

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Agreement:

“Acceptance Protocol” has the meaning set out in Section 3.1(a)(3) of Appendix 2E [Equipment and Furniture];

“Actual Coverage Amount” has the meaning set out in Section 5.12 of Schedule 5 [Insurance Requirements];

“Additional Irrecoverable Tax” means HST incurred by Project Co in respect of the supply of any good or service to the Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Design or Construction or performing the Services to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST that Project Co would have recovered or been credited with prior to the applicable Change in Law;

“Additional Recoverable Tax” means HST incurred by Project Co in respect of the supply of any good or service to the Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Design or Construction or performing the Services to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST that Project Co would not have recovered or been credited with prior to the applicable Change in Law;

“Adjusted Estimated Market Value” has the meaning set out in Schedule 9 [Compensation on Termination];

“Adjusted Highest Compliant Bid Price” has the meaning set out in Schedule 9 [Compensation on Termination];

“Affiliate” in respect of a Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person where **“control”** means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person;

“Affiliated Person” has the meaning set out in Appendix 4G [Market Testing Procedure];

“Agreement” means this agreement including any recitals, schedules and appendices to this agreement, as amended, supplemented or restated from time to time;

“Allowable Capital Expenditure” means the Capital Expenditure incurred by Project Co as a direct consequence of a Relevant Works Change in Law;

“Annual Bed Projection Notice” has the meaning set out in Section 2.3 of Appendix 4E [Housekeeping and Waste Management Services];

“Annual Service Plan” has the meaning set out in Section 4.3 of Schedule 4 [Services Protocols and Specifications];

“Applicant” has the meaning set out in Section 8.1 (Supervening Events);

“Architect” means CEI Architecture Planning Interiors, which has been engaged by the Design-Builder to undertake the Design;

“Asset Register” has the meaning set out in Section 7.3 of Schedule 2 [Design and Construction Protocols];

“Authority” means Fraser Health Authority;

“Authority Activities” means any activities carried on or to be carried on by the Authority, or other Persons permitted by the Authority, in the Facility, related to the provision of clinical and non-clinical services;

“Authority Event of Default” has the meaning set out in Section 13.1 (Authority Events of Default);

“Authority Indemnified Person” means:

- (a) any contractor or subcontractor (of any tier) of the Authority;
- (b) any representative, agent or advisor (including legal and financial advisors) of the Authority or any Person referred to in (a) above, in each case acting in such capacity; and
- (c) any director, officer or employee of the Authority or of any Person referred to in (a) or (b) above, in each case acting in such capacity;

“Authority Person” means:

- (a) any director, officer, employee or agent of the Authority;
- (b) any representative, advisor (including any legal and financial advisor) of the Authority or subcontractor (of any tier) of the Authority in any such Person’s capacity as a provider of services directly or indirectly to the Authority in connection with the Project, other than Project Co, Project Contractors or Sub-Contractors;

- (c) any invitee of the Authority or any of the Authority Persons referred to in (a) or (b) above who enters upon the Lands; or
- (d) any lessee or tenant of the Authority at the Facility;

“Authority Policies” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Availability Condition” has the meaning set out in Schedule 8 [Payments];

“Avoidable Costs”, when used in relation to an event or circumstance, means all costs and expenditures which:

- (a) are saved or avoided as a result of the event or circumstance or its effects; or
- (b) if Project Co acted reasonably and in accordance with this Agreement (including Section 2.5), would have been saved or avoided as a result of the event or circumstance or its effects;

“Base Case Project IRR” means 8.11% being the Nominal internal rate of return for the Project calculated on an after tax basis at the level of Project Co in accordance with the Financial Model as shown in Cell D56 of the Outputs Summary Sheet;

“Base Date” means September 30, 2010;

“BC Building Code” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“Bed Usage Notice” has the meaning set out in Section 2.4 of Appendix 4E [Housekeeping and Waste Management Services];

“Benchmarking Exercise” has the meaning set out in Section 4.1 of Appendix 4G [Market Testing Procedure];

“Benchmark Price Range” has the meaning set out in Appendix 4G [Market Testing Procedure];

“Benchmarking Proposal” has the meaning set out in Section 4.4 of Appendix 4G [Market Testing Procedure];

“Beneficiary” has the meaning set out in Section 9.2 (Conduct of Third Person Claims);

“BI Policy” has the meaning set out in Section 3.4 of Schedule 5 [Insurance Requirements];

“Biomedical Waste” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“BMS” has the meaning set out in Section 7.6.1.1(1) of Schedule 3 [Design and Construction Specifications];

“Boiler and Machinery Policy” has the meaning set out in Section 3.3 of Schedule 5 [Insurance Requirements];

“Building” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“Building Systems” has the meaning set out in Appendix 4C [Plant Services];

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in British Columbia;

“CaGBC” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP;

“Capital Payment” has the meaning set out in Section 2.1(a) of Schedule 8 [Payments];

“Cash and Cash Equivalents” means cash and:

- (a) marketable, direct obligations of the Government of Canada or of any political agency or subdivision thereof or the Government of the Province of British Columbia, maturing within 365 days of the date of purchase;
- (b) commercial paper maturing within 180 days from the date of purchase thereof, and rated in Canada:
 - (1) A-1+ by Standard and Poor’s Rating Services or Canadian Bond Rating Service;
 - (2) P-1 by Moody’s Investors Services, Inc.; or
 - (3) R-1 (High) by Dominion Bond Rating Service; and
- (c) certificates of deposit, term deposits, overnight bank deposits or acceptances in each case maturing within 365 days of the date of purchase, deposit or acceptance which are issued, accepted or guaranteed by a bank listed on Schedule I of the *Bank Act* (Canada);

“Category A Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category A1 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category A2 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category B Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category B1 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category B2 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category B3 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category C Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category D Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category E Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category E1 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category E2 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category F Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category F1 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Category F2 Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Certificate of ED Opening” has the meaning set out in Section 13.3(a)(1) of Schedule 2 [Design and Construction Protocols];

“Certificate of Service Commencement” has the meaning set out in Section 13.3(b)(1) of Schedule 2 [Design and Construction Protocols];

“Change” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Certificate” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Directive” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change in Control” means with respect to a Person any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the Person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in a Person or group of Persons, other than the equity holders of the entity immediately prior to the change, directly or indirectly:

- (a) controlling the composition of the majority of the board of directors of the entity or of a general partner or manager of the entity;

- (b) controlling the decisions made by or on behalf of the Person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the entity, a general partner of the entity or a manager of the entity or otherwise;
- (c) holding equity (either beneficially or otherwise) of that entity with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of that entity with more than one half of the voting rights; or
- (d) having the ability to direct or cause the direction of the management, actions or policies of the entity;

“Change in Law” means the coming into effect in Canada after the Financial Submission Date

- (a) any new Law; or
- (b) any modification (including repeal) of any Law existing on such date,

which is binding on Project Co or the Authority, but excluding in each such case:

- (c) any lawful requirements of any Governmental Authority (unless resulting from a Change in Law);
- (d) any change in the interpretation of any legislation other than a judgment of a relevant Court which changes binding precedent in British Columbia;
- (e) any new Law or modification arising from or in any way connected to or having substantially the same effect as any Law which as of the Financial Submission Date:
 - (1) had been introduced as a Bill in the Legislative Assembly of British Columbia or the Parliament of Canada or in a draft statutory instrument published or issued by a Governmental Authority; or
 - (2) had been published in the Canada Gazette or in a draft bill as part of a Governmental Authority discussion or consultation paper;

“Change Mark-Up” has the meaning set out in Section 2.10 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Report” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Change Report Costs” has the meaning set out in Section 2.5(b)(2)(A) of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Charge” has the meaning set out in Schedule 7 [Lands];

“**Core Group**” has the meaning set out in Appendix 2B [User Consultation Process];

“**City**” means the City of Surrey;

“**Cleaned Elements**” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“**Cleaning Access Times**” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“**Cleaning Outcome Standards**” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“**Cleaning Services**” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“**Clinical Services**” means the direct and/or indirect provision of medical and healthcare services at the Facility to or for the benefit of persons requesting or requiring such services;

“**Clinical Specification**” has the meaning set out in Section 2.3.1 of Schedule 3 [Design and Construction Specifications];

“**CMMS**” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“**Commissioning**” has the meaning set out in Appendix 2E [Equipment and Furniture];

“**Commissioning Plan**” has the meaning set out in Section 12.3 of Schedule 2 [Design and Construction Protocols];

“**Compensation Event**” means any of the following events or circumstances if and to the extent that it interferes adversely with, or causes a failure of, the carrying out of the Design, the Construction or the Services, causes an Unavailability Event or causes Direct Losses to Project Co or any Project Co Person:

- (a) breach by the Authority of any of its obligations under this Agreement;
- (b) breach of any representation or warranty by the Authority under this Agreement;
- (c) misconduct of the Authority, an Authority Person or a Facility User;
- (d) a negligent act or omission of the Authority, an Authority Person or a Facility User;
- (e) the existence of Undisclosed Environmental Liabilities;
- (f) a Permit which is the obligation of the Authority to obtain or maintain is declared invalid or defective by a court of competent jurisdiction;

- (g) the existence as at the Effective Date of any encumbrance enforceable against or affecting the Lands or the Facility other than the Encumbrances;
- (h) the discovery of any human remains, relics or other articles or structures of historical, antiquarian or archaeological interest on or adjacent to the Lands;
- (i) a claim asserting infringement of aboriginal rights (including duty to consult) or aboriginal treaty rights or aboriginal title by any first nation(s);
- (j) a Protest Action;
- (k) lawful or unlawful strike, lockout, work-to-rule or other dispute by Public Sector Employees or by the employees of any contractor (other than Project Co) engaged by the Authority to provide services in the Facility;
- (l) the actions referred to in Section 11.5 (Allocation of Costs for Authority Actions) as constituting a Compensation Event;
- (m) the event referred to in Section 8.4(e)(2) (Project Co's Entitlements Upon Occurrence of a Relief Event);
- (n) the event referred to in Section 8.6(d)(2) (Parties' Entitlements Upon Occurrence of a Force Majeure Event);
- (o) the event referred to in Section 6.12(a) and 6.12(b) of Schedule 2 [Design and Construction Protocols];
- (p) Project Co's compliance with a direction from the Authority under Section 3.3 of Schedule 13 [Dispute Resolution Procedure] when the matter in dispute is subsequently resolved,, or settled, in Project Co's favour;
- (q) the execution of works, other than usual or reasonably expected works, on the Site or in respect of the Facility not forming part of this Agreement by the Authority or any person permitted to execute such works by the Authority or any Authority Person;
- (r) the outbreak or effects of any Medical Contamination if and to the extent such Medical Contamination affects more than 15% of the floor space in the Facility;
- (s) if part of the Facility or part of the portion of the Lands on which the Facility is situated or any interest of Project Co or any Partner is expropriated by any Governmental Authority and such expropriation is not an Authority Event of Default as set out in Section 13.1(c);
- (t) the existence of any Utilities on, in under or over the Site that not been disclosed by the Authority prior to the Financial Submission Date; or
- (u) any other event which is expressly stated in this Agreement to constitute a Compensation Event,

except to the extent that any of such events arise, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

“Compliant Bid” has the meaning set out in Schedule 9 [Compensation on Termination];

“Confidential Information” means Personal Information, and information of a party that the party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information;

“Confidential Waste” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“Construction” means everything (other than Design) required to achieve Service Commencement, including the construction of the Facility, temporary works and the supply of all labour and materials, construction equipment, management, supervision and support of any kind or nature whatsoever required for the construction of the Facility and the supply, installation, testing and commissioning of all Equipment;

“Construction CGL Policy” has the meaning set out in Section 2.1 of Schedule 5 [Insurance Requirements];

“Construction Period” means the period commencing on the Effective Date and ending on the Service Commencement Date;

“Construction Period Payment” has the meaning set out in Appendix 8B [Construction Period Payments];

“Construction Period Joint Committee” has the meaning set out in Section 2.7(a) of Schedule 2 [Design and Construction Protocols];

“Construction Property Policy” has the meaning set out in Section 2.2 of Schedule 5 [Insurance Requirements];

“Contingent Funding Liabilities” means direct or indirect liabilities or contingent liabilities, if any, of the Partners in respect of financial obligations owed to Project Co, to the General Partner, to any party under the Junior Debt or the Senior Lenders under the Senior Financing Agreements, such as, for example, the amount a Partner has agreed to contribute to Project Co, promissory notes, obligations to fund reserve accounts, guarantees, letters of credit in respect of deferred equity, subordinated debt or equity bridge loans;

“Contract Year” means each of:

- (a) the period from the Effective Date to the next March 31st;
- (b) each subsequent period of 12 calendar months commencing on April 1st; and
- (c) the period from the April 1st immediately prior to the Termination Date to and including the Termination Date;

“Cooling Degree Days” has the meaning set out in Appendix 2D [Energy];

“Cost to Date” has the meaning set out in Appendix 8B [Construction Period Payments];

“CPTED” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“Cumulative Allowable Capital Expenditure” means the cumulative amount of all the Allowable Capital Expenditures from time to time during the Term;

“Data Room” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“dBA” has the meaning set out in Appendix 3D [Sound Transmission Ratings];

“Debt” of any Person at any date means, without duplication:

- (a) all obligations of such Person for borrowed money;
- (b) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments;
- (c) all obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business;
- (d) all obligations of such person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such person is liable, except leases arising in the ordinary course of business;
- (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property);
- (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other similar instrument;
- (g) all Debt (as otherwise defined in this definition) of others secured by a Charge on any asset of such Person, provided such Debt (as otherwise defined in this definition) is assumed by such Person; and
- (h) all Debt (as otherwise defined in this definition) of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee;

“Deduction” means a deduction made in calculating a Service Payment in accordance with Schedule 8 [Payments];

“Default Rate” on any day means [REDACTED] per annum over the Prime Rate;

“Defect” means any defect or fault, including omission, in the Facility which occurs due to a failure by Project Co to comply with the Design and Construction obligations under this Agreement;

“Deficiencies” has the meaning set out in Section 1.1 of Schedule 2 [Design and Construction Protocols];

“Deficiency Deadline” has the meaning set out in Section 13.4 of Schedule 2 [Design and Construction Protocols];

“Delivery” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Demand Maintenance” has the meaning set out in Appendix 4C [Plant Services];

“Demand Requisition” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Design” means everything required for the design of the Facility except for any design that is expressly excluded from Project Co’s responsibility under this Agreement;

“Design and Construction Energy Target” has the meaning set out in Appendix 2D [Energy];

“Design and Construction Protocols” means the provisions of Schedule 2 [Design and Construction Protocols];

“Design and Construction Representative” has the meaning set out in Section 2.1 of Schedule 2 [Design and Construction Protocols];

“Design and Construction Specifications” mean the provisions of Schedule 3 [Design and Construction Specifications];

“Design Professionals” means the Architect, the Architect’s subconsultants and the design consultants engaged directly by the Design-Builder or Project Co, including engineers and technical experts, who provide services with respect to the Design;

“Design-Build Agreement” means the design and construction agreement between Project Co and the Design-Builder, a certified copy of which has been delivered by Project Co to the Authority, as amended, supplemented or replaced from time to time in accordance with this Agreement;

“Design-Builder” means EllisDon Corporation or any assignee or replacement permitted under this Agreement;

“Direct Losses” means in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs

(including increased Capital Expenditures), expenses (including the reasonable cost of legal or professional services), proceedings, demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event or omission:

- (a) net of related Insurance Proceeds and Insurance Receivables any amount which the relevant party would have recovered (in respect of such condition, event or omission) if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement;
- (b) excluding any Indirect Losses, except to the extent included in a third party claim; and
- (c) in the case of Project Co, without limiting the foregoing:
 - (1) including the full amount of the related loss or reduction of any Service Payments; and
 - (2) net of Avoidable Costs related to such event or omission,

and in calculating any amount of any additional capital expenditure, labour or similar cost claimed by Project Co as a Direct Loss, Project Co will be entitled to add to such amounts the mark-ups referred to in Section 2.10 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Disclosed Data” means any information, data and documents made available or issued to Project Co or any Project Contractor or Sub-Contractor in connection with the Project by or on behalf of the Authority, including any information relating to the Lands or the requirements of any Governmental Authority, whether before or after the execution of this Agreement;

“Discriminatory Change in Tax Law” means a Change in Law which results in the imposition of Taxes or a change in Taxes which specifically apply to discriminate against:

- (a) the Project or health care-related projects procured and contracted on a public-private partnership basis similar to the Project;
- (b) Project Co and its Partners or Persons that have contracted on similar health care-related projects procured and contracted with the Authority or other statutory or public body on a public-private partnership basis similar to the Project;
- (c) the design, provision, operation or maintenance of hospitals or health care facilities and not to other types of facilities; or
- (d) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar health care-related projects procured and contracted on a public-private partnership basis similar to the Project and not other Persons;

“Dispute” means any disagreement, failure to agree or other dispute between the Authority and Project Co arising out of or in connection with this Agreement, including in respect of the interpretation, breach,

performance, validity or termination of this Agreement, whether in the law of contract or any other area of law;

“Dispute Notice” has the meaning set out in Section 2.2 of Schedule 13 [Dispute Resolution Procedure];

“Dispute Resolution Procedure” has the meaning set out in Section 2.1 of Schedule 13 [Dispute Resolution Procedure];

“Distributed UBC Conference Rooms” has the meaning set out in Appendix 3D [Sound Transmission Ratings];

“Distribution” means, without duplication or double counting:

- (a) whether in cash or in kind, any:
 - (1) distribution to Partners or other distribution in respect of equity interests in Project Co;
 - (2) redemption or purchase of any equity interest in Project Co or reduction of partnership capital or the amount of a Partner’s contribution stated in the limited partnership certificate or any other reorganization or variation to partnership capital;
 - (3) payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);
 - (4) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof, or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business or not on commercially reasonable terms including to any current or former Partner, or any current or former Affiliate of any current or former Partner;
 - (5) conferral of any other benefit which is not conferred and received in the ordinary course of business or is not conferred or received on commercially reasonable terms, including to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co; and
 - (6) other payment to any current or former Partner, any current or former Affiliate of any current or former Partner or Project Co howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect of any equity interest in Project Co or other securities of or interests in Project Co if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; or

- (b) the early release of any reserves or any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated. A Distribution will be calculated in a manner that is consistent with the calculation of the Threshold Equity IRR in the Financial Model;

“Down Time” has the meaning set out in Appendix 4C [Plant Services];

“Draft Proposal” has the meaning set out in Section 3.5(a) Appendix 4G [Market Testing Procedure];

“Draft Reinstatement Plan” has the meaning set out in Section 6.4(a) (Project Co's Obligations – Material Damage or Destruction);

“ED Move-in Schedule” has the meaning set out in Section 10.5(a) of Schedule 2 [Design and Construction Protocols];

“ED Opening” means that all of the following criteria have been achieved in relation to the Emergency Department:

- (a) an occupancy permit has been issued for the ED Opening Areas or the City has issued a temporary occupancy permit or other written permission that is sufficient for occupancy and use of the ED Opening Areas for patient care and treatment;
- (b) Project Co has completed the training of Authority staff as required by Section 12.2 of Schedule 2 [Design and Construction Protocols] for the ED Opening Areas and the ED Opening Services; and
- (c) Project Co has delivered to the Authority a report from the commissioning agent retained by Project Co under Section 12.1 of Schedule 2 [Design and Construction Protocols] confirming completion of all commissioning activities with respect to the ED Opening Areas scheduled in the Commissioning Plan to be completed before ED Opening;

“ED Opening Areas” means:

- (a) the Emergency Department;
- (b) the South Building Spine;
- (c) the North Building Link;
- (d) the facility's main lobby and related stairways and escalators providing access from the Emergency Department to Level 2 of the South Building Spine; and
- (e) the below grade parking facilities described in Schedule 3 [Design and Construction Specifications],

and all related rooms, areas, entranceways, roads, driveways, Building Systems and Maintained Elements which support the occupation, use, functionality and operation of each such area for their intended uses;

“ED Opening Date” means the date when all the criteria for ED Opening that have not been waived have been satisfied as certified by the Independent Certifier in accordance with Schedule 2 [Design and Construction Protocols];

“ED Opening Deficiency” has the meaning set out in Section 13.1(a) of Schedule 2 [Design and Construction Protocols];

“ED Opening Payments” has the meaning set out in Section 2.3 of Schedule 8 [Payments];

“ED Opening Plan” has the meaning set out in Section 4.2 of Schedule 4 [Services Protocols and Specifications];

“ED Opening Services” has the meaning set out in Section 5.6(a) of Schedule 4 [Services Protocols and Specifications];

“Effective Date” means the date of this Agreement;

“Elevator Availability” has the meaning set out in Appendix 4C [Plant Services];

“Eligible Change in Law Event” means the occurrence of a:

- (a) Relevant Change in Law;
- (b) Relevant Works Change in Law;
- (c) Discriminatory Change in Tax Law; or
- (d) Input Tax Recoverability Change in Law.

“Emergency Department” means the functional component described in Section 6.0 (Emergency) of the Clinical Specification;

“Employee Information” has the meaning set out in Schedule 9 [Compensation on Termination];

“Employee Payments” means any liability that has been reasonably incurred by Project Co arising as a result of termination of this Agreement under collective agreements, employment agreements or under any other agreements with employees of Project Co, including severance (whether accrued or not), vacation pay and sick pay accrued but excluding any Distribution;

“Encumbrances” has the meaning set out in Schedule 7 [Lands];

“Energy” has the meaning set out in Appendix 2D [Energy];

“Energy Consumption” has the meaning set out in Appendix 2D [Energy];

“Energy Management Plan” has the meaning set out in Section 4.7 of Schedule 4 [Services Protocols and Specifications];

“Energy Model” has the meaning set out in Appendix 2D [Energy];

“Environmental Credit” has the meaning set out in Appendix 2D [Energy];

“Environmental Laws” means all Laws relating to the protection of human health and all plant, animal, land, water and air resources that may be affected by the Project;

“Environmental Management Plan” has the meaning set out in Section 4.6 of Schedule 4 [Services Protocols and Specifications];

“EOC” has the meaning set out in Section 5.3.6 of Schedule 3 [Design and Construction Specifications];

“Equipment” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Equipment Cash Allowance” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Equipment Cash Allowance Account” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Equipment Committee” has the meaning set out in Section 9.7 of Appendix 2E [Equipment and Furniture];

“Equipment Consultant” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Equipment Data Sheets” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Equipment List” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Equipment Procurement Schedule” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Equity IRR” means Project Co's Nominal blended equity internal rate of return calculated on an after tax basis at the level of Project Co in accordance with the Financial Model as shown in Cell D54 of the Outputs Summary Sheet, having regard to Distributions made and projected to be made;

“Estimated Market Value” has the meaning set out in Schedule 9 [Compensation on Termination];

“Event” has the meaning set out in Schedule 8 [Payments];

“Evidence-Based-Design” or **“EBD”** has the meaning set out in Section 3.1 of Schedule 3 [Design and Construction Specifications];

“Excluded Person” has the meaning set out in Appendix 4G [Market Testing Procedure];

“Excusing Event” means any of the following events or circumstances if it occurs on or after the Service Commencement Date and interferes adversely with, or causes a failure of, the performance of the Services or causes an Unavailability Event:

- (a) work performed in accordance with the ED Opening Plan, except that:
 - (1) any such work improperly performed and the effects thereof will not constitute an Excusing Event; and
 - (2) if such work continues beyond the period or duration set out in the ED Opening Plan, the Excusing Event will terminate at the end of the period or duration set out in the ED Opening Plan;
- (b) Scheduled Maintenance (including Life Cycle Requirements) performed in accordance with the Annual Service Plan, except that:
 - (1) improperly performed Scheduled Maintenance and the effects thereof will not constitute an Excusing Event; and
 - (2) if the Scheduled Maintenance continues beyond the period or duration set out in the Annual Service Plan, the Excusing Event will terminate at the end of the period or duration set out in the Annual Service Plan;
- (c) the carrying out by Project Co of Minor Works required by the Authority in accordance with this Agreement;
- (d) failure by any utility company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner or any unreasonable interference with the Services by any such body as a result of maintenance or other work;
- (e) failure of plant or utilities which the Authority is responsible for providing to the Facility under this Agreement,
- (f) compliance by Project Co with an order or direction by police, fire officials or any comparable public authority having the legal authority to make such order or give such direction;
- (g) a Change in Law;
- (h) the outbreak or effects of any Medical Contamination, to the extent it does not constitute a Compensation Event;
- (i) the occurrence of a disease or disorder in a given population at a frequency substantially higher than that expected within that population in a given time period;

- (j) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with the Design and Construction Specifications, failure or shortage of power; and
- (k) any other event which is expressly stated in this Agreement to constitute an Excusing Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

“Exempt Refinancing” means:

- (a) a change in taxation or change in accounting treatment pursuant to changes in Laws or GAAP or International Financial Reporting Standards;
- (b) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are solely in respect of:
 - (1) breach of representations, warranties, covenants or undertakings;
 - (2) movement of monies between the Project Accounts (as defined in the Senior Financing Agreements) in accordance with the terms of the Senior Financing Agreements;
 - (3) late or non-provision of information or consents;
 - (4) amendments to Project Contracts;
 - (5) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);
 - (6) restrictions imposed by the Senior Lenders on the dates at which the financing provided by the Senior Lenders under the Senior Financing Agreements can be advanced to Project Co under the Senior Financing Agreements, and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Lenders to the Authority prior to being given;
 - (7) changes to milestones for drawdown set out in the Senior Financing Agreements and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Lenders to the Authority prior to being given;
 - (8) failure by Project Co to obtain any consents from Governmental Authorities required by the Senior Financing Agreements; or

- (9) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;
- (c) an amendment, variation or supplement of an agreement approved by the Authority as part of any Change;
- (d) a sale of Junior Debt or Units in Project Co by Partners or, in the case of Junior Debt, Affiliates of Partners or securitization of the existing rights or interests attaching to Junior Debt or Units in Project Co;
- (e) a Qualifying Bank Transaction; or
- (f) a conversion of Units into Junior Debt or of Junior Debt into Units, provided that the total principal amount of all Junior Debt outstanding immediately following the conversion plus amounts paid to Project Co by way of subscription for Units outstanding immediately following the conversion does not exceed the total amounts paid to Project Co by way of subscription for Units outstanding immediately prior to the conversion plus the total principal amount of all Junior Debt outstanding immediately prior to the conversion;

“Existing Facilities Report” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Expiry Date” means February 28, 2044;

“Facility” means the buildings, related structures, utility connections, landscaping and other improvements to be constructed by Project Co pursuant to this Agreement;

“Facility Change” has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Facility Condition Report” has the meaning set out in Section 2.3(d) of Schedule 4 [Services Protocols and Specifications];

“Facility Maintenance Payment” has the meaning set out in Section 2.1(c) of Schedule 8 [Payments];

“Facility Move-in Schedule” has the meaning set out in Section 10.5(b) of Schedule 2 [Design and Construction Protocols];

“Facility Threat and Risk Assessment” has the meaning set out in Section 4.10 of Schedule 2 [Design and Construction Protocols];

“Facility Users” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Fair Market Value” means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale;

“Financial Model” means Project Co’s financial model for the Project attached as Schedule 15 [Financial Model], a copy of which is attached to this Agreement in electronic format, as updated or amended from time to time in accordance with the terms of this Agreement;

“Financial Submission Date” means August 18, 2010;

“Five Year Maintenance Plans” has the meaning set out in Section 4.4 of Schedule 4 [Services Protocols and Specifications];

“Force Majeure Event” means the occurrence after the Effective Date of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, radioactive, chemical or biological contamination, except to the extent that such contamination arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person;
- (c) earthquake or tidal wave;
- (d) flood, except to the extent that such flood arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person; or
- (e) pressure waves caused by devices traveling at supersonic speeds,

which directly causes a party to be unable to comply with all or a material part of its obligations under this Agreement;

“Functional Area Risk Categorisation” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“Functional Unit” has the meaning set out in Schedule 8 [Payments];

“GAAP” means generally accepted accounting principles in effect in Canada including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants;

“General Administration” means the functional component described in Section 12.0 (General Administration & Support Offices) of the Clinical Specification;

“Geotechnical Report” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Gigajoule” or “Gj” has the meaning set out in Appendix 2D [Energy];

“Good Industry Practice” means using standards, practices, methods and procedures to a good commercial standard, conforming to Law and exercising that degree of skill and care, diligence, prudence

and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

“Governmental Authority” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, Court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project;

“Guarantee” means the guarantee dated December 15, 2010, provided by the Province of British Columbia to Project Co guaranteeing payment by the Authority hereunder;

“H & S Conviction” has the meaning set out in Section 12.1(g) (Project Co Events of Default);

“Handback Amount” has the meaning set out in Appendix 4B [Handback Requirements];

“Handback Certificate” has the meaning set out in Section 4.2(a) of Appendix 4B [Handback Requirements];

“Handback Holdback” has the meaning set out in Section 3.1(a) of Appendix 4B [Handback Requirements];

“Handback Requirements” means the requirements set out in Appendix 4B [Handback Requirements];

“Handback Survey” has the meaning set out in Section 2.2 of Appendix 4B [Handback Requirements];

“Handback Works” has the meaning set out in Section 2.3(a) of Appendix 4B [Handback Requirements];

