

SCHEDULE 11

MATERIAL PROJECT CONTRACTOR COLLATERAL AGREEMENT

for the Kelowna and Vernon Hospitals Project

**INTERIOR HEALTH AUTHORITY
[MATERIAL PROJECT CONTRACTOR]
[PROJECT CO]**

NTD: This Agreement will be customized for each material Project Contractor, including the Design-Builder and the Service Provider)

Dated: ▼

SCHEDULE 11

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MATERIAL PROJECT CONTRACTOR COLLATERAL AGREEMENT

THIS AGREEMENT is dated as of ▼, 2008.

AMONG:

▼,

(the "**Material Project Contractor**")

AND:

INTERIOR HEALTH AUTHORITY, a regional health board designated under the *Health Authorities Act* (British Columbia)

(the "**Authority** ")

AND:

▼

("Project Co")

WHEREAS:

A. The Authority and Project Co have entered into an agreement dated on or about the Effective Date (the "**Project Agreement**") whereby Project Co has agreed to design, construct, finance and maintain the Facility and to provide the Other Site Services (the "**Project**"), all as more particularly described in the Project Agreement;

B. Project Co and the Material Project Contractor have entered into an agreement dated on or about the Effective Date (the "**Material Contract**") whereby the Material Project Contractor has agreed to carry out [**the Design and Construction/the Services**]; and

C. It is a condition of the Material Contract that the Material Project Contractor enter into this Agreement with the Authority and Project Co.

NOW THEREFORE in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meaning given to such terms in the Project Agreement, and:

"Material Contract" has the meaning set out in Recital B;

"Novation Agreement" has the meaning set out in Section 4.5(b);

"Novation Effective Date" means the effective date of the Novation Agreement;

"Parties" means the Authority, Project Co and the Material Project Contractor;

"Project" has the meaning set out in Recital A;

"Project Agreement" has the meaning set out in Recital A;

"Proposed Novation Date" has the meaning set out in Section 4.1;

"Proposed Novation Notice" has the meaning set out in Section 4.1;

"Proposed Step-in Date" has the meaning set out in Section 3.1;

"Proposed Substitute" has the meaning set out in Section 4.1;

"Step-in Date" means the date the Authority delivers the Step-in Undertaking;

"Step-in Notice" has the meaning set out in Section 3.1;

"Step-in Period" means the period commencing on the Step-in Date and ending on the earliest of:

- (a) subject to Section 4.8, the date of the first anniversary of the Step-in Date;
- (b) the Step-out Date;
- (c) the Novation Effective Date; and
- (d) the termination date of the Material Contract as permitted under Section 3.8.

"Step-in Undertaking" has the meaning set out in Section 3.5;

"Step-out Date" has the meaning set out in Section 3.9; and

"Termination Notice" has the meaning set out in Section 2.1.

1.2 Construction and Interpretation

This Agreement will be interpreted according to the following provisions, save to the extent that 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 in this Agreement to “**Section**” is to a section of this Agreement;
- (d) each reference to an agreement, document, standard, principle or other instrument include (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 include 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) the words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively;
- (m) any consent contemplated to be given under this Agreement must be in writing;
- (n) 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;
- (o) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied;
- (p) 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; and
- (q) 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.

1.3 Governing Law

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

1.4 Attornment

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

2. TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Termination Notice

The Material Project Contractor will not terminate the Material Contract without first giving the Authority at least 25 Business Days' notice specifying the grounds for such termination (the "**Termination Notice**").

2.2 Survival of Material Contract

Notwithstanding any provision of the Material Contract to the contrary, on termination of the Project Agreement by the Authority, the parties agree that the Material Contract will not come to an end except in accordance with the terms of this Agreement.

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

Subject to Section 3.2, if the Authority has terminated the Project Agreement in accordance with its terms or if the Authority has received a Termination Notice, the Authority may give notice to the Material Project Contractor (a "**Step-in Notice**") of the intention of the Authority to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such Proposed Step-in Date is:

- (a) no later than 10 Business Days after termination of the Project Agreement if the Project Agreement was terminated by the Authority; and
- (b) no later than 10 Business Days after delivery of the Termination Notice to the Authority.

3.2 Senior Financing Agreement

The Authority will not issue a Step-In Notice at any time that the Senior Lenders are validly exercising under any Senior Financing Agreement any step-in rights with respect to the Material Contract and the running of all notice periods and timelines set out in Section 3.1 will be suspended until such time as the Senior Lenders are no longer exercising, or are no longer permitted to exercise, such rights under any Senior Financing Agreement.

3.3 Notice of Obligations and Step-In Undertaking

Not less than five Business Days prior to the Proposed Step-in Date, the Material Project Contractor will give notice to the Authority of any sums which are due and payable but unpaid by Project Co and of any other material obligations or liabilities, which should have been performed or discharged by Project Co under the Material Contract, in each case, as at the date of the Step-in Notice.

3.4 Update of Obligations

Not less than two Business Days prior to the Proposed Step-in Date, the Material Project Contractor will give notice to the Authority of any change in such sums, obligations or liabilities referred to in Section 3.3.

3.5 Delivery of Step-In Undertaking

On the Proposed Step-in Date the Authority may deliver to the Material Project Contractor a written undertaking to the Material Project Contractor (the "**Step-in Undertaking**") undertaking to the Material Project Contractor to:

- (a) pay or procure the payment to the Material Project Contractor, within 15 Business Days of demand by the Material Project Contractor, of any sum due and payable or accruing due and payable but unpaid by Project Co to the Material Project Contractor under the Material Contract before the Step-in Date provided such amounts have been notified by the Material Project Contractor to the Authority in accordance with Sections 3.3 and 3.4;
- (b) perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Project Co under the Material Contract which will have fallen due for performance or discharge before the Step-in Date and which have been notified

by the Material Project Contractor to the Authority in accordance with Sections 3.3 and 3.4;

- (c) pay or procure the payment of any sum due and payable by Project Co under the Material Contract as a result of any act or omission occurring during the Step-in Period which arise from any act or omission occurring after the Step-in Date; and
- (d) perform or discharge or procure the performance or discharge of any obligations of Project Co under the Material Contract as a result of any act or omission occurring during the Step-in Period which arise from any act or omission occurring after the Step-in Date.

3.6 Limits on Authority Liability on Step-In

The Authority will not be required to assume any liability under a Step-in Undertaking for any outstanding obligations or liabilities of Project Co to the Material Project Contractor which:

- (a) existed as at the Step-In Date; and
- (b) are not notified to the Authority pursuant to Sections 3.3 and 3.4.

3.7 Non-Delivery of the Step-In Undertaking

If the Authority does not deliver the Step-in Undertaking on or before the Proposed Step-in Date, the Step-in Notice will be deemed to have been withdrawn and the rights and obligations of the parties will be construed as if the Step-in Notice had not been given.

3.8 Effect of Step-In Undertaking

During any Step-in Period, the Material Project Contractor will continue to observe and perform its duties and obligations under the Material Contract and will only be entitled to exercise its rights of termination under the Material Contract:

- (a) by reference to a default under the Material Contract arising during the Step-in Period provided that no event of default by Project Co under the Project Agreement will entitle the Material Project Contractor to exercise such rights of termination during the Step-in Period;
- (b) if the Authority fails to pay when due any amount owed to the Material Project Contractor or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking; or
- (c) if such rights of termination arise in circumstances where there is no default under the Material Contract by the Authority or the Material Project Contractor.

3.9 Step-Out

The Authority may, at any time, terminate the Step-in Period by giving the Material Project Contractor at least 30 days' notice specifying the date on which the Step-in Period will terminate (the "**Step-out Date**").

3.10 Effect of Step-Out

The Authority will be released from the Step-in Undertaking on the expiry of the Step-in Period, provided that the Authority has performed and discharged in full or procured the performance and discharge in full of any of the Authority's obligations under the Step-in Undertaking arising on or before the Step-out Date.

4. NOVATION

4.1 Proposed Substitute

At any time that the Authority is entitled to give a Step-in Notice pursuant to Section 3.1 or at any time during the Step-in Period, the Authority may give notice (a "**Proposed Novation Notice**") to the Material Project Contractor that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, assignment, transfer or other disposal, the rights and obligations of Project Co under the Material Contract and specifying a date (the "**Proposed Novation Date**"):

- (a) falling not later than 15 Business Days after termination of the Project Agreement if the Project Agreement has been terminated by the Authority;
- (b) falling not later than the expiry of the Termination Notice if a Proposed Novation Notice was given by the Authority at a time when it is entitled to give a Step-in Notice pursuant to Section 3.1; and
- (c) falling not later than 30 days after the date of the Proposed Novation Notice, if a Proposed Novation Notice was given during a Step-in Period and, in any event, not later than the Step-Out Date.

Subject to Section 3, the Material Project Contractor will not be entitled to terminate the Material Contract during the notice period specified in a Proposed Novation Notice.

4.2 Consent to Novation

If the Proposed Novation Notice specifies the Authority as the Proposed Substitute, the Material Project Contractor's consent to the novation will be deemed to have been given. If the Proposed Substitute is not the Authority, a novation in accordance with a Proposed Novation Notice will only be effective if the Material Project Contractor consents to that novation in writing in accordance with Section 4.3 and the Authority will (as soon as practicable) supply the Material Project Contractor with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- (c) the names of the directors and the secretary of the Proposed Substitute;
- (d) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and

- (e) details of the technical competence of the Proposed Substitute and the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Material Contract.

4.3 Grant of Consent

The Material Project Contractor may withhold or delay consent to a novation only if the Proposed Substitute is not the Authority and the Authority has failed to show to the Material Project Contractor's satisfaction (acting reasonably) that:

- (a) the Proposed Substitute has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Material Contract; and
- (b) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are sufficient to perform the obligations of Project Co under the Material Contract.

Within five Business Days of the receipt of a Proposed Novation Notice and all information required under Section 4.2, the Material Project Contractor will notify the Authority in writing that it has consented to the novation and if the Material Project Contractor has not consented, an explanation of its reasons to withhold its consent.

4.4 Consent Withheld

If the Material Project Contractor withholds its consent to a Proposed Novation Notice, the Authority may give one or more subsequent Proposed Novation Notices, pursuant to the provisions of Section 4.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which the Authority reasonably believes would fulfil the requirements of Sections 4.3, provided that only one Proposed Novation Notice may be outstanding at any one time, and provided further that:

- (a) if a Step-in-Notice has not been issued, any revised Proposed Novation Date will be a date falling no later than the date specified in Section 4.1(a) or 4.1(b), as the case may be; and
- (b) if the Proposed Novation Notice was served during the Step-in Period, any revised Proposed Novation Date will be a date falling not later than 30 days after the date of the revised Proposed Novation Notice and, in any event, not later than the Step-Out Date.

4.5 Implementation of Novation

If the Material Project Contractor consents or is deemed to have consented to a novation pursuant to a Proposed Novation Notice, then on the Proposed Novation Date:

- (a) the Proposed Substitute will become a party to the Material Contract in place of Project Co and, thereafter, will be treated as if it was and had always been named as a party to the Material Contract in place of Project Co; and

- (b) the Material Project Contractor, Project Co and the Proposed Substitute will enter into a novation agreement (the "**Novation Agreement**") and any other requisite agreements, in form and substance satisfactory to the Material Project Contractor, acting reasonably, pursuant to which:
 - (1) the Proposed Substitute will be granted all of the rights of Project Co under the Material Contract; and
 - (2) the Proposed Substitute will assume all of the obligations and liabilities of Project Co under the Material Contract.

4.6 Effect of Novation

On and after the Novation Effective Date:

- (a) the Material Project Contractor will owe its obligations under the Material Contract whether arising before, on or after such date, to the Proposed Substitute; and
- (b) if the Authority has entered into a Step-in Undertaking, the Authority will be released from the Step-in Undertaking, provided that all obligations of the Authority under the Step-in Undertaking which have accrued up to the Novation Effective Date have been fully and unconditionally discharged.

The Authority and the Material Project Contractor will use reasonable efforts to agree to any amendments to the Material Contract reasonably necessary to reflect the fact that the Project Agreement may have terminated at the time of the Novation Effective Date.

4.7 Termination After Novation

After the Novation Effective Date the Material Project Contractor will only be entitled to exercise its rights of termination under the Material Contract:

- (a) in respect of any Project Co Event of Default arising after that date in accordance with the Material Contract; or
- (b) if the Proposed Substitute does not discharge the obligations and liabilities assumed by it under Section 4.6 which relate to matters arising prior to the end of the Step-in Period within 15 Business Days following the Novation Effective Date.

