

SCHEDULE 2
DESIGN AND CONSTRUCTION PROTOCOLS
TABLE OF CONTENTS

1. INTERPRETATION	1
1.1 Definitions	1
2. PARTIES' DESIGN AND CONSTRUCTION REPRESENTATIVES	3
2.1 Appointment of Representatives	3
2.2 Replacement.....	3
2.3 Authority of Representatives	3
2.4 Review Procedure	3
2.5 Authority Not Responsible for Design or Construction	3
2.6 Project Co's Additional Observer	3
2.7 Construction Period Committee.....	4
3. INDEPENDENT CERTIFIER.....	6
3.1 Appointment.....	6
3.2 Appointment and Replacement	6
3.3 Monthly Inspections and Report.....	6
3.4 Payment Certificates	7
3.5 Application for Certificates of ED Opening and Service Commencement	7
3.6 Permitted Access.....	7
3.7 No Responsibility for Design or Construction.....	8
4. PROJECT CO'S RESPONSIBILITIES	8
4.1 Design/Build Responsibility	8
4.2 Standard of Performance for Design and Construction	8
4.3 Defects in Design or Construction	8
4.4 Compliance with Laws.....	9
4.5 Permits for the Design and Construction.....	9
4.6 Helipad Permits	9
4.7 LEED Gold Certification.....	9
4.8 LEED Project Checklist	11
4.9 Energy	11
4.10 Facility Threat and Risk Assessment	11
5. DESIGN.....	11
5.1 Additional Design Considerations	11
5.2 Zoning Approval	12
5.3 Design Process	12
5.4 Design Change.....	14
5.5 Mock-Ups and Prototype Rooms	14
5.6 Ownership of Design	16

6.	CONSTRUCTION.....	16
6.1	Construction of the Facility	16
6.2	Amendments and Changes to the Drawings and Specifications	16
6.3	Skilled Workers.....	16
6.4	Control of the Construction.....	17
6.5	Existing Utilities	17
6.6	Site Investigation	17
6.7	Existing Facilities Report	17
6.8	Geotechnical Report.....	17
6.9	Site Issues	18
6.10	Connections and Integration to Existing Hospital.....	19
6.11	The Authority's Access to Site	20
6.12	Inspection	20
6.13	<i>Builders Lien Act</i> and Builders Liens.....	21
6.14	Safety.....	22
6.15	Protection of Property.....	22
6.16	Pre-Construction Survey and Monitoring	22
6.17	Control of Vibration.....	23
6.18	Infection Control and Control of Dust and Noise.....	23
6.19	Signage.....	24
6.20	Temporary Works	24
6.21	Project Meetings.....	24
6.22	Project Records	24
7.	EQUIPMENT SUPPLY AND INSTALLATION	26
7.1	Design and Construction Requirements.....	26
7.2	Asset Tagging.....	26
7.3	Asset Register	26
8.	QUALITY MANAGEMENT.....	27
8.1	Quality of the Design and Construction.....	27
8.2	Quality System	27
8.3	Project Co's Quality Consultant.....	27
8.4	Quality Assurance Program.....	27
8.5	Quality Assurance Plan	29
8.6	Reporting	30
8.7	Quality Review by the Authority.....	30
9.	WORKERS COMPENSATION	30
9.1	Evidence of WCB Compliance	30
9.2	Indemnity for WCB Non-Compliance	30
9.3	Prime Contractor	30
9.4	Failure to Comply with WCB Requirements.....	31
10.	PROJECT SCHEDULE AND SCHEDULING.....	31
10.1	Initial Project Schedule	31

10.2	Project Schedule Updates	31
10.3	Failure to Update Project Schedule.....	32
10.4	Compliance with Project Schedule.....	32
10.5	Move-In Schedules.....	32
11.	DELAYS AND ACCELERATION	32
11.1	Acceleration to Recover Project Co Delays	32
11.2	Delay Costs	33
11.3	Acceleration to Advance ED Opening or Service Commencement	33
12.	COMMISSIONING.....	33
12.1	Testing and Commissioning	33
12.2	Equipment and Systems Operation and Training.....	34
12.3	Commissioning Plan.....	34
13.	COMPLETION.....	36
13.1	Deficiency List	36
13.2	Advance Notice of Application for ED Opening or Service Commencement.....	36
13.3	Application for Certificate of ED Opening or Service Commencement.....	37
13.4	Correction of Deficiencies.....	38
APPENDIX 2A INDEPENDENT CERTIFIER AGREEMENT		
APPENDIX 2B USER CONSULTATION PROCESS		
APPENDIX 2C REVIEW PROCEDURE		
APPENDIX 2D ENERGY		
APPENDIX 2E EQUIPMENT AND FURNITURE		
APPENDIX 2F INITIAL PROJECT SCHEDULE		
APPENDIX 2G PROPOSAL EXTRACTS (DESIGN AND CONSTRUCTION)		
APPENDIX 2H SITE PLAN		
APPENDIX 2I STANDARD SMH CONTRACTOR RULES		

SCHEDULE 2

DESIGN AND CONSTRUCTION PROTOCOLS

1. INTERPRETATION

1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 of this Agreement:

“**Asset Register**” has the meaning set out in Section 7.3 of this Schedule;

“**CaGBC**” means the Canada Green Building Council;

“**Certificate of ED Opening**” has the meaning set out in Section 13.3(a)(1) of this Schedule;

“**Certificate of Service Commencement**” has the meaning set out in Section 13.3(b)(1) of this Schedule;

“**City**” means the City of Surrey;

“**Commissioning Plan**” has the meaning set out in Section 12.3 of this Schedule;

“**Construction Period Joint Committee**” has the meaning set out in Section 2.7(a) of this Schedule;

“**Deficiency**” means an ED Opening Deficiency or a Service Commencement Deficiency;

“**Deficiency Deadline**” has the meaning set out in Section 13.4;

“**Design and Construction Representative**” has the meaning set out in Section 2.1 of this Schedule;

“**ED Move-in Schedule**” has the meaning set out in Section 10.5(a);

“**ED Opening Deficiency**” has the meaning set out in Section 13.1(a);

“**Existing Facilities Report**” means the report entitled “Surrey Memorial Hospital Redevelopment Project: Existing Facilities Report” dated January 29, 2010;

“**Facility Move-in Schedule**” has the meaning set out in Section 10.5(b);

“**Facility Threat and Risk Assessment**” has the meaning set out in Section 4.10 of this Schedule;

“**Geotechnical Report**” means the report prepared by Levelton Consultants Ltd. dated October 6, 2009;

“**Independent Certifier**” has the meaning set out in Section 3.1 of this Schedule;

“**Intended Uses**” means the uses for the Facility as described in the Design and Construction Specifications;

“**LEED Gold Certification**” means the award of a LEED Gold certification from the CaGBC under the LEED Rating System;

“LEED Rating System” means CaGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System for New Construction & Major Renovations LEED Canada – NC 1.0 (and March 2007 Addendum);

“Project Co’s Additional Observer” has the meaning set out in Section 2.6 of this Schedule;

“Project Co’s Quality Consultant” has the meaning set out in Section 8.3 of this Schedule;

“Project Schedule” has the meaning set out in Section 10.1 of this Schedule;

“Proposal Extracts (Design and Construction)” means the provisions of Appendix 2G [Proposal Extracts (Design and Construction)];

“Quality Assurance Plan” has the meaning set out in Section 8.5 of this Schedule;

“Quality Assurance Program” has the meaning set out in Section 8.4 of this Schedule;

“Quality System” means an organizational structure, procedures, processes and resources necessary to implement a comprehensive, planned and systematic program, designed and implemented by Project Co pursuant to this Agreement, to ensure that the standards of quality control, quality management and quality assurance required by this Agreement are achieved by Project Co in every material aspect of the Design and Construction;

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

“Service Commencement Deficiency” has the meaning set out in Section 13.1(b);

“Site” means the areas identified on Appendix 2H [Site Plan] as “Work Area A” and “Work Area B”;

“SMH” or **“Hospital”** means the existing Surrey Memorial Hospital;

“SMH Campus” means all of the lands upon which SMH is located;

“Submittal” 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];

“Updated Project Schedule” has the meaning set out in Section 10.2 of this Schedule;

“User Consultation Group” has the meaning set out in Section 5.3(a) of this Schedule;

“Work Area A” has the meaning set out in Section 6.9(a)(1);

“Work Area B” has the meaning set out in Section 6.9(a)(2); and

“Work Plan” has the meaning set out in Section 6.10(c).

2. PARTIES' DESIGN AND CONSTRUCTION REPRESENTATIVES

2.1 Appointment of Representatives

Both parties will within 5 Business Days of the Effective Date designate in writing a person (the "**Design and Construction Representative**") to be the party's single point of contact with respect to the Design and the Construction. A party's Design and Construction Representative may or may not be a Key Individual. Except as otherwise set out in this Agreement, all costs or expenses incurred by or with respect to a party's Design and Construction Representative will be for the account of that party.

2.2 Replacement

Subject to Section 2.8 of this Agreement in respect of Key Individuals, a party may at any time and in its own discretion by notice to the other party change the person appointed as the party's Design and Construction Representative. If for any reason a party's Design and Construction Representative is unable or unwilling to continue then the party will immediately appoint a replacement Representative. If at any time a party objects to a Representative of the other party then the other party will give reasonable consideration to replacing the Representative with a person reasonably acceptable to the objecting party.

2.3 Authority of Representatives

A party's Design and Construction Representative will have full authority to act on behalf of and bind the party with respect to Design and Construction under this Agreement, including giving any review, acceptance, approval or confirmations which may be given by the Authority. Notwithstanding the above, a party's Design and Construction Representative will not have the authority to execute or agree to any amendments or to give any waivers of this Agreement.

2.4 Review Procedure

The parties will comply with Appendix 2C [Review Procedure].

2.5 Authority Not Responsible for Design or Construction

The Authority's rights of review, acceptance, approval or confirmation of compliance with respect to any aspect of the Design or the Construction, including pursuant to Appendix 2C [Review Procedure], will be for the Authority's benefit only, and no review, acceptance, approval or confirmation of compliance by the Authority's Design and Construction Representative or other representative of the Authority will in any way relieve Project Co of its obligation for all aspects of the Design and Construction of the Facility except as may be expressly set out in this Agreement.

2.6 Project Co's Additional Observer

If Project Co appoints a representative of the Design-Builder as Project Co's Design and Construction Representative then Project Co may, at its discretion, designate in writing an additional person (the "**Project Co's Additional Observer**") who may participate in the Design and Construction as follows:

- (a) Project Co's Additional Observer will be permitted to participate in, observe and be fully informed on all aspects of the Design and Construction, including:

- (1) accompanying Project Co's Design and Construction Representative to any Design and Construction meeting with the right to speak and be heard at such meeting (including for illustration the meetings described in 6.21 of this Schedule);
 - (2) participating in the inspections and discussions relating to the issuance of the Certificate of ED Opening and Certificate of Service Commencement as described in Section 13.3 of this Schedule; and
 - (3) participating in the inspections to identify Deficiencies as described in Section 13.1 of this Schedule;
- (b) the appointment of Project Co's Additional Observer will not amend or alter the authority of Project Co's Design and Construction Representative as provided by this Agreement;
 - (c) Project Co may, from time to time, give notice to change the person who is Project Co's Additional Observer but at any one time there may not be more than one person who is Project Co's Additional Observer;
 - (d) the Authority will co-operate to facilitate the participation of Project Co's Additional Observer, including copying Project Co's Additional Observer on notices and written communications that it issues to Project Co's Design and Construction Representative and inviting Project Co's Additional Observer to all meetings held between the Authority and Project Co's Design and Construction Representative; and
 - (e) all costs and expenses incurred by or with respect to Project Co's Additional Observer will be for the account of Project Co.

2.7 Construction Period Committee

- (a) By no later than January 17, 2011, the Authority and Project Co will establish, and will maintain until Service Commencement, a joint liaison committee (the "**Construction Period Joint Committee**") consisting of the Design and Construction Representatives and such other members as the parties may agree from time to time.
- (b) The purpose of the Construction Period Joint Committee is to provide a formal forum for the parties to consult and cooperate in all matters relating to the Facility during the Construction Period and any member appointed to the Construction Period Joint Committee will not have any duties or obligations arising out of such appointment independent of such member's duties or obligations to the party making such appointment.
- (c) The Construction Period Joint Committee:
 - (1) will only have the authority as expressly delegated to it by the Authority and Project Co, and both parties will give reasonable consideration to delegating appropriate authority to permit efficient decision making with respect to the Facility;

- (2) may strike, establish terms of reference for, delegate authority and appoint members having the necessary experience and qualifications to, such sub-committees as the Construction Period Joint Committee may determine are necessary from time to time and all such sub-committees will report to the Construction Period Joint Committee;
 - (3) will establish protocols and procedures for undertaking the tasks and responsibilities delegated to it, including a co-operative and consultative process to review all documentation submitted to it in relation to the Design and Construction;
 - (4) may make recommendations to the parties on all matters relating to the Facility, which the parties may accept or reject in their complete discretion; and
 - (5) will have no authority to agree to any amendments or to give any waivers of this Agreement.
- (d) Subject to the provisions of this Agreement, the members of the Construction Period Joint Committee may adopt such procedures and practices for the conduct of the activities of the Construction Period Joint Committee as they consider appropriate from time to time and:
- (1) may invite to any meeting of the Construction Period Joint Committee such other (non-voting) persons as a member may decide; and
 - (2) receive and review a report from any person agreed by the members of the Construction Period Joint Committee.
- (e) The Construction Period Joint Committee will meet at least once each month at a location provided by Project Co at or near the Site (unless otherwise agreed by its members) and from time to time as necessary. If any member of the Construction Period Joint Committee requests an additional meeting, the parties will act reasonably in accommodating this request. Meetings of the Construction Period Joint Committee will be convened on not less than 10 Business Days' notice (which will also identify the agenda items to be discussed at the meeting) provided that in an emergency a meeting may be called at any time on such notice as may be reasonable in the circumstances. The Construction Period Joint Committee will be chaired by a representative of the Authority unless the Authority requires that a representative of Project Co chair the Construction Period Joint Committee.
- (f) The Authority will keep minutes of all recommendations and meetings of the Construction Period Joint Committee and circulate such minutes to Project Co within five Business Days of the making of the recommendation or the holding of the meeting.

3. INDEPENDENT CERTIFIER

3.1 Appointment

The parties will cooperate to jointly appoint a person (or firm of persons) (the “**Independent Certifier**”), who is:

- (a) qualified and experienced with respect to the design and construction of projects in British Columbia similar to the Project, and
- (b) independent from both the Authority and Project Co (and who will be impartial to the parties),

to provide certification services for the benefit of the parties during the Construction Period. The parties will enter into an agreement with the Independent Certifier on the terms generally as set out in Appendix 2A [Independent Certifier Agreement]. The parties confirm that Project Co may also appoint the Independent Certifier to provide certification services in respect of the Design-Build Agreement.

3.2 Appointment and Replacement

If within 20 Business Days of the Effective Date the Independent Certifier has not been appointed, or if for any reason during the Construction Period the Independent Certifier is unable or unwilling to continue to perform the Independent Certifier services or if the Independent Certifier’s appointment has been terminated by the Authority and Project Co, then:

- (a) within 5 Business Days of the date that is 20 Business Days after the Effective Date (or within 5 Business Days of the date of termination of the Independent Certifier’s appointment, if applicable), Project Co will provide the names of 3 candidates acceptable to Project Co for consideration by the Authority;
- (b) within 10 Business Days of receiving the candidate names, the Authority will notify Project Co of the candidates acceptable to the Authority, and the parties will cooperate to enter into a contract with an acceptable candidate generally in the form set out in Appendix 2A [Independent Certifier Agreement]; and
- (c) if none of the candidates are acceptable to the Authority, acting reasonably, or if for any reason an Independent Certifier is not appointed within 40 Business Days of the Effective Date (or within 20 Business Days of the date of termination of the Independent Certifier’s appointment, if applicable), then either party may immediately apply to the British Columbia International Commercial Arbitration Centre for the selection of an Independent Certifier, providing the other party the opportunity to participate in the selection and appointment process.

3.3 Monthly Inspections and Report

The parties will require the Independent Certifier to:

- (a) consult with the Design-Builder and others involved in the Design; and

- (b) conduct inspections of the Construction,

as the Independent Certifier determines is required to be generally satisfied that the Design and Construction are proceeding in accordance with the requirements of this Agreement, and, no later than the 10th day of each month, prepare and deliver to the Authority and Project Co a monthly written report containing a description of:

- (c) the Design and Construction completed in the previous month;
- (d) the progress of the Design and Construction relative to the Updated Project Schedule, with an explanation and analysis of any variances; and
- (e) any elements of the Facility that for any reason vary from the requirements of this Agreement, with particular reference to this Schedule and Schedule 3 [Design and Construction Specifications].

3.4 Payment Certificates

As contemplated in Appendix 8B [Construction Period Payments], the parties will require the Independent Certifier to, promptly after the end of each month in the Construction Period and promptly upon request by Project Co in relation to a payment under Section 2 of Appendix 8B [Construction Period Payments], prepare and deliver to the Authority and Project Co a certificate certifying the Cost to Date.

3.5 Application for Certificates of ED Opening and Service Commencement

The parties will require the Independent Certifier to perform the obligations of the Independent Certifier described in Section 13 of this Schedule.

3.6 Permitted Access

Project Co will give the Independent Certifier access to the Design and Construction work as the Independent Certifier reasonably requests in order to be fully informed as to the progress of the Design and Construction including:

- (a) access to drawings, specifications, schedules, records, and other documents or data relating to the Design and Construction, including such information that is being produced by or in the possession of the Design Builder or others; and
- (b) access to the Site,

and Project Co will:

- (c) permit the Independent Certifier to attend all Design meetings and, during Construction, all Construction meetings except to the extent Project Co and the Authority expressly otherwise agree; and
- (d) keep the Independent Certifier fully informed as to the progress of the Construction, including giving notice in accordance with Good Industry Practice of any part of the work on the Facility before it becomes covered up and unavailable for inspection.

3.7 No Responsibility for Design or Construction

Nothing in this Agreement (including this Schedule) will be interpreted as giving the Independent Certifier any responsibility or authority for any aspect of the Design or the Construction, or as relieving Project Co of its responsibility for the Design and Construction as set out in this Agreement, and neither Project Co nor the Design-Builder nor any Sub-Contractor will be entitled to rely on any review, acceptance, approval or confirmation that the Independent Certifier may give with respect to Design or Construction.

4. PROJECT CO'S RESPONSIBILITIES

4.1 Design/Build Responsibility

Notwithstanding any other provision of this Agreement, Project Co will:

- (a) have complete responsibility for the Design and Construction of the Facility;
- (b) perform and complete the Design and Construction:
 - (1) in accordance with all terms of this Agreement including the terms of this Schedule and the Design and Construction Specifications;
 - (2) so as to provide a new health care facility that at Service Commencement:
 - (A) is complete and operational and fit for the Intended Uses;
 - (B) will permit Project Co to provide the Services in accordance with the requirements of this Agreement; and
 - (C) is fully integrated with other existing or planned buildings or structures at SMH, as described in the Design and Construction Specifications; and
 - (3) to reflect and capture the intent and benefits of the Proposal Extracts (Design and Construction).

Each of the obligations in Sections 4.1(b)(1), 4.1(b)(2) and 4.1(b)(3) of this Schedule are independent obligations, and the fact that Project Co has satisfied one obligation will be no defence to an allegation that it has failed to satisfy another.

4.2 Standard of Performance for Design and Construction

Project Co will, at all times during the Construction Period and in all respects, perform the Design and Construction to the standards as required by Section 2.1 of Schedule 3 [Design and Construction Specifications].

4.3 Defects in Design or Construction

Project Co will, without cost to the Authority, and without limiting Project Co's obligations to perform the Services as set out in this Agreement, including Schedule 4 [Services Protocols and Specifications],

correct any Defect that becomes apparent at any time during the Term, subject to the terms of this Agreement, including any Scheduled Maintenance and the Handback Requirements.

4.4 Compliance with Laws

Project Co will undertake and perform the Design and Construction in accordance with applicable Laws, and so that all elements of the Design and the Construction, including all workmanship, construction equipment and materials, and the supply and installation of Equipment, meet or exceed the requirements of applicable Laws. If there is any conflict or ambiguity between the provisions of applicable Laws, or between a provision of applicable Laws and the Design and Construction Specifications, or between provisions of the Design and Construction Specifications, then the provision of higher quality or higher standard will govern.

4.5 Permits for the Design and Construction

Except as expressly provided otherwise in this Agreement, Project Co will obtain all Permits required for the Design and Construction. Project Co will keep the Authority's Design and Construction Representative fully informed of the details of all discussions and negotiations with Governmental Authorities with respect to all Permits for which it is responsible and, upon request from the Authority's Design and Construction Representative, Project Co will provide to the Authority copies of all documentation and correspondence with a Government Authority relating to such Permits. Project Co will provide reasonable advance notice to the Authority of any meetings with the City or other Governmental Authorities (where practicable) and upon request by the Authority a representative of the Authority may attend any such meetings. Project Co assumes all risk and costs arising in relation to Permits for which Project Co is responsible as described in this Section 4.5, including delays to the Project Schedule arising from delays in obtaining Permits or inability to obtain Permits, conditions of obtaining Permits, or amendments to Permits as may be required.

The Authority will provide Project Co with such information within the Authority's possession, and cooperate with Project Co, as Project Co may reasonably require in relation to all Permits for which Project Co is responsible.

4.6 Helipad Permits

Without limiting Project Co's obligations under Section 4.5, Project Co will obtain all Permits required for the Design, Construction and operation of the Helipad, including certification of the Helipad from Transport Canada.

4.7 LEED Gold Certification

Project Co will obtain LEED Gold Certification of the Facility in accordance with the following:

- (a) Within 60 days of the Effective Date Project Co will register the Facility with CaGBC.
- (b) Project Co will, subject to this Section, achieve all necessary prerequisites, credits and points under the LEED Rating System required to achieve the LEED Gold Certification and may in its discretion determine which of the credits and points to pursue, except that:

- (1) Project Co will achieve the following LEED credits/points:
- (A) Energy and Atmosphere Credit 1 – Optimize Energy Performance: 47% Reduction in Design Energy Cost Relative to MNECB (6 points) or 40% Reduction in Design Energy Cost Relative to ASHRAE/IESNA 90.1-1999 (6 points); and
 - (B) Energy & Atmosphere Credit 3 – Best Practice Commissioning;
- (2) Energy & Atmosphere Credit 6 - Green Power will not be considered as an acceptable credit.
- (c) If at any time after Project Co obtains registration with the CaGBC in accordance with Section 4.7(a) of this Schedule the requirements to achieve LEED Gold Certification under the LEED Rating System change, and Project Co is required to comply with such change in order to achieve LEED Gold Certification for the Facility, then Project Co will forthwith notify the Authority of such change and such change will be a Change pursuant to Schedule 6 [Changes, Minor Works and Innovation Proposals].
- (d) Project Co will compile and submit the required documents for certification.
- (e) If for any reason Project Co fails to achieve 6 points in Energy and Atmosphere Credit 1 as required by Section 4.7(b)(1)(A) of this Schedule for the Facility within 18 months of the Service Commencement Date then Project Co will, upon written demand from the Authority, and in addition to any payment owing under Section 4.7(f) or 4.7(g) of this Schedule, immediately pay to the Authority \$500,000.
- (f) If for any reason Project Co fails to achieve the credit described in Section 4.7(b)(1)(B) of this Schedule for the Facility within 18 months of the Service Commencement Date then Project Co will, upon written demand from the Authority, and in addition to any payment owing under Section 4.7(e) or 4.7(g) of this Schedule, immediately pay to the Authority \$100,000.
- (g) If for any reason Project Co fails to obtain LEED Gold Certification for the Facility within 18 months of the Service Commencement Date then Project Co will, upon written demand from the Authority, and in addition to any payment owing under Section 4.7(e) or 4.7(f) of this Schedule, immediately pay to the Authority \$100,000 for every point less than 39 points, to a maximum payment amount of \$500,000.
- (h) Upon payment of amounts, if any, owing under this Section 4.7 Project Co will have no further obligations in respect of obtaining LEED Gold Certification, except to provide the Authority with such information and administrative assistance as the Authority may reasonably require in relation to obtaining LEED Gold Certification, and for greater certainty the failure to obtain LEED Gold Certification will not be a Project Co Event of Default.

4.8 LEED Project Checklist

As a condition of Service Commencement Project Co will deliver to the Authority:

- (a) a LEED project checklist, generally in accordance with CaGBC requirements, together with a written confirmation that, in Project Co's judgment:
 - (1) the LEED credits/points specified in Section 4.7(b) of this Schedule will be achieved for the Facility; and
 - (2) LEED Gold Certification will be achieved for the Facility as required by Section 4.7 of this Schedule; and
- (b) a written opinion from a LEED accredited professional that Project Co's confirmation under Section 4.8(a) above is reasonable.

4.9 Energy

Project Co will comply with the requirements of Appendix 2D [Energy].

4.10 Facility Threat and Risk Assessment

Project Co will, by the date specified in the Submittal Schedule, deliver to the Authority a comprehensive threat and risk assessment report for the Facility ("**Facility Threat and Risk Assessment**") identifying specific risks and vulnerabilities to people, property and the Authority associated with the Facility and the surrounding community, and describing how the Facility design will mitigate these risks and vulnerabilities. The Facility Threat and Risk Assessment will be based on the preliminary facility threat and risk assessment included in the Proposal Extracts (Design and Construction). The Authority may provide comments on the Facility Threat and Risk Assessment within 15 Business Days of receiving it. Project Co will, acting reasonably, take account of the Authority's comments in finalizing the Facility Threat and Risk Assessment and deliver to the Authority a copy of the final Facility Threat and Risk Assessment within 15 Business Days of receiving the Authority's comments. Project Co will implement the risk mitigation strategies described in the Facility Threat and Risk Assessment in developing the Facility design.

5. DESIGN

5.1 Additional Design Considerations

In addition to other requirements of this Agreement, Project Co will undertake and perform the Design so that the Design:

- (a) is undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the Design, as of the date of this Agreement, and Project Co will appoint a design team that:
 - (1) is so qualified;

- (2) includes (as required by applicable Law or Good Industry Practice) licensed or registered professional engineers and architects; and
 - (3) has sufficient expertise and experience to expeditiously and efficiently perform all of the Design in a proper and professional manner to the standard set out in this Agreement;
- (b) includes specific consideration of “constructability” and “life cycle” cost issues at all stages of Design, as appropriate; and
 - (c) includes consideration of efficient and cost-effective operation and maintenance.

5.2 Zoning Approval

The Authority has obtained re-zoning of the Site to permit the Construction of the Facility. Copies of the re-zoning bylaw and related documents are available in the Data Room. Project Co will be fully responsible to obtain all other permits and approvals required for the Construction of the Facility including the "Development Permit" and any "Development Variance Permit" that may be required, and entering into "Servicing Agreements" as may be required by the City of Surrey.

5.3 Design Process

Project Co will undertake the Design:

- (a) with appropriate consultation with representatives of the Facility Users (the "**User Consultation Group**") in accordance with Appendix 2B [User Consultation Process];
- (b) in accordance with Appendix 2C [Review Procedure]; and
- (c) in phases progressively, with each phase capturing the information and detail approved in a previous phase, as follows:
 - (1) Schematic Design Phase – this phase will include supplemental information not included in Appendix 2G [Proposal Extracts (Design and Construction)] and development of drawings and other documents illustrating the scale and character of the Facility, architecture and engineering systems and any development permit (if applicable) in sufficient detail to describe how the parts of the Facility functionally relate to each other, such as the site plan, spatial relationship diagrams, principal floor plans, sections, and elevations;
 - (2) Design Development Phase – this phase will include drawings and other documents, including a site plan, elevations and sections, together with a written project brief detailing area calculations, building systems and outline specifications, to fully describe the size and character of the entire Facility including the architectural, structural, mechanical, and electrical systems, materials and other elements to fully describe the Facility; and

(3) Construction Documents Phase - this phase will include construction documents consisting of drawings and specifications describing in detail the requirements for the construction of the Facility delivered to the Authority:

- (A) at 50% completion and at 95% completion;
- (B) in accordance with the Submittal Schedule and Appendix 2C [Review Procedure] and in a timely way in advance of Construction with sufficient detail to permit the Authority to understand and assess the design of the Facility.

If Project Co intends to proceed with construction of an element of the Facility in advance of the completion of the design of the entire Facility then Project Co will deliver the 50% and 95% construction documents for that element (with sufficient accompanying detail to permit the Authority to understand and assess the design of that element) in advance of the design documents for other elements of the Facility;

(d) so that in each phase, Project Co will provide to the Authority the level of detail and documentation that the Authority would customarily receive or expect to receive for a facility similar to the Facility in accordance with Good Industry Practice, including (as applicable to a particular phase):

- (1) dimensioned floor plans and elevations showing all millwork;
- (2) furniture and equipment;
- (3) interior elevations for all rooms and spaces;
- (4) exterior building elevations;
- (5) completed site and landscaping plans;
- (6) room finish schedules;
- (7) room data sheets;
- (8) reflected ceiling plans;
- (9) interior finishes; and
- (10) a written report detailing and describing the manner in which the following have been taken into account in the Design:
 - (A) clinical operations and delivery;
 - (B) LEED Gold Certification, including energy efficiency/sustainability and the relevant LEED project checklist and points;

- (C) material selection;
- (D) constructability;
- (E) Life Cycle Requirements;
- (F) the Facility Threat and Risk Assessment; and
- (G) building operating services.

Project Co will only issue drawings and specifications for construction purposes based on Reviewed Drawings and Specifications as described in Appendix 2C [Review Procedure].

5.4 Design Change

The following will apply to the Authority's requests for amendments to the Facility design:

- (a) revisions to drawings and specifications and additional Design requested by the Authority under the processes described in Section 5 of this Schedule and in Appendix 2B [User Consultation Process] and Appendix 2C [Review Procedure], are not Changes and will be completed at Project Co's cost (except to the extent that any such requested revision would constitute a material change to the Design and Construction Specifications, the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply and such revision will not be implemented except under a Change Certificate issued by the Authority); and
- (b) if and to the extent the Authority requires a variation of any Design described in the Reviewed Drawings and Specifications (other than a variation required to bring the Design into conformity with the Design and Construction Specifications or the Proposal Extracts (Design and Construction)) then such variation will be a Change and the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.

5.5 Mock-Ups and Prototype Rooms

Project Co will, at its cost, provide "mock-ups" and "prototype" rooms as follows:

- (a) at an early stage of the user consultation process described in Appendix 2B [User Consultation Process], Project Co will provide 1:1 scale paper mock-ups of the following rooms indicating the dimensions and sizing of the room and location of millwork, services, equipment and furniture and configuration of headwalls:
 - (1) the following rooms in the Emergency Department: treatment room, trauma room, care station, seclusion room, RAZ treatment cubicle, isolation room, CT room, general rad room, ultrasound room, triage desk, and decontamination room;
 - (2) the technical components of the following areas in the Lab: accessioning, medical biochemistry, hematopathology, medical microbiology and transfusion medicine;

- (3) the following patient rooms: ICU patient room, NICU patient room and a Medical/Surgical patient room (HCU or NU);
 - (4) an isolation room and a bariatric room in Medical/Surgical (HCU or NU);
 - (5) care stations (for each department or component of the Facility);
 - (6) a medication room, soiled holding room, nourishment station, patient therapy room, clean utility room and dirty utility room;
 - (7) the respiratory assembly and testing room;
 - (8) the technical components of the IV formation areas in the Pediatric Pharmacy; and
 - (9) other rooms as may be requested by the Authority;
- (b) at a later stage of the user consultation process described in Appendix 2B [User Consultation Process], Project Co will provide fully constructed mock-ups of the following rooms (at a location either within the Facility as it is under construction or at another location provided by Project Co near the Facility), including all actual materials, finishes, millwork, services, equipment and furniture included in the design of the room so that the Authority and the User Consultation Group can experience all features of the design and make design decisions:
- (1) the following patient rooms: ICU patient room, NICU patient room, Medical/Surgical patient room (HCU or NU), and Emergency Department treatment room; and
 - (2) a medication room;
- (c) during Construction, Project Co will construct an in-situ "prototype" of each of the following rooms and make each prototype available to the Authority at appropriate stages of construction so that the Authority and the User Consultation Group can review the prototype room (including all materials, services, millwork, finishes, equipment and furniture) in its actual location within the Building at various stages of construction, and consider whether any design adjustments are necessary:
- (1) the following rooms in the Emergency Department: treatment room, care station, seclusion room, exam cubicle, soiled holding room, medication room;
 - (2) the following rooms in NICU: patient room; care station, on call room, and medication room;
 - (3) the following rooms in ICU: patient room; isolation room, care station, and medication room;
 - (4) HDCU patient room; and

- (5) the following rooms in Medical/Surgical (HCU or NU): patient room, medication room, isolation room, and care station.

Project Co will modify the mock-ups and prototypes as may be required as the design develops based on feedback from the User Consultation Group and the Authority.

5.6 Ownership of Design

With respect to ownership and property rights relating to the Design:

- (a) the Authority will not have an ownership interest in the Design, including any of the drawings or specifications prepared and produced by Project Co, the Design-Builder or any Sub-Contractor;
- (b) Project Co grants to the Authority, or as required will cause the Design-Builder and all Sub-Contractors to grant to the Authority, an irrevocable licence giving the Authority the non-exclusive right to use the Design in connection with the Facility, including any of the documents and information listed in Section 6.22 of this Schedule, beyond the end of the Term and as long as the Facility exists, including for renovations, additions and alterations to the Facility, provided that, except for reference purposes, the Design, including the plans, sketches, drawings, electronic files, graphic representations and specifications will not be used on any other project; and
- (c) Project Co will execute and deliver, or cause to be executed and delivered, any and all further and other documents as the Authority may reasonably request to effect and record the licence referred to in Section 5.6(b) of this Schedule.

6. CONSTRUCTION

6.1 Construction of the Facility

Project Co will perform the Construction in strict conformity with the Reviewed Drawings and Specifications, as may be modified and amended from time to time in accordance with the terms of this Agreement, and this obligation will be in addition to all other obligations of Project Co under this Agreement.

6.2 Amendments and Changes to the Drawings and Specifications

During the Construction, Project Co will submit all amendments or additions to the Reviewed Drawings and Specifications to the Authority's Design and Construction Representative for review under Appendix 2C [Review Procedure].

Any Changes during the Construction will be subject to the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals].

6.3 Skilled Workers

Project Co will employ or cause the Design-Builder to employ a sufficient number of sufficiently skilled workers to perform the Construction in compliance with this Agreement.

6.4 Control of the Construction

Project Co will have total control of the Construction and will effectively direct and supervise the Construction so that it is undertaken in compliance with the terms of this Agreement. Project Co will be responsible for all construction means, methods, techniques, sequences and procedures with respect to the Construction and for coordinating the various elements of the Construction, and nothing in this Agreement (including this Schedule) will be interpreted as giving any responsibility for the above to the Authority, the Authority's Design and Construction Representative or any other representative or agent of the Authority, or to the Independent Certifier.

6.5 Existing Utilities

Project Co will confirm the location of, and protect:

- (a) all existing off-Site utilities that may be affected by the Construction; and
- (b) all existing on-Site utilities that may be affected by the Construction that were disclosed by the Authority in the Data Room prior to the Financial Submission Date.

Project Co will protect any existing on-Site utilities that are discovered by Project Co during the Construction that were not disclosed by the Authority in the Data Room.

6.6 Site Investigation

By entering into this Agreement, Project Co will be deemed to have inspected the Site and the SMH Campus in relation to the performance of its obligations under this Agreement and to have satisfied itself and accepted all risks and related responsibilities relating to the Site and SMH Campus (except as expressly provided to the contrary in this Agreement) including:

- (a) the adequacy of the rights of access to and through the Site for the Construction;
- (b) vehicular access and parking;
- (c) temporary storage of building materials and equipment;
- (d) existing utilities on the Site and on the SMH Campus; and
- (e) geotechnical conditions.

6.7 Existing Facilities Report

The Authority has made available the Existing Facilities Report for Project Co's reference, but Project Co acknowledges that the Authority makes no representation whatsoever as to the accuracy or completeness of any information in the Existing Facilities Report.

6.8 Geotechnical Report

The Authority has made available the Geotechnical Report. The Authority makes no representation whatsoever as to the accuracy or completeness of any information in the Geotechnical Report and

Project Co specifically acknowledges that the Authority assumes and accepts no responsibility that the geotechnical information, as may be available in the Geotechnical Report, is accurate or completely describes actual site conditions including geotechnical or soil conditions (including presence of boulders, rock, low-strength soil and voids) and ground water conditions (including presence of underground streams or water table conditions) that may affect the Design or Construction.