“Handback Works Plan” has the meaning set out in Section 2.3(b) of Appendix 4B [Handback Requirements];

“Has Knowledge”, “Have Knowledge” or “Having Knowledge” means:

- (a) for an individual, when information is acquired by the individual;
- (b) for a corporation, when information has come to the attention of:
 - (1) a director or officer of the corporation; or
 - (2) a senior employee of the corporation with responsibility for matters to which the information relates,
- (c) for a partnership other than a limited partnership, when any partner Has Knowledge under the other Sections of this definition or under this Section (c) or Section (d) below for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates; or

- (d) for a limited partnership, when any general partner Has Knowledge under the other Sections of this definition or under this Section (d) or Section (c) above for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates;
- (e) for the Authority, when information has come to the attention of:
 - (1) a director or officer of the Authority; or
 - (2) a senior employee of the Authority with responsibility for matters to which the information relates,

under circumstances in which a reasonable person would take cognizance of it;

“Hazardous Substance” means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws;

“HCPP” has the meaning set out in Schedule 5 [Insurance Requirements];

“HCU” means the functional component described in Section 1.0 (Medical/Surgical Inpatient Care – Hemodialysis Capable Unit) of the Clinical Specification;

“HDCU” means the functional component described in Section 5.0 (High Dependency Care Unit/Medical Surgical Unit) of the Clinical Specification;

“Heating Degree Days” has the meaning set out in Appendix 2D [Energy];

“Helipad” has the meaning set out in Section 2.6.1 of Schedule 3 [Design and Construction Specifications];

“Help Desk” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Help Desk Report” has the meaning set out in Appendix 4D [Help Desk Services];

“Help Desk Services” has the meaning set out in Section 5.2 of Schedule 4 [Services Protocols and Specifications];

“Highest Compliant Bid Price” has the meaning set out in Schedule 9 [Compensation on Termination];

“High Service Failure” has the meaning set out in Schedule 8 [Payments];

“Holding Company” means, with respect to a corporation, another corporation of which the first corporation is a “subsidiary” as defined in the *Business Corporations Act* (British Columbia) as at the date of this Agreement;

“Hospital” has the meaning set out in Schedule 2 [Design and Construction Specifications];

“Housekeeping and Waste Management Services” has the meaning set out in Section 5.3 of Schedule 4 [Services Protocols and Specifications];

“Housekeeping Quality Report” has the meaning set out in Section 6.7 of Schedule 4 [Services Protocols and Specifications];

“HST” means the goods and services tax imposed pursuant to Section IX of the *Excise Tax Act* (Canada);

“ICU” means the functional component described in Section 3.0 (Intensive Care Unit) of the Clinical Specification;

“Income Tax” means any tax imposed on the income of a Person by any Canadian (whether federal, provincial or otherwise) Governmental Authority;

“Indemnifier” has the meaning set out in Section 9.2 (Conduct of Third Person Claims);

“Independent Certifier” has the meaning set out in Section 3.1 of Schedule 2 [Design and Construction Protocols];

“Index Linked”, with respect to an amount at any time, means that the amount is adjusted as at each April 1st commencing April 1, 2011 by:

- (a) multiplying it by the Inflation Index as at the immediately preceding January; and
- (b) dividing it by the Inflation Index as at the Base Date;

“Indicative Design” has the meaning set out in Section 2.8.1 of Schedule 3 [Design and Construction Specifications];

“Indirect Losses” means loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity, exemplary or punitive damages or any consequential loss or indirect loss of any nature, (but does not include any losses (including loss of revenue or loss of profit) of Project Co) under, or in connection with, this Agreement or of any Project Contractor under any Project Contract or Sub-Contractor under any Sub-Contract (except to the extent any such losses arose from a source other than the Project) claimed, suffered or allegedly suffered by:

- (a) in the case of Project Co, Project Co or any Project Co Person (other than a Person who is a Project Co Person solely by virtue of being an invitee of Project Co or any Project Co Person); or

- (b) in the case of the Authority, the Authority or any Authority Person (other than a Person who is an Authority Person solely by virtue of being an invitee of the Authority or any of Authority Persons) or an Authority Indemnified Person;

"Inflation Index" means the Consumer Price Index, as published by the Bank of Canada or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably or failing agreement as determined by the Dispute Resolution Procedure;

"Initial Design and Construction Proposal" has the meaning set out in Appendix 2G [Proposal Extracts (Design and Construction)];

"Initiating Party" has the meaning set out in Section 2.6(b)(2) of Schedule 13 [Dispute Resolution Procedure];

"Innovation Proposal" has the meaning set out in Section 4.1 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

"Input Tax Recoverability Change in Law" means a Change in Law, other than a Discriminatory Change in Tax Law, which results in Additional Irrecoverable Tax or Additional Recoverable Tax.

"Installation" has the meaning set out in Appendix 2E [Equipment and Furniture];

"Insurance Proceeds" means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained under this Agreement other than:

- (a) any policy of insurance maintained by the Authority solely for the benefit of the Authority;
- (b) for the purposes of Sections 6.7, 6.10 and 6.11, insurance proceeds received by Project Co or the Senior Lenders from:
 - (i) the delay in start-up insurance described in Section 2.2(f) of Schedule 5 [Insurance Requirements]; or
 - (ii) the business interruption insurance described in Section 3.4 of Schedule 5 [Insurance Requirements];

"Insurance Receivables" means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained under this Agreement other than:

- (a) any policy of insurance maintained by the Authority solely for the benefit of the Authority;
- (b) for the purposes of Sections 6.7, 6.10 and 6.11, insurance proceeds received by Project Co or the Senior Lenders from:
 - (i) the delay in start-up insurance described in Section 2.2(f) of Schedule 5 [Insurance Requirements]; or

- (ii) the business interruption insurance described in Section 3.4 of Schedule 5 [Insurance Requirements];

“Insurance Trust Account” has the meaning given in the Insurance Trust Agreement;

“Insurance Trust Agreement” means the insurance trust agreement dated December 15, 2010 among Project Co, the Authority, the Agent (as defined in the Senior Financing Agreements) and the Insurance Trustee;

“Insurance Trustee” means Computershare Trust Company of Canada;

“Insuring Party” has the meaning set out in Section 5.11 of Schedule 5 [Insurance Requirements];

“Intellectual Property” means any or all of the following and all rights, arising out of or associated therewith:

- (a) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) industrial designs and any registrations and applications therefor throughout the world;
- (e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
- (f) data bases and data collections and all rights therein throughout the world;
- (g) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world;

“Intended Uses” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“ITS Inc.” means FED (ITS) SMH Inc.;

“ITS GP Inc.” means FED (ITS) SMH General Partner Inc.;

"ITS LP" means FED (ITS) SMH Limited Partnership;

"Joint Technical Review" has the meaning set out in Section 2.3(a) of Schedule 4 [Services Protocols and Specifications];

"Junior Debt" means indebtedness issued by Project Co to any of its Partners or Affiliates of Partners which ranks subordinate in all respects to the Senior Debt, excluding:

- (a) all amounts not actually paid to Project Co by cash advance, rights entitling Project Co to a cash advance, or other consideration;
- (b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Project Co, other than to any Partner or any Affiliate of a Partner; and
- (c) capitalized interest, and interest on overdue interest;

"Key Individuals" has the meaning set out in Section 2.8 (Key Individuals);

"Lab" means the functional component described in Section 7.0 (Laboratory Services) of the Clinical Specification;

"Lands" has the meaning set out in Schedule 7 [Lands];

"Laws" means all laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time, including, for greater certainty, those related to the issuance of Permits, and any building codes;

"LEED Gold Certification" has the meaning set out in Schedule 2 [Design and Construction Protocols];

"LEED Rating System" has the meaning set out in Schedule 2 [Design and Construction Protocols];

"Lender Endorsements" has the meaning set out in Schedule 5 [Insurance Requirements];

"Lenders' Remedies Agreement" means the agreement between the Authority, the Senior Lenders and Project Co in the form set out in Schedule 10 [Lenders' Remedies Agreement], as amended, supplemented or replaced from time to time in accordance with this Agreement;

"Lenders' Technical Advisor" has the meaning set out in Appendix 8B [Construction Period Payments];

"Liability Payment" has the meaning set out in Section 9.3 (General Obligation to Pursue Third Person Recovery);

"Licence" has the meaning set out in Section 2.1(a) of Schedule 7 [Lands];

"Life Cycle Costs" means all costs incurred to satisfy the Life Cycle Requirements;

"Life Cycle Component" means each component of plant, equipment or other items to be supplied, installed, constructed and commissioned as part of the Facility as described in the Life Cycle Report and, for greater certainty, does not include improvements, furniture and equipment installed by a tenant of the Facility;

"Life Cycle Payment" has the meaning set out in Section 2.1(b) of Schedule 8 [Payments];

"Life Cycle Plan" has the meaning set out in Section 4.5 of Schedule 4 [Services Protocols and Specifications];

"Life Cycle Report" has the meaning set out in Section 4.1(a) of Schedule 4 [Services Protocols and Specifications];

"Life Cycle Requirements" means the replacement and refurbishment of all Life Cycle Components by Project Co as contemplated in this Agreement;

"Linked Unit" has the meaning set out in Schedule 8 [Payments];

"Liquid Market" has the meaning set out in Schedule 9 [Compensation on Termination];

"Longstop Date" means February 28, 2015, as adjusted in accordance with this Agreement;

"Long Stop Return Date" has the meaning set out in Section 4.10 of Schedule 8 [Payments];

"Low Service Failure" has the meaning set out in Schedule 8 [Payments];

"Maintained Elements" has the meaning set out in Appendix 4C [Plant Services];

"Maintained Equipment" has the meaning set out in Appendix 4C [Plant Services];

"Maintenance" has the meaning set out in Appendix 4C [Plant Services];

"Maintenance Access Times" has the meaning set out in Appendix 4C [Plant Services];