4.8 Extension of Step-In Period

As at the date of the first anniversary of the Step-in Date, if the Step-in Period has not previously ended, and the Authority is in the course of conducting discussions in good faith with a Proposed Substitute, the Step-in Period will be extended and will continue until such date as is proposed by the Authority and agreed by the Material Project Contractor, acting reasonably.

5. RIGHTS AND OBLIGATIONS UNDER THE MATERIAL CONTRACT

5.1 Rights of Termination

If:

- (a) no Step-in Notice or Proposed Novation Notice is given before a Termination Notice expires or within 15 Business Days after termination of the Project Agreement by the Authority;
- (b) a Step-in Undertaking is not issued on the Proposed Step-in Date;
- (c) the Step-in Notice is withdrawn or, pursuant to Section 3.7, deemed to have been withdrawn;
- (d) the Step-in Period ends before the occurrence of the Novation Effective Date;
- (e) in the absence of a Step-in Undertaking, the Material Project Contractor reasonably withholds its consent to a novation pursuant to a Proposed Novation Notice, in accordance with Section 4.3, and does not subsequently grant consent to a novation in accordance with Section 4.4 on or before the Proposed Novation Date;
- (f) in the absence of a Step-in Undertaking, the obligations of the Proposed Substitute set out in Section 4.5 are not performed on the Proposed Novation Date;
- (g) the Material Project Contractor is entitled to terminate the Material Contract under Section 3.8 or 4.7; or
- (h) the Authority exercises its right to Step-out under Section 3.9, then on the Step-out Date,

the Material Project Contractor may:

- (i) exercise all of its rights under the Material Contract and act upon any and all grounds for termination available to it in relation to the Material Contract whenever occurring; and
- (j) pursue any and all claims and exercise any and all rights and remedies against Project Co.

5.2 Project Co's Obligations to Continue

Until completion of a novation pursuant to Section 4.5, Project Co will continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Material Contract notwithstanding:

- (a) the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking;
- (b) the service of a Proposed Novation Notice; or
- (c) any other provision of this Agreement.

6. REVOCATION OF NOTICES

A Termination Notice and a Step-in Notice may each be revoked (in writing to the recipient) by the party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the parties will be construed as if the relevant notice had not been given.

7. ASSIGNMENT

7.1 Binding on Successors and Assigns

This Agreement will be binding on and will enure to the benefit of the parties and their respective successors and permitted assigns.

7.2 Restriction on Assignment

No party will assign or transfer any part of its respective rights or obligations under this Agreement without the prior consent of the others (such consent not to be unreasonably withheld or delayed), provided that:

- (a) the Authority will be entitled, without the consent of any other party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with the Project Agreement; and
- (b) the Material Project Contractor will assign this Agreement to any party to whom it assigns the Material Contract in accordance with the terms of the Material Contract and the Project Agreement).

8. GENERAL

8.1 Notices

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

if to the Authority:

▼
 Attention: ▼
 Fax No: ▼

if to the Agent:

▼
 Attention: ▼
 Fax No: ▼

if to Project Co:

▼
 Attention: ▼
 Fax No: ▼

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

- (a) if delivered by hand during business hours on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if sent by facsimile transmission during business hours on a Business Day, upon the sender receiving confirmation of the transmission, and if not transmitted during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission.

8.2 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

8.3 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

8.4 No Partnership or Agency

Nothing in this Agreement will be construed as creating a partnership or as constituting the Material Project Contractor as an agent of the Authority. The Material Project Contractor will not hold itself out as having any authority or power to bind the Authority in any way.

8.5 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

8.6 Remedies Cumulative

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or

partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

8.7 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

8.8 Delivery by Fax

Any party may deliver an executed copy of this Agreement by fax but that party will immediately dispatch by delivery in person to the other parties an originally executed copy of this Agreement.

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

[MATERIAL PROJECT CONTRACTOR]

Per: _____
Authorized Signatory

INTERIOR HEALTH AUTHORITY

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

[PROJECT CO]

Per: _____
Authorized Signatory