6.9 Site Issues

- (a) The Site consists of the following areas:
 - (1) the portion of the Site that the Authority will make available to Project Co for construction of the Building (identified on Appendix 2H [Site Plan] as "**Work Area A**"), part of which will not be available to Project Co until June 2011, as shown on Appendix 2H [Site Plan]; and
 - (2) the portions of the Site identified on Appendix 2H [Site Plan] as "**Work Area B**", which the Authority will make available to Project Co to perform related Construction activities, but within which Project Co must at all times maintain existing vehicle and pedestrian access routes to and from City streets and Hospital buildings (except as may be permitted pursuant to a Work Plan);
- (b) Project Co will:
 - (1) construct the Building within Work Area A;
 - (2) install a six foot fence around the perimeter of Work Area A and such hoarding as may be required to separate Work Area A from the Hospital;
 - (3) perform all Construction activities within Work Area A except as approved by the Authority under Section 6.10 for any work required in Work Area B, existing Hospital buildings or other areas of the SMH Campus (a Work Plan for construction activity in Work Area B must include an adequate plan for maintaining vehicle and pedestrian access to Hospital buildings within or adjacent to Work Area B, including the areas listed in Section 6.9(b)(4) below);
 - (4) perform all Construction activities without blocking or disrupting vehicle or pedestrian access to, except as may be permitted pursuant to a Work Plan, the Hospital's:
 - (A) emergency department;
 - (B) ambulance station or ambulance parking areas;
 - (C) underground or surface parking areas; or
 - (D) delivery areas;

- (5) cause Project Co Persons, construction workers and suppliers to enter or exit the Site only at the access routes labelled as "CONSTRUCTION ACCESS" on Appendix 2H [Site Plan], unless otherwise approved by the Authority;
- (6) take reasonable steps to ensure that Construction workers or suppliers do not:
 - (A) use any portion of the SMH Campus (or the Authority's parking facilities located north of the SMH Campus on 96th Avenue) for vehicular parking; or
 - (B) smoke on any portion of the SMH Campus;
- (7) provide a 24-hour hotline (and post the phone number in a prominent location on the Site) for:
 - (A) Authority staff to notify Project Co of any Construction related emergencies; and
 - (B) neighbours and passers-by to contact Project Co;

and Project Co will respond to any phone calls made on the hotline within 1 hour;
- (8) provide a community liaison officer to provide a single point of contact with Project Co regarding construction and development issues; and
- (9) before commencing the Construction, prepare and implement in co-operation with the Authority a construction fire safety plan for the Project, which plan will describe emergency access routes to and from the Facility and the SMH Campus during an emergency.

6.10 Connections and Integration to Existing Hospital

The Hospital must remain fully operational at all times during Construction. Project Co will:

- (a) co-operate with the Authority to co-ordinate any work required to connect to the Hospital to minimize the interference to the on-going operation of the Hospital, including the delivery of quality patient care;
- (b) comply with Appendix 2I [Standard SMH Contractor Rules] in relation to all work performed on the SMH Campus outside of the Site;
- (c) at least seven days before undertaking any work in the Hospital or in Work Area B or proceeding with any proposed shutdown of Hospital services, deliver to the Authority and obtain the Authority's approval of a work plan ("**Work Plan**") clearly identifying:
 - (1) the activity that may interfere with the operation of the Hospital, including a description of the nature, timing and extent of interference;
 - (2) the steps Project Co intends to take to minimize the extent of such interference;

- (3) the temporary measures that the Authority will be required to take to accommodate the interference; and
- (4) any specific reporting relationships between Project Co and the staff desirable or required to coordinate the interference,

unless the Authority, at its discretion, notifies Project Co in writing that a Work Plan will not be required for particular work or a particular shutdown.

Prior to delivering a Work Plan, Project Co will consult with the Authority and, upon reasonable request, the Authority will make appropriate staff available for such consultation to determine the Work Plan that minimizes interference to the Hospital. Project Co will not proceed with any work in the Hospital or any proposed shutdown of Hospital services without: the Authority's prior written approval of a Work Plan under this Section, such approval not to be unreasonably withheld or delayed; or advance written notice from the Authority confirming that a Work Plan is not required.

6.11 The Authority's Access to Site

Subject to complying with all relevant safety procedures, including any relevant health and safety plans for the carrying out of the Construction and Project Co's and/or the Design-Builder's site rules, the Authority's Design and Construction Representative and its delegates, will have access at all reasonable times during normal working hours to:

- (a) attend the Site and view the Construction; and
- (b) subject to obtaining the consent of the relevant manufacturer or supplier (which Project Co will use all reasonable efforts to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Construction for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Construction.

The Authority's Design and Construction Representative and its delegates will have the right to attend all monthly progress meetings and site meetings, including meetings between Project Co and the Design-Builder or its Sub-contractors.

Project Co will cooperate with the Authority to arrange for tours of the Site at reasonable times during Construction for interested doctors and other health care officials and personnel, in a way that does not interfere with the progress of the Construction.

Except as set out above or as otherwise provided for in this Agreement, the Authority will not grant any person access to the Site or Facility during the Construction Period without the consent of Project Co, such consent not to be unreasonably withheld or delayed.

6.12 Inspection

Prior to the Service Commencement Date, Project Co will, upon request by the Authority's Design and Construction Representative including detailed reasons for the request, open up for inspection by the

Authority's Design and Construction Representative any part of the work on the Facility which the Authority's Design and Construction Representative, acting reasonably, believes is defective and:

- (a) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are no Defects in the relevant part of such work, and Project Co complied with the requirements of Section 3.6 of this Schedule, then any delay caused by the exercise of such rights will be treated as a Compensation Event and be subject to Section 8.3 of this Agreement;
- (b) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that any relevant part of the work on the Facility is defective, then:
 - (1) Project Co will rectify and make good such Defect(s);
 - (2) any consequence of such rectification or making good Defect(s) will be carried out by Project Co at no cost to the Authority; and
 - (3) Project Co will not be entitled to any extension of time to the Project Schedule in relation to such rectification and making good of such work; and
- (c) if the parties are unable to reach agreement in accordance with Sections 6.12(a) or (b) above, then the matter will, at the request of either party, be referred to the Dispute Resolution Procedure. If, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of the matter in Dispute, the parties will proceed in accordance with the position of the Authority, provided that Project Co proceeding in accordance with the Authority's position will be a Compensation Event if the relevant matter in Dispute is determined in favour of Project Co.

6.13 Builders Lien Act and Builders Liens

With respect to builders liens and the requirements of the *Builders Lien Act* (British Columbia):

- (a) the Authority will not have any responsibility to be the payment certifier under any contract related to Construction;
- (b) Project Co will make all required builders lien holdbacks;
- (c) no builders lien holdback will be retained by the Authority under this Agreement;
- (d) if it is determined that any builders lien holdback is required to be retained by the Authority, then Project Co agrees that it is making and will make all of its required holdbacks as agent for the Authority;
- (e) Project Co will indemnify the Authority from any damages, costs, claims and expenses of any kind, including actual solicitors costs, arising from the failure of the Authority to retain a builders lien holdback; and

- (f) failure to hold back payment of amounts due to any Person in accordance with Section 4 of the *Builders Lien Act* (British Columbia) will not constitute a Project Co Event of Default.

6.14 Safety

Project Co will be solely responsible for safety during the Construction Period, including the safety of all persons on the Site and any other location where the Construction is performed (whether on the Site or other location lawfully or not) and members of the public, and will comply with the requirements of applicable Laws, applicable construction safety legislation, regulations and codes and Good Industry Practice (except that Project Co will cease to be responsible for safety in the Emergency Department after the ED Opening).

6.15 Protection of Property

Project Co will:

- (a) protect the Authority's property (and any third party's property) from damage during the Construction, including buildings, roadways, drainage systems, landscaping, surfaces, services and infrastructure (including carrying out the Construction so that Construction-caused settlement of existing buildings and structures does not exceed 30 mm at any location); and
- (b) promptly repair any damage to property caused by Project Co in undertaking the Construction, including any damage caused by site settlement (regardless of the amount of settlement) or ground vibration.

Project Co acknowledges that Construction-caused settlement of existing buildings and structures on the SMH Campus and Construction-caused ground vibration may disrupt the operation of medical equipment (including diagnostic imaging equipment in the adjacent North Building), requiring the equipment to be shut-down and re-calibrated, and may disrupt utility services to SMH. Project Co will co-operate with the Authority and take all reasonable steps to avoid disrupting such equipment and services, including meeting with the Authority's staff and equipment suppliers in advance of Construction to develop a Work Plan describing measures that Project Co will take to minimize any potential disruption or interference, and implementing the Work Plan. Project Co will monitor site settlement and ground vibration during Construction (as required by Sections 6.16 and 6.17 of this Schedule) and take additional steps as may be required to avoid equipment or service disruptions as the Construction progresses. In addition to its obligations to promptly repair any damage to property as required by Section 6.15(b) of this Schedule, if any medical equipment is disrupted by Construction-caused settlement or ground vibration, Project Co will, at its cost, arrange for the Authority's equipment suppliers to re-calibrate the equipment and return it to service as quickly as possible.

6.16 Pre-Construction Survey and Monitoring

Project Co will:

- (a) prior to start of any Construction, conduct a pre-construction survey of the existing SMH buildings, roadways, services, infrastructure, and adjacent properties, in a form and detail

satisfactory to the Authority, acting reasonably, which will without limitation include field observations and photographs of existing conditions, with spot elevations by a British Columbia Land Surveyor (BCLS) registered surveyor at locations that will be accessible throughout and following construction for ongoing settlement monitoring, and deliver a copy of the pre-construction survey report to the Authority; and

- (b) re-survey of the spot elevations at regular intervals throughout the Construction Period and at six months following Service Commencement, to determine ongoing long-term settlement effects, and deliver monitoring surveys to the Authority in a form and detail satisfactory to the Authority, acting reasonably.

6.17 Control of Vibration

Project Co will discuss with the Authority any expected ground vibration from Project Co's Construction activities in advance of those activities (as vibration may affect existing Hospital operations and function of sensitive medical equipment), and without limiting the previous sentence Project Co will:

- (a) carry out its Construction activities so that:
 - (1) ground vibration from Project Co's construction activities does not exceed 5mm per second peak particle velocity at any time (except with prior written approval from the Authority);
 - (2) ground vibration in excess of 0.3mm per second peak particle velocity is limited to certain times of the day and certain days of the week as determined by the Authority, acting reasonably; and
 - (3) vibration transfer to adjacent Hospital buildings does not adversely affect existing Hospital operations (including in particular diagnostic operations in the adjacent North Building); and
- (b) install vibration monitoring devices to monitor compliance with this Section during Construction, and deliver to the Authority no later than the 5th day of each month, a monitoring report for the previous month.

6.18 Infection Control and Control of Dust and Noise

Project Co will:

- (a) take all reasonable steps (including any specific steps reasonably required by the Authority) to minimize dust and noise from the Construction and to mitigate any adverse effects on the existing Hospital; and
- (b) without limiting Project Co's obligation under Section (a) above:
 - (1) comply with CSA Z317.13 (Infection Control during Construction, Renovation or Maintenance of Health Care Facilities), including "Preventative Measure IV", at all times during the Construction Period; and

- (2) monitor compliance with CSA Z317.13 on a daily basis during the Construction and deliver to the Authority no later than the 5th day of each month, a performance report for the previous month that:
 - (A) describes the steps taken by Project Co to comply with CSA Z317.13; and
 - (B) confirms that Project Co complied with CSA Z317.13 or identifies any failure by Project Co to comply.

6.19 Signage

Project Co may erect signage at the Site during Construction to identify Project Co, the Design-Builder and Project Contractors provided such signs are acceptable to the Authority's Design and Construction Representative, acting reasonably.

6.20 Temporary Works

During the Construction Period, Project Co will:

- (a) have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use; and
- (b) provide its own services necessary for Project Co's construction use including but not limited to power, telephone, water and sewage, and will not connect directly to the existing hospital buildings or infrastructure except with the Authority's prior approval.

6.21 Project Meetings

Without limiting the obligations pursuant to Section 2.7 of this Schedule in respect of the Construction Period Joint Committee, at the Authority's request, Project Co's Design and Construction Representative will attend meetings to update the Authority on the progress of Construction and to discuss any issues that have arisen. The meetings will be at least weekly unless agreed otherwise by the Authority.

6.22 Project Records

Notwithstanding any other provision of this Agreement:

- (a) As-Built Drawings and Specifications: Project Co will:
 - (1) throughout the Construction, update the Reviewed Drawings and Specifications (with respect to the drawings, such update will be in hard copy and "CAD" or other electronic format reasonably acceptable to the Authority's Design and Construction Representative), including all final shop drawings, so as to produce accurate and complete as-built documents for the Facility;
 - (2) as requested from time to time during the Construction, make available such as-built drawings and specifications to the Authority's Design and Construction

Representative for review to permit the Authority's Design and Construction Representative to monitor Project Co's compliance with the requirements of this Section; and

- (3) provide three full-size hard copies and two electronic copies in “.dwg” format of the completed as-built drawings and specifications to the Authority's Design and Construction Representative on or before Service Commencement.

(b) Maintenance Manuals: Project Co will:

- (1) on or before Service Commencement, make available all maintenance manuals, specifications, warranties and related information, in either written or electronic form, for all the equipment and systems that have been included in the Design and Construction of the Facility for review by the Authority's Design and Construction Representative; and
- (2) organize and store such information in accordance with Schedule 14 [Records and Reports];

(c) Design Records: Project Co will retain records of the Design development;

(d) Minutes of Meetings: The Authority will retain minutes of the following meetings between the Authority and Project Co: Design management meetings, Construction management meetings and Construction Period Joint Committee meetings. Project Co will retain minutes of all other meetings between the Authority and Project Co relating to the Design and Construction. The party responsible for keeping minutes will circulate such minutes to the other party's Design and Construction Representative for review and comment within the time period specified in this Agreement for the particular meeting or if no time period is specified then as soon as reasonably possible after the relevant meeting, and a reasonable period before any subsequent meeting so that all parties may consider the minutes and take required actions in advance of the subsequent meeting;

(e) Inspection Reports and Tests Results: Project Co will retain official reports and certified test records of all inspections and tests which were undertaken as part of the Construction;

(f) Utility Plans: Project Co will retain utility plans for the Facility and the Site;

(g) Landscape and Irrigation Plans: Project Co will retain landscape and irrigation plans for the Facility and the Site;

(h) Copies of all Permits: Project Co will retain copies of all Permits for the Construction and occupation of the Facility; and

(i) Signed Quality Assurance Plan: Project Co will retain a signed copy of the Quality Assurance Plan for the Construction and all records of the Quality Assurance Program implemented as required by this Agreement.

7. EQUIPMENT SUPPLY AND INSTALLATION

7.1 Design and Construction Requirements

The obligations and responsibilities of the parties related to Equipment are set out in Appendix 2E [Equipment and Furniture]. Project Co will complete the Design and Construction to accommodate in the Facility the installation, operation, repair and maintenance of all the Equipment, including as required all electrical and plumbing connections, structural support, seismic restraints and space for efficient access, all to the tolerances and specifications as may be specified and required by the manufacturers or suppliers of the Equipment (which may be of a higher standard than specified in Schedule 3 [Design and Construction Specifications]).

7.2 Asset Tagging

Project Co will, in consultation with the Authority, affix an Authority approved asset identification tag to each piece of equipment installed in the Facility, including:

- (a) all Equipment (excluding Category E equipment and non-physical Equipment such as software licences); and
- (b) all mechanical, HVAC and communications systems equipment.

Each asset identification tag will include a unique numerical identifier.

7.3 Asset Register

Project Co will create, maintain, update and share with the Authority, an asset register of all equipment installed in the Facility (the “**Asset Register**”), including:

- (a) all Equipment (excluding Category E equipment); and
- (b) all mechanical, HVAC and communications systems equipment.

For each item of equipment recorded on the Asset Register, Project Co will, as applicable, record the following information:

- (c) make, model and device type;
- (d) equipment item number;
- (e) asset tag number;
- (f) serial number;
- (g) purchase order or equipment purchase contract identifier;
- (h) equipment supplier and contact information for the equipment supplier;
- (i) installed location (room number);

- (j) date installed;
- (k) anticipated replacement date or timeframe;
- (l) warranty start date and expiry date;
- (m) required utility, HVAC, medical gas or other connections; and
- (n) any other information that may be agreed upon by the Authority and Project Co.

8. QUALITY MANAGEMENT

8.1 Quality of the Design and Construction

Project Co is solely responsible for the quality of the Design and Construction.

8.2 Quality System

Project Co acknowledges that a comprehensive Quality System is critical for the proper and timely completion of the Design and Construction and accordingly Project Co will implement and follow a Quality System.

8.3 Project Co's Quality Consultant

Project Co will retain a qualified, independent expert in quality management ("**Project Co's Quality Consultant**") to develop a Quality Assurance Program and Quality Assurance Plan in conjunction with Project Co.

8.4 Quality Assurance Program

Project Co's quality assurance program (the "**Quality Assurance Program**") will:

- (a) detail Project Co's measures required to complete all aspects of the Design and Construction pursuant to its Quality System and in accordance with the requirements of this Agreement including this Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications];
- (b) address and be applicable to all aspects of the Design and Construction;
- (c) provide for a graded approach to quality in which the appropriate level of quality assurance requirements for various elements of the Design and Construction are defined;
- (d) describe or comply with the following:
 - (1) the required quality level for each process or activity involved in the Design and Construction and the means of achieving it;
 - (2) the steps to ensure that everyone participating in the Design or Construction is committed to the Quality Assurance Program;

- (3) the steps to ensure that the management and organizational structure and responsibilities are defined and understood by everyone participating in the Design or Construction;
- (4) require that all persons participating in the Design or Construction are competent to do their required tasks;
- (5) require that individuals involved with the Quality Assurance Program will be held accountable for their work;
- (6) provide that the right people will have the right information at the right time;
- (7) provide that relevant experience for each process or activity will be sought and used;
- (8) Design and Construction activities are planned and controlled;
- (9) the right items, processes, and practices will be used;
- (10) materials and services are verified to confirm that they are correct; persons giving verification will be sufficiently qualified and will be independent from those who perform or install the materials or services;
- (11) peer reviews and inspections will be performed on structured planned basis on all elements of the Design and Construction and:
 - (A) errors and deficiencies will be identified and recorded;
 - (B) errors and deficiencies remedied or corrected and a record maintained of the remedy or correction, and
- (12) maintain records as required by this Agreement;
- (e) provide for independent design verification in accordance with Good Industry Practice;
- (f) provide that professionals of record will:
 - (1) carry out on-site inspections, review materials testing and inspector's reports, undertake required surveying, measuring, and verification of materials and construction methods to ensure conformance with the Reviewed Drawings and Specifications and the Design and Construction Specifications; and
 - (2) provide a letter of assurance that is an attestation that the Design and Construction has been performed in accordance with the Reviewed Drawings and Specifications and the Design and Construction Specifications.

8.5 Quality Assurance Plan

Project Co will develop a reasonable quality assurance plan (the “**Quality Assurance Plan**”) that describes the implementation of the Quality Assurance Program in accordance with the following:

- (a) Project Co will deliver to the Authority a preliminary draft of the Quality Assurance Plan (that is based on the preliminary quality assurance plan included in the Proposal Extracts (Design and Construction) by no later than January 17, 2011, failing which, the Authority will be entitled to make a Deduction of \$2,500 for each week or part thereof after January 17, 2011 until Project Co has delivered to the Authority a preliminary draft of the Quality Assurance Plan but if Project Co has not delivered to the Authority a preliminary draft of the Quality Assurance Plan by the date falling 40 Business Days after the Effective Date, the Deduction applicable under this Section 8.5(a) will increase to \$5,000;
- (b) the Authority will provide its comments, if any, on the preliminary draft to Project Co within 20 Business Days of receipt of the preliminary draft;
- (c) Project Co will deliver a revised draft of the Quality Assurance Plan to the Authority not less than 20 Business Days after receiving the Authority’s comments, failing which, the Authority will be entitled to make a Deduction of \$5,000 for each week or part thereof after the date falling 20 Business Days after the Authority’s comments were received by Project Co until Project Co has delivered to the Authority a revised draft of the Quality Assurance Plan;
- (d) the Authority will, within 15 Business Days of receipt of the revised draft, advise Project Co whether the Authority accepts the Quality Assurance Plan, and if the Authority does not accept it the Authority will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (e) if the Authority does not accept the Quality Assurance Plan, the parties will, acting reasonably, diligently work together with a view to revising the Quality Assurance Plan to address the Authority’s reasons for non-acceptance;
- (f) if the Authority has not accepted the Quality Assurance Plan by the date that is 90 Business Days after the Effective Date, Project Co may refer the dispute to the Dispute Resolution Procedure to determine whether Project Co’s proposed Quality Assurance Plan is reasonable.
- (g) any Deduction the Authority is entitled to make pursuant to Section 8.5(a) or Section 8.5(c) of this Schedule will be made from the first Service Payment payable to Project Co pursuant to Schedule 8 [Payments]; and
- (h) Deductions made pursuant to this Section 8.5 will not be counted for the purposes of Sections 11.1 or 12.1(g) of this Agreement or Sections 6.7 or 6.8 of Schedule 4 [Services Protocols and Specifications].

Project Co will promptly implement and strictly comply with the Quality Assurance Plan developed under this Section.

8.6 Reporting

Project Co will deliver to the Authority a monthly report of the Quality Assurance Plan prepared by Project Co's Quality Consultant covering all aspects of the Design and Construction completed in the reporting period that are relevant to the Quality Assurance Plan. Project Co will highlight any deficiencies identified and corrective actions taken to address such deficiencies during the period covered by such report.

8.7 Quality Review by the Authority

The Authority may, at its discretion, perform its own audits of the Quality Assurance Program and for that purpose Project Co will make available for review by the Authority, upon request from the Authority, all records of the Quality Assurance Program and the Quality Assurance Plan to permit the Authority to be satisfied that Project Co is following its Quality Assurance Plan.

9. WORKERS COMPENSATION

9.1 Evidence of WCB Compliance

Project Co will provide evidence, satisfactory to the Authority's Design and Construction Representative, of compliance by Project Co and all Project Contractors with the requirements of the *Workers Compensation Act*, as amended, and all regulations and successor legislation thereto, including payments due thereunder at the following times:

- (a) prior to commencing the Construction; and
- (b) at any time during Construction, upon request of the Authority's Design and Construction Representative acting reasonably.

9.2 Indemnity for WCB Non-Compliance

If Project Co or anyone employed by or through Project Co in the performance of any Construction does not comply with the requirements of the *Workers Compensation Act*, as amended, and all regulations and successor legislation thereto, including payment and deduction and remittance of any and all contributions, fees, assessments and charges required to be made pursuant to the above, Project Co will indemnify the Authority from any cost, loss, liability or obligation which the Authority may incur as a result.

9.3 Prime Contractor

For the purposes of applicable legislation and regulations, Project Co agrees to be, or will cause the Design-Builder to be, at all times during the Construction Period, the prime contractor as defined in the *Workers Compensation Act* for the Site (except for the Emergency Department after ED Opening) and accordingly will comply, or will cause to be complied, with all resulting requirements and obligations including:

- (a) ensuring continuing coordination of the occupational health and safety activities of all employers on the Site, including the Authority, the Authority's Design and Construction Representative, any other contractors and everyone engaged by or through any of them;
- (b) delivering any notices of the Project as required by applicable regulations; and

- (c) complying with the obligations of a prime contractor for a multi-employer workplace as prescribed by the applicable regulations.

If for any reason the Workers Compensation Board of British Columbia refuses to recognize Project Co or the Design-Builder as the prime contractor then, to the extent permitted by law, Project Co will cooperate with the Authority and perform on behalf of the Authority the obligations which the Authority is required to undertake as prime contractor in connection with the Construction by virtue of the *Workers Compensation Act* and Regulations, or other statutes.

9.4 Failure to Comply with WCB Requirements

If at any time the Construction is stopped because Project Co, or any Project Co Person providing services or work on the Project, unreasonably fails or refuses to comply with an order issued pursuant to the *Workers Compensation Act*, then such failure or refusal will be considered a Project Co Material Breach.

10. PROJECT SCHEDULE AND SCHEDULING

10.1 Initial Project Schedule

Attached as Appendix 2F [Initial Project Schedule] is the initial project schedule (the “**Project Schedule**”), which the parties have relied upon in entering into this Agreement.

10.2 Project Schedule Updates

Project Co will, as required from time to time until Service Commencement, but no less than once per calendar month by the 15th day of each month, in consultation with the Authority update the Project Schedule so that it is at all times an accurate, reasonable and realistic representation of Project Co's plans for the completion of the Design and Construction of the Facility in accordance with the requirements of this Agreement. The updates will include:

- (a) adjustments resulting from Supervening Events and Changes, if any, as permitted by this Agreement;
- (b) as the Design progresses, best estimates of:
 - (1) the start and completion dates for the design phases described in Section 5.3 of this Schedule; and
 - (2) the commencement of Construction;
- (c) the planned start and completion dates of the major activities of Construction;
- (d) the planned start and completion dates of work required to connect to the Hospital or any proposed shut-down of Hospital services;
- (e) the Target ED Opening Date; and

- (f) the Target Service Commencement Date, which (except to the extent necessary to reflect adjustments made in accordance with Section 10.2(a) of this Schedule) may not be updated or otherwise changed within 12 months of such date unless the Authority, in its discretion, consents.

Project Co will deliver an updated Project Schedule monthly to the Authority and the Independent Certifier and upon delivery the updated Project Schedule (the "**Updated Project Schedule**") will be the Project Schedule under this Agreement in substitution for the previously issued Project Schedule. If at any time the Authority does not agree with the proposed updates that may be required to the Project Schedule then the disagreement may be referred to the Dispute Resolution Procedure.

10.3 Failure to Update Project Schedule

If Project Co fails or refuses to deliver an Updated Project Schedule as required under Section 10.2 of this Schedule, then such failure or refusal will be deemed to be a Project Co Material Breach.

10.4 Compliance with Project Schedule

Project Co will undertake the Design and Construction of the Facility in compliance with the Updated Project Schedule, as may be updated pursuant to this Agreement.

10.5 Move-In Schedules

Project Co acknowledges that the Authority will rely on the ED Opening Date and the Service Commencement Date as set out in the Project Schedule (as may be adjusted under Section 10.2 of this Schedule).

As soon as reasonably practicable, but in any event no later than 180 days prior to the Target ED Opening Date and the Target Service Commencement Date, as the case may be, Project Co will deliver to the Authority's Design and Construction Representative a move-in schedule in respect of the:

- (a) Emergency Department (the "**ED Move-in Schedule**"); and
- (b) the balance of the Facility (the "**Facility Move-in Schedule**"),

indicating the anticipated dates when such areas will become available for occupation by the Authority so as to facilitate and permit the Authority to progressively take up occupation in an efficient manner. The Authority's Design and Construction Representative will advise Project Co of any key or significant moves or move-in requirements, and Project Co will, as reasonably possible, accommodate the Authority's requirements and requests. Project Co will, as may be required from time to time, up-date the ED Move-in Schedule and the Facility Move-in Schedule.

11. DELAYS AND ACCELERATION

11.1 Acceleration to Recover Project Co Delays

If at any time the Authority, acting reasonably, determines that Project Co is behind the Updated Project Schedule and will not achieve ED Opening by the Target ED Opening Date or Service Commencement by the Target Service Commencement Date, then the Authority may deliver notice to Project Co's Design

and Construction Representative to use its best efforts, at Project Co's own cost and at no cost to the Authority, to accelerate the Construction so as to conform to the Updated Project Schedule and achieve ED Opening by the Target ED Opening Date and Service Commencement by the Target Service Commencement Date.

11.2 Delay Costs

If, other than due to a Supervening Event or a Change, Project Co fails to achieve:

- (a) ED Opening by the Target ED Opening Date; or
- (b) Service Commencement by the Target Service Commencement Date,

then Project Co will reimburse the Authority for any additional out-of-pocket costs which the Authority reasonably incurs and evidences to Project Co because the Authority relied on the relevant move-in schedule, which are in excess of the costs which the Authority would have incurred had Project Co achieved the dates set out in the relevant move-in schedule. Notwithstanding anything contained in this Agreement (including any Schedule), the liability of Project Co for failing to achieve either ED Opening by the Target ED Opening Date or Service Commencement by the Target Service Commencement Date, or both ED Opening and Service Commencement by the Target ED Opening Date and the Target Service Commencement Date respectively, will not exceed \$10,000 per day.

11.3 Acceleration to Advance ED Opening or Service Commencement

Without prejudice to the Authority's rights under Section 11.1 of this Schedule, if at any time the Authority determines that it requires the Construction to proceed in advance of the Updated Project Schedule then the Authority may give written notice to Project Co to provide the Authority with a written proposal to accelerate the Construction, including cost estimates and an estimate of the time saved. If the Authority acting reasonably decides to proceed with the acceleration then:

- (a) the Authority will notify Project Co in writing;
- (b) Project Co will implement the directed acceleration in accordance with its proposal;
- (c) the Authority will reimburse Project Co for costs that were described in Project Co's proposal and reasonably incurred by Project Co (but not for any other costs); and
- (d) if the acceleration involves a Change (other than to the Updated Project Schedule) then such Change will be made in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

12. COMMISSIONING

12.1 Testing and Commissioning

Project Co will, prior to applying for a Certificate of ED Opening or a Certificate of Service Commencement, retain a qualified commissioning agent (who is neither a Project Co Person nor an Affiliate of a Project Co Person; and who is acceptable to the Authority, acting reasonably), to test all equipment and systems in the Facility (including Category A, Category B and Category F Equipment, and

completing the Acceptance Protocols for Project Co Procured Equipment) to demonstrate to the reasonable satisfaction of the Authority's Design and Construction Representative that the Facility equipment and systems are operating so that:

- (a) in the case of ED Opening: the Authority may occupy the ED Opening Areas for their Intended Uses; and the relevant Availability Conditions are satisfied for all Functional Units in the ED Opening Areas; and
- (b) in the case of Service Commencement: the Authority may occupy the Facility for its Intended Uses; and the Availability Conditions are satisfied for all Functional Units.

12.2 Equipment and Systems Operation and Training

Project Co will be knowledgeable on the proper use and maintenance of all equipment and systems Project Co installs in the Facility, including communication systems, and will provide sufficient training and education to the Authority staff to enable the Authority to properly utilize such equipment and systems, including any training and education with respect to Equipment required under Appendix 2E [Equipment and Furniture]. The Authority will identify the relevant Authority staff and make such staff available for training at reasonable times before the ED Opening Date and the Service Commencement Date.

12.3 Commissioning Plan

Project Co will prepare and deliver to the Authority's Design and Construction Representative and the Independent Certifier a detailed plan (the "**Commissioning Plan**") setting out the testing, commissioning, training and other activities Project Co intends to carry out to satisfy Sections 12.1, 12.2 and 12.3 of this Schedule and to achieve ED Opening and Service Commencement, including:

- (a) a description of the specific equipment and systems to be tested and commissioned and the associated commissioning requirements, including those to be completed before ED Opening and between ED Opening and Service Commencement;
- (b) supporting documentation, including as appropriate:
 - (1) design calculations and/or assumptions; and
 - (2) manufacturer's specifications;
- (c) a description of the training and education that Project Co intends to provide to the Authority's staff to enable the Authority to properly utilize the equipment and systems installed in the Facility, including all training and education to be completed before ED Opening and between ED Opening and Service Commencement;
- (d) the name of the commissioning agent and the names of other persons to be involved in testing, commissioning and training;
- (e) a description of Project Co's system for managing records of tests, inspections, quality assurance and training;
- (f) a general description of Project Co's transition plans for handover to the Authority of:

- (1) the Emergency Department at ED Opening; and
 - (2) the balance of the Facility at Service Commencement;
- (g) a schedule, related to the Project Schedule, showing:
- (1) the timing of all testing and commissioning and training; and
 - (2) for each requirement of ED Opening and Service Commencement (described in Schedule 1 [Definitions and Interpretation]), the date upon which Project Co anticipates achieving the requirement.

The Commissioning Plan must be reasonable having regard to the requirements of Sections 12.1, 12.2 and 12.3 of this Schedule and will be developed and finalized as follows:

- (h) Project Co will deliver a preliminary draft of the Commissioning Plan to the Authority not less than 12 months before the Target ED Opening Date, failing which, the Authority will be entitled to make a Deduction of \$2,500 for each week or part thereof after the date falling 12 months before the Target ED Opening Date until Project Co has delivered to the Authority a preliminary draft of the Commissioning Plan but if Project Co has not delivered to the Authority a preliminary draft of the Commissioning Plan by the date falling 9 months before the Target ED Opening Date, the Deduction applicable under this Section 12.3(h) will increase to \$5,000;
- (i) the Authority will provide its comments, if any, on the preliminary draft to Project Co within 20 Business Days of receipt of the preliminary draft;
- (j) Project Co will deliver a revised draft of the Commissioning Plan to the Authority not less than 40 Business Days after receipt of the Authority's comments on the preliminary draft, failing which, the Authority will be entitled to make a Deduction of \$5,000 for each week or part thereof after the date falling 40 Business Days after the Authority's comments were received by Project Co until Project Co has delivered to the Authority a revised draft of the Commissioning Plan;
- (k) the Authority will, within 15 Business Days of receipt of the revised draft, advise Project Co whether the Authority accepts the Commissioning Plan, and if the Authority does not accept it the Authority will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (l) if the Authority does not accept the Commissioning Plan, the parties will, acting reasonably, diligently work together with a view to revising the Commissioning Plan to address the Authority's reasons for non-acceptance;
- (m) if the Authority has not accepted the Commissioning Plan by the date that is 6 months before the Target ED Opening Date, Project Co may refer the dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Commissioning Plan is reasonable;

- (n) any Deduction the Authority is entitled to make pursuant to Section 12.3(h) or Section 12.3(j) of this Schedule will be made from the first Service Payment payable to Project Co pursuant to Schedule 8 [Payments]; and
- (o) Deductions made pursuant to this Section 12.3 will not be counted for the purposes of Sections 11.1 or 12.1(g) of this Agreement or Sections 6.7 or 6.8 of Schedule 4 [Services Protocols and Specifications].

13. COMPLETION

13.1 Deficiency List

Prior to and as a condition of issuance of the Certificate of Service Commencement or Certificate of ED Opening, as the case may be, the parties will require the Independent Certifier to, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative with respect to an application for a:

- (a) Certificate of ED Opening, prepare a complete list of Defects that are apparent upon inspection of the ED Opening Areas (the "**ED Opening Deficiencies**") and deliver to Project Co and the Authority's Design and Construction Representative the list of ED Opening Deficiencies; and
- (b) Certificate of Service Commencement, prepare a complete list of Defects that are apparent upon inspection of the Facility (the "**Service Commencement Deficiencies**") and deliver to Project Co and the Authority's Design and Construction Representative the list of Service Commencement Deficiencies.

The Authority or Project Co may refer matters relating to the accuracy or completeness of the list of ED Opening Deficiencies or the list of Service Commencement Deficiencies to the Dispute Resolution Procedure, but the Certificate of ED Opening and the Certificate of Service Commencement, when issued, will be final and not referable to the Dispute Resolution Procedure or otherwise subject to dispute between the parties.

13.2 Advance Notice of Application for ED Opening or Service Commencement

Project Co acknowledges that the Independent Certifier will need sufficient time to complete any inspections, consult with the Authority, and prepare the lists of deficiencies, and accordingly Project Co will:

- (a) at least 30 days (but no more than 60 days) before the Target ED Opening Date, deliver to the Independent Certifier and the Authority's Design and Construction Representative a notice setting out:
 - (1) a description of all outstanding Design and Construction to be completed by Project Co prior to ED Opening; and
 - (2) a list of all Defects with respect to the ED Opening Areas that Project Co is aware of at the time of the notice;

- (b) at least 30 days (but no more than 60 days) before the Target Service Commencement Date, deliver to the Independent Certifier and the Authority's Design and Construction Representative a notice setting out:
 - (1) a description of all outstanding Design and Construction to be completed by Project Co prior to Service Commencement; and
 - (2) a list of all Defects that Project Co is aware of at the time of the notice;
- (c) assist the Independent Certifier to make any advance inspections requested by the Independent Certifier.

13.3 Application for Certificate of ED Opening or Service Commencement

If Project Co believes it has achieved the requirements for ED Opening or Service Commencement and complied with Section 13.2 then Project Co may apply to the Independent Certifier (with a copy to the Authority's Design and Construction Representative) for a Certificate of ED Opening or a Certificate of Service Commencement, as the case may be. No later than 5 Business Days after application by Project Co for a Certificate of ED Opening or a Certificate of Service Commencement, the parties will require the Independent Certifier to, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative, make an inspection of the Facility, review the basis for Project Co's application for ED Opening or Service Commencement, and then within a further 5 Business Days, with respect to an application for a:

- (a) Certificate of ED Opening:
 - (1) if ED Opening has been achieved, issue a certificate indicating that ED Opening has been achieved (a "**Certificate of ED Opening**"), together with a list of Deficiencies (if any); or
 - (2) if ED Opening has not been achieved, provide Project Co and the Authority's Design and Construction Representative with a list of all incomplete Design and Construction that must be completed prior to ED Opening;
- (b) Certificate of Service Commencement:
 - (1) if Service Commencement has been achieved, issue a certificate indicating that Service Commencement has been achieved (a "**Certificate of Service Commencement**"), together with a list of Deficiencies (if any); or
 - (2) if Service Commencement has not been achieved, provide Project Co and the Authority's Design and Construction Representative with a list of all incomplete Design and Construction that must be completed prior to Service Commencement.

A Certificate of ED Opening or a Certificate of Service Commencement issued by the Independent Certifier will be final and not referable to the Dispute Resolution Procedure or otherwise subject to dispute between the parties. A Certificate of Service Commencement issued by the Independent Certifier will be

evidence that the Independent Certifier reviewed the basis for the Architect's certification that "substantial performance", as defined in the *Builder's Lien Act* (British Columbia) has been achieved, and found no apparent error.

13.4 Correction of Deficiencies

Upon issuance of the Certificate of ED Opening or the Certificate of Service Commencement, Project Co will proceed expeditiously to correct each Deficiency by the date that is 30 days after:

- (a) the ED Opening Date with respect to ED Opening Deficiencies; and
- (b) the Service Commencement Date with respect to the Service Commencement Deficiencies,

or such later date as may be reasonably required to provide sufficient time to correct the Deficiency and that is agreed by the Authority, acting reasonably (each Deficiency having its own "**Deficiency Deadline**"). Each Deficiency which has not been fully corrected by its Deficiency Deadline will be deemed (without the requirement for any further action by the Authority) to have generated a Demand Maintenance request on that day and thereafter the applicable provisions of this Agreement, including applicable Rectification Periods and Deductions, will apply to each such deemed request.