"Maintenance Services" has the meaning set out in Appendix 4C [Plant Services];

"Market Tested Services" has the meaning set out in Appendix 4G [Market Testing Procedure];

"Market Tested Services Costs" has the meaning set out in Schedule 8 [Payments];

"Market Testing" has the meaning set out in Appendix 4G [Market Testing Procedure];

"Market Testing Dates" has the meaning set out in Appendix 4G [Market Testing Procedure];

"Market Testing Meetings" has the meaning set out in Section 3.1 of Appendix 4G [Market Testing Procedure];

“Market Testing Proposal” has the meaning set out in Section 3.5(e) of Appendix 4G [Market Testing Procedure];

“Material Contract Party” means a party to a Material Contract, other than Project Co;

“Material Project Contractor Collateral Agreement” means the agreement to be entered into between the Authority, a Material Contract Party and Project Co in the form set out in Schedule 11 [Material Project Contractor Collateral Agreement], as amended, supplemented or replaced from time to time in accordance with this Agreement;

“Material Contracts” means:

- (a) the Project Contracts; and
- (b) any agreement for products, services or management to Project Co between Project Co and a current or former Affiliate of Project Co or a current or former Partner of Project Co;

“Medium Service Failure” has the meaning set out in Schedule 8 [Payments];

“Medical Contamination” means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and this Agreement cannot substantially prevent or cannot substantially remove with the result that:

- (a) it is unsafe to admit patients or staff to the relevant area or to use the area for the purpose for which it is intended; and
- (b) the area cannot be made safe for the admission of patients or staff;

“Minor Works” has the meaning set out in Schedule 6 [Changes, Minor works and Innovation Proposals];

“Minor Works Rates” has the meaning set out in Section 3.1(a) of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Miscellaneous Maintenance” has the meaning set out in Section 3.10(a) of Appendix 4C [Plant Services];

“Monitoring Period” has the meaning set out in Appendix 2D [Energy];

“NC” has the meaning set out in Appendix 3D [Sound Transmission Ratings];

“Net Change Value” has the meaning set out in Section 2.9(a) of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Net Present Value” means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

“New Project Agreement” means an agreement on substantially the same terms and conditions as this Agreement (including any agreements entered into pursuant to this Agreement as at the Termination Date) but with the following amendments:

- (a) if this Agreement is terminated prior to the Service Commencement Date, the extension of the Target Service Commencement Date and the Longstop Date by such reasonable period as is agreed by the Authority and the New Project Co to meet such extended Target Service Commencement Date and Longstop Date;
- (b) any accrued Deductions pursuant to Schedule 8 [Payments] will be cancelled;
- (c) the term of such agreement will be equal in length to the term from the Termination Date until the date on which the Operating Period would otherwise have expired;
- (d) the Authority may not terminate such agreement for reasons which arose prior to the Termination Date so long as the New Project Co is using all reasonable efforts to remedy any breach of this Agreement that arose prior to the Termination Date and which is capable of being remedied; and
- (e) any other amendments as may be specified by the Authority that do not adversely affect any compensation which would otherwise be payable to Project Co pursuant to Schedule 9 [Compensation on Termination];

“New Project Co” means the Person who has entered into or who will enter into the New Project Agreement with the Authority;

“New Service Provider Start Date” has the meaning set out in Schedule 8 [Payments];

“New Service Provider Transition Period” has the meaning set out in Section 3.15 of Schedule 8 [Payments];

“NICU” means the functional component described in Section 4.0 (Neonatal Intensive Care Unit) of the Clinical Specification;

“Nominal” means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecast inflation;

“Non-Insuring Party” has the meaning set out in Section 5.11 of Schedule 5 [Insurance Requirements];

“North Building” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“North Building Link” has the meaning set out in Section 4.3.2.3 of Schedule 3 [Design and Construction Specifications];

“Notice of Intention to Arbitrate” has the meaning set out in Section 2.6(a) of Schedule 13 [Dispute Resolution Procedure];

“Notice of Objection to Arbitration” has the meaning set out in Section 2.6(b) of Schedule 13 [Dispute Resolution Procedure];

“Notifying Party” has the meaning set out in Section 5.12 of Schedule 5 [Insurance Requirements];

“NU” means the functional component described in Section 2.0 (Medical/Surgical Inpatient Care – Neurology Unit) of the Clinical Specification;

“Nurse Call Proposal” has the meaning set out in Section 7.8.10.1(1) of Schedule 3 [Design and Construction Specifications];

“Operating Period” means the period between the Service Commencement Date and the Termination Date;

“Operating Period Joint Committee” has the meaning set out in Section 2.2(a) of Schedule 4 [Services Protocols and Specifications];

“Operating Period Representative” has the meaning set out in Section 2.1 of Schedule 4 [Services Protocols and Specifications];

“Outbreak Cleaning” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“Outbreak Cleaning Notice” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“Outputs Summary Sheet” means the sheet labeled “Model Summary” in the Financial Model;

“Partners” means ITS Inc. and ITS LP;

“Partner Loan” means any funds contributed to Project Co by a Partner or an Affiliate of a Partner in relation to the Project;

“Paying Party” has the meaning set out in Section 9.3 (General Obligation to Pursue Third Person Recovery);

“Payment Adjustment Report” has the meaning set out in Section 7.1(f)(2) of Schedule 8 [Payments];

“Payment Period” has the meaning set out in Schedule 8 [Payments];

“Pediatric Pharmacy” means the functional component described in Section 9.0 (Pediatric Pharmacy) of the Clinical Specification;

“Performance Indicators” means the performance indicators identified as such in Schedule 4 [Services Protocols and Specifications];

“Performance Monitoring Program” has the meaning set out in Section 6.2 of Schedule 4 [Services Protocols and Specifications];

“Performance Monitoring Report” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Permanent Repair” has the meaning set out in Schedule 8 [Payments];

“Permanent Repair Deadline” has the meaning set out in Section 3.11(a)(4) of Schedule 8 [Payments];

“Permits” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements, zoning and by-law amendments and variances, and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Project in accordance with this Agreement;

“Permitted Debt” means:

- (a) trade or other similar indebtedness incurred in the ordinary course of business (unless being contested in good faith and with appropriate proceedings with an adequate reserve therefor in accordance with GAAP having been placed on the Project Co's books and records);
- (b) Taxes and governmental charges, salaries, related employee payments and trade payables;
- (c) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Permit, Project Contract or this Agreement; and
- (d) Debt incurred by way of Partner Loans,

but does not include any Senior Debt;

“Persistent Breach” means a breach or series of breaches by Project Co of any term, covenant or undertaking to the Authority (other than a breach for which Deduction could be made) which, due to the fact that such breach has:

- (a) continued for 60 days or more after notice thereof from the Authority to Project Co; or
- (b) occurred 3 or more times in the previous 12 months,

demonstrates either a persistent inability, or a persistent unwillingness, to comply with its obligations under this Agreement;

“Person” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Governmental Authority;

“Personal Information” means ‘personal information’ as defined in the *Freedom of Information and Protection of Privacy Act*, (British Columbia), which is collected, acquired, obtained by Project Co or the Authority in relation to or in the course of providing the Design, the Construction or the Services under this Agreement, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual, or as otherwise defined in the *Freedom of Information and Protection of Privacy Act*, (British Columbia);

“Planned Refinancing” means a Refinancing that is identified as a Planned Refinancing in Schedule 19 [Planned Refinancing] but only to the extent and amount of a Planned Refinancing Gain for that Refinancing;

“Planned Periodic Cleaning” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“Planned Refinancing Gain” means the extent and amount that a Refinancing Gain arising from a Planned Refinancing was fully taken into account and set out in the calculation of the Service Payments or other payments hereunder and expressly set out in Schedule 19 [Planned Refinancing] as of the Effective Date;

“Plans” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Plant Services” has the meaning set out in Section 5.1 of Schedule 4 [Services Protocols and Specifications];

“Preliminary Change Instruction” has the meaning set out in Section 2.3 of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Preliminary Estimate” has the meaning set out in Section 2.5(b)(1) of Schedule 6 [Changes, Minor Works and Innovation Proposals];

“Preferred Service Tenderer” has the meaning set out in Section 3.9 of Appendix 4G [Market Testing Procedure];

“Pre-Refinancing Equity IRR” means the Equity IRR calculated immediately prior to the Refinancing but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing;

“Prime Rate” means the annual rate of interest announced by Canadian Imperial Bank of Commerce (or its successor), or any other Canadian chartered bank agreed to by the parties, from time to time as its “prime” rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

“Principal Insured Risk” means a risk that would be insured against by policies for the insurance referred to in any of Sections 2 and 3 of Schedule 5 [Insurance Requirements];

“Procurement” has the meaning set out in Appendix 2E [Equipment and Furniture];

“Project” means the design, construction, financing, testing, commissioning, maintenance and life cycle rehabilitation of the Facility and all other works and ancillary services in accordance with this Agreement;

“Project Co Event of Default” has the meaning set out in Section 12.1 (Project Co Events of Default);

“Project Co Hazardous Substances” means those Hazardous Substances for which Project Co is responsible pursuant to Schedule 7 [Lands];

“Project Co Insolvency Event” means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of Project Co; or
- (b) any proceedings with respect to Project Co being commenced under the *Companies’ Creditors Arrangement Act* (Canada) and if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days; or
- (c) Project Co making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against Project Co under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction and, if proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days; or
- (d) Project Co ceasing to carry on business;

“Project Co Material Breach” means:

- (a) a failure by Project Co to pay any amount due and owing to the Authority under this Agreement on the due date (which amount is not being disputed in good faith) and Project Co has not remedied such failure to pay within 10 Business Days following notice from the Authority;
- (b) a failure by Project Co to:

- (1) maintain the policies of insurance required to be maintained by Project Co under this Agreement;
 - (2) maintain such policies on the terms required under this Agreement (including a failure to comply with its obligation under Schedule 5 [Insurance Requirements] to name the Authority as an insured party); or
 - (3) provide evidence to the Authority as required by the terms of this Agreement that such policies have been taken out, maintained, paid for and renewed in accordance with the terms of this Agreement;
- (c) a Persistent Breach;
- (d) except as provided for in (a) through (c) above, a breach, or series of breaches, by Project Co of any agreement, covenant or undertaking made to the Authority (other than a breach for which a Deduction could be made), or any representation or warranty made by Project Co to the Authority in this Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made, the consequence of which is:
- (1) a risk to the safety of the public;
 - (2) a risk of material liability of the Authority to third Persons;
 - (3) an adverse effect on the performance of the Design, the Construction or the Services and as a result thereof that the Authority is reasonably likely to be materially deprived of the benefit of this Agreement; or
 - (4) any material provision of this Agreement being unenforceable against Project Co;
or
- (e) a breach by Project Co of Section 5 (Financing of the Project), other than a breach described in Section 12.1(i); or
- (f) any other fact or circumstance designated as a “Project Co Material Breach” under this Agreement, including those specified in Sections 9.4 and 10.3 of Schedule 2 [Design and Construction Protocols];

“Project Co Operating CGL Policy” has the meaning set out in Section 3.1 of Schedule 5 [Insurance Requirements];

“Project Co Operating Property Policy” has the meaning set out in Section 3.2 of Schedule 5 [Insurance Requirements];

“Project Co Person” means:

- (a) any director, officer, employee or agent of Project Co in each case acting as such;

- (b) any Project Contractor, any Sub-Contractor and any representative, advisor (including any legal and financial advisor) or contractor of Project Co, in any such Person's capacity as a provider of services, work or materials, directly or indirectly to Project Co in connection with the Project; or
- (c) any invitee of Project Co or any of the Project Co Persons referred to in (a) or (b) above who enters upon the Lands;

"Project Co Procured Equipment" has the meaning set out in Section 3.1 of Appendix 2E [Equipment and Furniture];

"Project Co's Additional Observer" has the meaning set out in Section 2.6 of Schedule 2 [Design and Construction Protocols];

"Project Co's End-Use Equipment" has the meaning set out in Section 7.8.8.1(1) of Schedule 3 [Design and Construction Specifications];

"Project Co's Quality Consultant" has the meaning set out in Section 8.3 of Schedule 2 [Design and Construction Protocols];

"Project Co's Rights" has the meaning set out in Section 8.13 (Equivalent Project Relief);

"Project Contractor" means the Design-Builder or any Service Provider and **"Project Contractors"** means any 2 or more of them;

"Project Contractor Breakage Costs" means the amount payable by Project Co to a Project Contractor under the terms of a Project Contract as a direct result of the termination of such Project Contract as a consequence of the termination of this Agreement but reduced (without duplication) to the extent that:

- (a) Project Co, the Project Contractors and any Sub-Contractors fail to take all reasonable steps to mitigate such amount;
- (b) such amount relates to any agreements or arrangements entered into by Project Co, the Project Contractors or the Sub-Contractors other than in the ordinary course of business and on commercial arm's length terms
- (c) such amount is a Distribution; and
- (d) such amount includes any loss of overhead or profit of the Service Providers or their Sub-Contractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set out in the applicable Project Contract or Sub-Contract);

"Project Contracts" means the Design-Build Agreement and the Services Contract;

"Project Design Objectives" has the meaning set out in Section 3.2.1 of Schedule 3 [Design and Construction Specifications];

“Project Intellectual Property” means the Intellectual Property which is created, brought into existence, acquired, licensed or used by Project Co, any Project Contractor, any Sub-Contractor or any other third party, directly or indirectly, for the purposes of the Design or Construction of the Facility, the maintenance, improvement or testing of the Facility, or otherwise for the purposes of this Agreement but does not include the Financial Model;

“Project Risk Premium” has the meaning set out in Schedule 9 [Compensation on Termination];

“Project Schedule” has the meaning set out in Section 10.1 of Schedule 2 [Design and Construction Protocols];

“Proposal Extracts (Design and Construction)” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Proposal Extracts (Services)” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Prospective Service Tenderers” has the meaning set out in Appendix 4G [Market Testing Procedure];

“Protest Action” means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, including any action taken or threatened to be taken, by any Person or Persons protesting or demonstrating against:

- (a) the carrying out of any part of the Project (including the construction of the Facility); or
- (b) the construction or operation of public health care facilities in general, occurring after the Effective Date,

but excluding any lawful or unlawful strike, lockout, go-slow or labour or other industrial relations dispute or job action;

“Prudent Coverage Amount” has the meaning set out in Section 5.12 of Schedule 5 [Insurance Requirements];

“Public Sector Employees” means Persons employed by an employer designated in the *Health Care Employers Regulation* under the *Public Sector Employees Act* (British Columbia);

“Qualified Insurers” means reputable insurers of good standing in Canada, the United States, the United Kingdom, Europe or Australia having a credit rating of (1) A- or better with AM BEST or (2) the equivalent thereof by any other recognized insurance rating agency;

“Qualifying Bank Transaction” means:

- (a) the disposition by a Senior Lender to a Qualifying Institution of any of its rights or interests in the Senior Financing Agreements;

- (b) the grant by a Senior Lender to a Qualifying Institution of any rights of participation in respect of the Senior Financing Agreements; or
- (c) the disposition or grant by a Senior Lender to a Qualifying Institution of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of Project Co, whether by way of security or otherwise;

“Qualifying Institution” means any of the following, provided it is not a Restricted Person, and provided none of its Affiliates is a Restricted Person for any reason other than by reason of section (d) of the definition of Restricted Person:

- (a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada);
- (b) a Canadian trust company, insurance company, investment company, pension fund or other institution which manages at least \$500 million in securities, including entities wholly owned by any of the foregoing;
- (c) a bank regulated by the Board of Governors of the Federal Reserve System of the United States, a U.S. bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that has or manages at least \$500 million in assets and would be a “qualified institutional buyer” under U.S. securities legislation, including entities wholly owned by any of the foregoing;
- (d) an institution which is recognised or permitted under the law of any member state of the European Economic Area (“EEA”) to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
- (e) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, the “OECD”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company or pension fund and which has or manages at least \$500 million in assets, including entities wholly owned by any such institution; or
- (f) any other institution consented to in writing by the Authority as a “Qualifying Institution”.

“Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing or a Planned Refinancing;

“Qualifying Service Tender” has the meaning set out in Appendix 4G [Market Testing Procedure];

“Quality Assurance Plan” has the meaning set out in Section 8.5 of Schedule 2 [Design and Construction Protocols];

“Quality Assurance Program” has the meaning set out in Section 8.4 of Schedule 2 [Design and Construction Protocols];

“**Quality System**” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“**Reactive Cleaning**” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“**Re-Bidding Costs**” has the meaning set out in Schedule 9 [Compensation on Termination];

“**Re-Bidding Process**” has the meaning set out in Schedule 9 [Compensation on Termination];

“**Re-Bidding Process Monitor**” has the meaning set out in Schedule 9 [Compensation on Termination];

“**Receiving Party**” has the meaning set out in Section 9.3 (General Obligation to Pursue Third Person Recovery);

“**Rectification**” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“**Rectification Period**” for an Event means:

- (a) for an Unavailability Event:
 - (1) 2 hours for a Priority Level 5 Functional Area;
 - (2) 3 hours for a Priority Level 4 Functional Area;
 - (3) 4 hours for a Priority Level 3 Functional Area; and
 - (4) 6 hours for a Priority Level 2 Functional Area or Priority Level 1 Functional Area; and
 - (5) with respect to parking stalls:
 - (A) 1 hour between the hours of 7 a.m. and 9 p.m. on Business Days; and
 - (B) 4 hours at all other times; and
- (b) for a Service Failure:
 - (6) for which a time has been specified as the “Rectification Period” in Schedule 4 [Services Protocols and Specifications], the time so specified;
 - (7) for which “N/A” has been specified as the “Rectification Period” in Schedule 4 [Services Protocols and Specifications], there is no Rectification Period;
 - (8) relating to reports or other documentation required to be delivered by Project Co, 24 hours; and
 - (9) not referred to in (5), (6) or (7) above:
 - (A) 4 hours for a High Service Failure;

- (B) 1 Business Day for a Medium Service Failure; and
- (C) 5 Business Days for a Low Service Failure,

in each case calculated:

- (c) from the time that the Event is reported to the Help Desk; or
- (d) in the case of an Event that has not been Rectified within one or more earlier Rectification Periods, from the end of the immediately preceding Rectification Period;

“Recyclable Waste” has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

“Referee” has the meaning set out in Section 2.4(c) of Schedule 13 [Dispute Resolution Procedure];

“Referee Agreement” has the meaning set out in Section 2.4(c) of Schedule 13 [Dispute Resolution Procedure];

“Referee Notice” has the meaning set out in Section 2.4 of Schedule 13 [Dispute Resolution Procedure];

“Refinancing” means:

- (a) Project Co incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;
- (b) any transaction in which the Authority, with the consent or at the request of agreement of Project Co, grants rights to any Person under an agreement similar to the Lenders’ Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such Person, other than the Lenders’ Remedies Agreement entered into on the Effective Date;
- (c) any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement;
- (d) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;
- (e) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
- (f) any other arrangement put in place by Project Co or another Person which has an effect which is similar to any of (a) through (e) above or which has the effect of limiting Project Co’s ability to carry out any of the actions referred to in (a) through (e) above,

but excluding any financing pursuant to Section 10.2 (Financing of Lump Sum Payment Amounts);

“Refinancing Gain” means an amount equal to the greater of zero and $[(A - B) - C]$, where:

A = the Net Present Value of Distributions (calculated on an after tax basis at the level of Project Co in a manner consistent with the Financial Model) immediately prior to the Refinancing (taking into account all effects (including the costs expenses of the Authority pursuant to Section 5.8) of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing;

B = the Net Present Value Distributions (calculated on an after tax basis at the level of Project Co in a manner consistent with the Financial Model) projected immediately prior to the Refinancing (but taking into account only those effects of the Refinancing that were fully reflected in the Financial Model as of the Effective Date and no other effects (including the costs and expenses of the Authority pursuant to Section 5.8) of the Refinancing, and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made over the remaining term of this Agreement following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR calculated as a single payment to be paid as a Distribution on the date of the Refinancing;

“Reinstatement Plan” has the meaning set out in Section 6.4(c) (Project Co's Obligations – Material Damage or Destruction);

“Reinstatement Works” has the meaning set out in Section 6.4(a) (Project Co's Obligations – Material Damage or Destruction)

“Relevant Assumptions” means the assumptions that the sale of the Units and amounts outstanding under Junior Debt is on the basis that there is no default by the Authority, that the sale is on a going-concern basis, that no restrictions exist on the transfer of the Units but that otherwise the actual state of affairs of Project Co and the Project is taken into account;

“Relevant Change in Law” means a Change in Law (other than a Discriminatory Change in Tax Law):

- (a) which effects either the *Health and Social Services Delivery Improvement Act* (BC) or the *Health Sector Partnership Agreement Act* (BC); or
- (b) which specifically applies to
 - (1) the Project or health care-related projects whose design, construction, financing, maintenance and service provision are procured on a public-private partnership basis similar to that of the Project;
 - (2) Project Co, its Partners or Project Contractors or Persons that have contracted on similar health care-related projects procured and contracted with the Authority

or other statutory or public body on a public-private partnership basis similar to the Project; or

- (3) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar health care-related projects procured and contracted on a public-private partnership basis similar to the Project and not other Persons; or

- (c) which principally affects or principally relates to the provision or operation of hospitals or healthcare premises,

and compliance with which would require a variation (as applicable) in the design, quality, scope, methodology or cost of the Design, the Construction or the Services;

“Relevant Works Change in Law” means a Change in Law (other than a Relevant Change in Law or a Discriminatory Change in Tax Law) which causes Project Co to incur Capital Expenditures to perform works affecting the Facility (being any work of alteration, addition, demolition or extension or variation in the quality or function of the Facility) which is not work which Project Co would otherwise be required to perform under this Agreement;

“Relief Event” means any of the following events or circumstances if and to the extent it interferes adversely with, or causes a failure of, the carrying out of the Design, the Construction or the Services or causes an Unavailability Event:

- (a) fire, explosion, lightning, storm (including snow storm), flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquake or any act of God similar to the foregoing, in each case to the extent it does not constitute a Force Majeure Event;
- (b) during the Construction Period, failure by any utility company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner or any unreasonable interference with the Construction by any such body as a result of maintenance and other work;
- (c) lawful or unlawful strike, lockout, work-to-rule, job action or other labour dispute generally affecting the construction, building maintenance or facilities management industry or a significant sector thereof;
- (d) any delay of more than 3 days in respect or any critical path matter in the Project Schedule caused by compliance by Project Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (e) a Change in Law during the Construction Period;
- (f) unreasonable delay in the payment of any Insurance Receivables;
- (g) accidental loss or damage to the Facility or any roads servicing the Site;

- (h) blockade or embargo to the extent it does not constitute a Force Majeure Event;
- (i) failure or shortage of fuel or transport; and
- (j) any other event which is stated in this Agreement to constitute a Relief Event,

except to the extent that any of such events arise or are contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

“Renovation” means an alteration of the Facility, or an addition, re-construction or demolition of a portion of the Facility, undertaken at any time after the Service Commencement Date other than pursuant to the Life Cycle Requirements;

“Repair” means a repair to the Facility undertaken at any time after the Service Commencement Date except for the completion of Deficiencies and other than pursuant to the Life Cycle Requirements;

“Reporting Error” has the meaning set out in Section 6.5 of Schedule 4 [Services Protocols and Specifications];

“Representative” means, as the case may be, a Design and Construction Representative or an Operating Period Representative;

“Request for Payment Approval” has the meaning set out in Section 3.10 of Appendix 2E [Equipment and Furniture];

“Respond” and **“Response”** has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Responding Party” has the meaning set out in Section 2.6(b)(2) of Schedule 13 [Dispute Resolution Procedure];

“Response Time” has the meaning set out in Schedule 4 [Services Protocols and Specifications];

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in the promotion, support or carrying out of terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to

imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanours) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;

- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to any claim of the Authority or the Province of British Columbia in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made and which (in respect of any such pending claim, if it were to be successful) would, in the Authority's view, in either case, be reasonably likely to materially affect the ability of Project Co to perform its obligations under this Agreement;
- (f) has a material interest in the production of tobacco products; or
- (g) has been convicted of an offence under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)*, or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence under the *Criminal Code (Canada)*;

"Return Date" has the meaning set out in Section 4.3(d) of Schedule 8 [Payments];

"Reviewed Drawings and Specifications" has the meaning set out in Section 5(a) of Appendix 2C [Review Procedure];

"Revised Proposal Drawings" has the meaning set out in Appendix 2G [Proposal Extracts (Design and Construction)];

"RMHC" means the Children's Family House Society of British Columbia, operating as Ronald McDonald House British Columbia;

"Room Data Sheets" means the room data sheets prepared by Project Co pursuant to Section 5.3(d)(7) of Schedule 2 [Design and Construction Protocols] and in accordance with Appendix 2C [Review Procedure];

"Routine Cleaning" has the meaning set out in Appendix 4E [Housekeeping and Waste Management Services];

"RT" means the functional component described in Section 8.0 (Respiratory Therapy Services) of the Clinical Specification;

"Scheduled Maintenance" has the meaning set out in Appendix 4C [Plant Services];

"Senior Debt" means:

- (a) all amounts outstanding, including interest and default interest accrued, from Project Co to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by Project Co for any reason other than a failure by Project Co to pay any amount when due;
- (b) cost of early termination of interest rate or currency hedging arrangements and other breakage costs or make-whole amounts payable by Project Co to the Senior Lenders as a result of a prepayment under the Senior Financing Agreements; and
- (c) all other fees, costs and expenses for which Project Co is responsible under the Senior Financing Agreements;

“Senior Debt Service Amount” means, for any period, the principal and interest payable by Project Co to the Senior Lenders in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements;

“Senior Financing Agreements” means:

- (a) the credit agreement dated December 15, 2010; and
- (b) the security agreements and blocked account agreements entered into pursuant to the credit agreement described in (a),

certified copies of each of which have been delivered by Project Co to the Authority, and as amended from time to time in accordance with the terms of this Agreement;

“Senior Lenders” means lenders to whom Senior Debt is owed;

“Service Commencement” means that all of the following have been achieved in relation to the Facility:

- (a) the Architect has certified that "substantial performance" of the Facility, as defined in the *Builders' Lien Act* (British Columbia), has been achieved;
- (b) an occupancy permit has been issued for the Facility or the City has issued a temporary occupancy permit or other written permission that is sufficient for occupancy of the Facility by the Authority for the Authority Activities;
- (c) Project Co has delivered to the Authority the LEED Project Checklist and written opinion as required by and in accordance with Section 4.8 of Schedule 2 [Design and Construction Protocols]; and
- (d) Project Co has delivered to the Authority a report from the commissioning agent retained by Project Co under Section 12.1 of Schedule 2 [Design and Construction Protocols] confirming completion of all commissioning activities scheduled in the Commissioning Plan to be completed before Service Commencement;

"Service Commencement Date" means the later of:

- (a) the date when all criteria for Service Commencement that have not been waived have been satisfied as certified by the Independent Certifier in accordance with Schedule 2 [Design and Construction Protocols]; and
- (b) the last Target Service Commencement Date;

"Service Commencement Deficiency" has the meaning set out in Section 13.1(b) of Schedule 2 [Design and Construction Protocols];

"Service Failure" has the meaning set out in Schedule 8 [Payments];

"Service Failure Deduction" has the meaning set out in Schedule 8 [Payments];

"Service Payment" has the meaning set out in Schedule 8 [Payments];

"Service Provider" means Honeywell Limited or any assignee or replacement permitted under this Agreement;

"Service Tenderers" has the meaning set out in Appendix 4G [Market Testing Procedure];

"Service Tender Requirements" has the meaning set out in Section 3.1(e) Appendix 4G [Market Testing Procedure];

"Service Tender Validity Period" has the meaning set out in Appendix 4G [Market Testing Procedure];

"Services" means everything other than Design and Construction that Project Co is required to do to satisfy its obligations under this Agreement, including the Plant Services, the Help Desk Services, the Housekeeping and Waste Management Services and the Utilities Management Services;

"Services Change" has the meaning set out in Schedule 6 [Changes, Minor Works and Innovation Proposals];

"Services Contract" means the agreement between Project Co and the Service Provider, a certified copy of which has been delivered by Project Co to the Authority, as amended, supplemented or replaced from time to time in accordance with this Agreement;

"Services Protocols and Specifications" means the provisions of Schedule 4 [Services Protocols and Specifications];

"Setup" has the meaning set out in Appendix 2E [Equipment and Furniture];

"Site" has the meaning set out in Schedule 2 [Design and Construction Protocols];

"Site Weather Monitoring Station" has the meaning set out in Appendix 2D [Energy];

“**SMH**” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“**SMH Campus**” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“**SMH Master Site Planning Concept**” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“**SMH Users**” has the meaning set out in Appendix 4D [Help Desk Services];

“**South Building**” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“**South Building Service Connection Room**” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“**South Building Spine**” has the meaning set out in Section 4.3.2.2 of Schedule 3 [Design and Construction Specifications];

“**Start-up Plan**” has the meaning set out in Section 4.1 of Schedule 4 [Services Protocols and Specifications];

“**STC**” has the meaning set out in Appendix 3D [Sound Transmission Ratings];

“**Sub-Contract**” means any contract entered into by a Project Contractor (except Project Contracts), or a sub-contractor of a Project Contractor of any tier, with one or more Persons in connection with the carrying out of Project Co’s obligations under this Agreement, as amended or replaced from time to time;

“**Sub-Contractor**” means any Person that enters into a Sub-Contract;

“**Sub-Contractor Termination Notice**” has the meaning set out in Section 6.8 of Schedule 4 [Services Protocols and Specifications];

“**Submittals**” has the meaning set out in Section 1 of Appendix 2C [Review Procedure];

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

“**Suitable Substitute Project Co**” has the meaning given to it in the Lenders’ Remedies Agreement;

“**Supervening Event**” means any of a Compensation Event, Relief Event, Excusing Event, Force Majeure Event or Eligible Change in Law Event;

“**Supervening Event Notice**” has the meaning set out in Section 8.2(a) (Procedures Upon the Occurrence of a Supervening Event);

“**Table 8B-1**” has the meaning set out in Appendix 8B [Construction Period Payments];

“Target ED Opening Date” means June 30, 2013, subject only to adjustments for Supervening Events and Changes;

“Target Service Commencement Date” means the date, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Project Co estimates Service Commencement will occur;

“Tax” or **“Taxes”** means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

“Temporary Alternative Accommodation” has the meaning set out in Schedule 8 [Payments];

“Temporary Alternative Accommodation Notice” has the meaning set out in Section 4.1 of Schedule 8 [Payments];

“Temporary Availability Condition” has the meaning set out in Section 3.11(a)(2) of Schedule 8 [Payments];

“Temporary Repair” has the meaning set out in Schedule 8 [Payments];

“Temporary Repair Proposal” has the meaning set out in Section 3.11(a) of Schedule 8 [Payments];

“Term” has the meaning set out in Section 2.1 (Term and Termination);

“Termination Date” means the earlier of the Expiry Date or the date of earlier termination referred to in Section 2.1 (Term and Termination);

“Termination Date Benchmark Canada Bond Yield” has the meaning set out in Schedule 9 [Compensation on Termination];

“Termination Date Discount Rate” has the meaning set out in Schedule 9 [Compensation on Termination];

“Termination Payment” means the amount owing by the Authority to Project Co pursuant to Schedule 9 [Compensation on Termination];

“Termination Payment Date” means the date on which the Authority must make the Termination Payment as provided for in Schedule 9 [Compensation on Termination];

“Test Period” has the meaning set out in Appendix 2D [Energy];

“Threshold Equity IRR” means [REDACTED] being the Equity IRR as set out in the Financial Model;

“Total Time” has the meaning set out in Appendix 4C [Plant Services];

“Total Unavailability” has the meaning set out in Schedule 8 [Payments];

“Transfer Restriction Date” has the meaning set out in Section 16.1(c)(1) (Limitations on Assignment of Project by Project Co);

“Transition” has the meaning set out in Schedule 8 [Payments];

“UBC” means University of British Columbia;

“UBC Clinical Academic Campus” means all of the spaces described in section 10.0 of the Clinical Specification and the UBC Videoconference Room Specifications;

“UBC Videoconference Rooms” has the meaning set out in Section 1.1(a) of Appendix 3B [UBC Videoconference Room Specifications];

“UBC Person” means:

- (a) any director, officer, employee, student or agent of UBC engaged or present at the Facility in connection with the Project;
- (b) any representative, advisor (including any legal and financial advisor) of UBC or subcontractor (of any tier) of UBC in any such Person’s capacity as a provider of services directly or indirectly to UBC in connection with the Project, other than Project Co, Project Contractors or Sub-Contractors; or
- (c) any invitee of UBC or any of the UBC Persons referred to in (a) or (b) above who enters upon the Lands in connection with the Project;

“Unavailable” and **“Unavailability”** have the meanings set out in Schedule 8 [Payments];

“Unavailability Deduction” has the meaning set out in Schedule 8 [Payments];

“Unavailability Event” has the meaning set out in Schedule 8 [Payments];

“Undisclosed Environmental Liabilities” means all Hazardous Substances located in, on, below or adjacent to the Lands, other than Project Co Hazardous Substances;

“Uninsurable” means, in relation to a risk:

- (a) insurance as required under this Agreement is not available in respect of the Project with Qualified Insurers; or

- (b) the insurance premium payable or the terms and conditions for insuring such risk at the levels and on the terms required by this Agreement are such that contractors, concessionaires, owners or others having a substantially similar interest in a project such as the Project in Canada are not generally insuring against such risk with Qualified Insurers;

“Uninsurable Risk” has the meaning set out in Section 6.15 (Consequences of Risks Becoming Uninsurable);

“Unit Deduction Amounts” has the meaning set out in Schedule 8 [Payments];

“Units” means units or other equity interests of any class in the capital of Project Co;

“Updated Project Schedule” has the meaning set out in Section 10.2 of Schedule 2 [Design and Construction Protocols];

“User Consultation Group” has the meaning set out in Section 5.3(a) of Schedule 2 [Design and Construction Protocols];

“User Consultation Group Submittal” has the meaning set out in Appendix 2B [User Consultation Process];

“Utility” or **“Utilities”** has the meaning set out in Appendix 4F [Utilities Management];

“Utility Company” has the meaning set out in Appendix 4F [Utilities Management];

“Utility Management Services” has the meaning set out in Section 5.4 of Schedule 4 [Services Protocols and Specifications];

“Valuator” means a firm of chartered accountants as represented by a fully qualified member of the Canadian Institute of Chartered Business Valuators;

“Weather Data” has the meaning set out in Appendix 2D [Energy];

“Work Area A” has the meaning set out in Section 6.9(a)(1) of Schedule 2 [Design and Construction Protocols];

“Work Area B” has the meaning set out in Section 6.9(a)(2) of Schedule 2 [Design and Construction Protocols]; and

“Work Plan” has the meaning set out in Section 6.10(c) of Schedule 2 [Design and Construction Protocols].

2. INTERPRETATION

This Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Agreement otherwise require:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (c) each reference to a Section, Schedule or Appendix is a reference to a Section of, Schedule to or Appendix to a Schedule to this Agreement; each Appendix is uniquely designated by using the number of the Schedule to which the Appendix is attached following by an alphabetical designator in sequence (for example, Appendix 4B [Handback Requirements] means the second Appendix attached to Schedule 4 [Services Protocols and Specifications]). A Schedule includes all of the Appendices attached to that Schedule;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;
- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be;
- (g) words importing the singular include the plural and vice versa;
- (h) words importing a particular gender include all genders;
- (i) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;

- (j) unless the context otherwise requires, each reference to “parties” means the parties to this Agreement and each reference to a “party” means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement;
- (k) all monetary amounts are expressed in Canadian Dollars;
- (l) whenever this Agreement obliges a party (the “Payor”) to pay any amount to the other party (the “Payee”) in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Payee:
 - (1) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis (including when the payment is made to an Affiliate of the Payee), so much of them as are proper and reasonable; and
 - (2) the Payee will, when requested by the Payor, provide supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums;
- (m) the Authority will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the Authority’s Representative) who have responsibilities in connection with the conduct of the Services or the Project;
- (n) without limiting the extent of its actual knowledge, Project Co will for all purposes of this Agreement be deemed to have such knowledge in respect of the Design, the Construction and the Services as is held (or ought reasonably to be held) by those employees or agents of Project Co, or any Project Contractor or Sub-Contractor, who have responsibilities in connection with the carrying out of the Design, the Construction or the Services to which the fact, matter or thing relates or is applicable;
- (o) each requirement for a thing or action to be “in accordance with” or “in compliance with” any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- (p) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (q) when a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Agreement;
- (r) any consent contemplated to be given under this Agreement must be in writing;
- (s) general words are not given a restrictive meaning;

- (1) if they are introduced by the word “other”, by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (t) words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- (u) the expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person’s own benefit, provided that the foregoing will not require the Authority to:
- (1) take any action which is contrary to the public interest, as determined by the Authority in its discretion; or
 - (2) undertake any mitigation measure that might be available arising out of its status as a public body that would not normally be available to a private commercial party;
- (v) the expressions “by Project Co” and “by or through Project Co” and expressions of like import are synonymous and mean by Project Co or by anyone employed by or through Project Co, including Project Co and all contractors, sub-contractors and suppliers of any tier and their respective officers, employees, consultants and agents;
- (w) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied;
- (x) where this Agreement requires the calculation of something that is calculated in the Financial Model, including Net Present Value of Distributions and Equity IRR but not including Payments and Deductions, the calculation will be done in a manner consistent with the calculation methodology in the Financial Model;
- (y) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (z) each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this

Agreement is held to be invalid, unenforceable or illegal, the Parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect; and

- (aa) each release, waiver of liability and indemnity in this Agreement expressed to be given in favour of a party is and will be interpreted as having been given in favour of and may be enforced by that party and, in the case of the Authority, by the Authority Indemnified Persons, and, in the case of Project Co, by Project Co Persons.

3. PRIORITY OF AGREEMENTS AND SCHEDULES

If there is any conflict between:

- (a) the main body of this Agreement and any of the Schedules hereto other than Schedule 11 (Material Project Contractor Collateral Agreement) or Schedule 10 (Lenders' Remedies Agreement), the provisions of the main body of this Agreement will prevail;
- (b) this Agreement and any Material Project Contractor Collateral Agreement or the Lenders' Remedies Agreement, as between the Authority and Project Co the provisions of such Material Project Contractor Collateral Agreement or the Lenders' Remedies Agreement will prevail, and among such agreements, the Lenders' Remedies Agreement will be paramount; and
- (c) Appendix 2G [Proposal Extracts (Design and Construction)] or Appendix 4A [Proposal Extracts (Services)] and any other provision of this Agreement, the other provision of this Agreement will prevail.

4. FINANCIAL MODEL

Except where expressly referred to, the Financial Model and its contents will not be used to interpret, and will not affect the meaning of, this Agreement.