peter Goldthorpe, Vice President Facilities
 Management
 E-mail: peter.goldthorpe@fraserhealth.ca

if to Project Co:
 Integrated Team Solutions SMH Partnership
 5000 Yonge Street, Suite 1805
 Toronto, Ontario M2N 7E9

Attention: Matt Dekkers
 E-mail: smh@fengatecapital.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

17.8 Further Assurances

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the

other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Agreement.

17.9 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it will not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

17.10 No Partnership, etc.

Nothing contained in this Agreement nor any action taken pursuant hereto or thereto will be deemed to constitute the Authority and Project Co a partnership, joint venture or any other similar such entity.

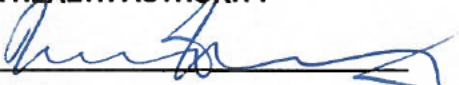
17.11 Survival

Notwithstanding any other provision of this Agreement, the provisions of Section 6.16 (Third Party Liability Insurance as an Uninsurable Risk), Section 8 (Supervening Events) (if and to the extent a Compensation Event relates to a claim made by a third party against Project Co after the Termination Date), Section 9 (Indemnities and Limits on Liabilities and Remedies), Section 14 (Procedure on Termination), Section 15 (Dispute Resolution), Section 17.1 (Confidentiality), Section 17.2 (Personal Information), Appendix 4B [Handback Requirements], Schedule 9 [Compensation on Termination] and Schedule 13 [Dispute Resolution Procedure] will survive the expiry or any earlier termination of this Agreement.

[signature page follows]

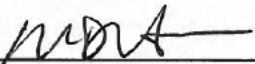
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

FRASER HEALTH AUTHORITY

Per: 
Name:
Title:


INTEGRATED TEAM SOLUTIONS SMH PARTNERSHIP,
by its general partners,

FED (ITS) SMH INC.

Per: 
Name:
Title:

Per: _____
Name:
Title:

FED (ITS) SMH General Partner Inc., in its capacity as general partner of FED (ITS) SMH LIMITED PARTNERSHIP

Per: 
Name:
Title:

Per: _____
Name:
Title: