

SCHEDULE 2

DESIGN AND CONSTRUCTION PROTOCOLS

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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:

"CaGBC" means the Canada Green Building Council;

"Certificate of Service Commencement" has the meaning set out in Section 3.5 of this Schedule;

"Construction Representative" has the meaning set out in Section 2.1(b) of this Schedule;

"Deficiencies" has the meaning set out in Section 12.1 of this Schedule;

"Design Review Procedure" has the meaning set out in Section 1.1 of Appendix 2D [Design Review Procedure];

"Design Representative" has the meaning set out in Section 2.1(a) of this Schedule;

"Geotechnical Reports" has the meaning set out in Section 6.8 of this Schedule;

"Independent Certifier" has the meaning set out in Section 3.1 of this Schedule;

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

"LEED Canada" means CaGBC's Leadership in Energy & Environmental Design (LEED) Green Building Rating System For New Construction & Major Renovations LEED Canada- NC 1.0 (March 2007 addendum);

"LEED Gold Certification" means the award of a LEED Gold certification from the CaGBC;

"LEED Rating System" means LEED Canada;

"Life Cycle Report" has the meaning set out in Section 5.9 of this Schedule;

"Master Development Agreement" means the agreement attached as Appendix 2L;

"Move-In-Schedule" has the meaning set out in Section 10.5 of this Schedule;

"Pavilion Work" has the meaning set out in Section 4.8 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 2B [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 4.1 of Appendix 2D [Design Review Procedure];

“Revised Design and Construction Proposal” has the meaning set out in the contents of Appendix 2B [Proposal Extracts (Design and Construction)];

“Site” means the area shown within the demarcation line on the drawing referenced in Appendix 2C [Site Plan].

“Submittal” or **“Submittals”** has the meaning set out in Section 1.4 of Appendix 2E [User Consultation Process];

“Submittal Schedule” has the meaning set out in Section 3.2 of Appendix 2E [User Consultation Process];

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

“User Consultation Process” has the meaning set out in Section 1.1 of Appendix 2E [User Consultation Process]; and

“Users” includes representatives of the Authority and other users of the Facility, but does not include the general public.

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) a person (the **“Design Representative”**) to be the party’s single point of contact with respect to the Design; and
- (b) a person (the **“Construction Representative”**) to be the party’s single point of contact with respect to the Construction.

A party's Design Representative and a party's Construction Representative may be the same person and 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 Representative and Construction Representative will be for the account of that party.

2.2 Replacement

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 Representative or the party's Construction Representative. If for any reason a party's Design Representative or 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 Representative will have full authority to act on behalf of and bind the party with respect to Design under this Agreement, and a party's Construction Representative will have full authority to act on behalf of and bind the party with respect to Construction under this Agreement, including giving any review, acceptance, approval or confirmations which may be given by the Authority. Notwithstanding the above, neither a Design Representative nor a Construction Representative will have the authority to execute or agree to any amendments or to give any waivers of this Agreement.

2.4 The Authority's Review, Acceptance, Approval or Confirmation

With respect to any review, acceptance, approval or confirmation that the Authority may give under this Agreement relating to Design or Construction:

- (a) Project Co's Design Representative or Project Co's Construction Representative (as applicable) will, on behalf of Project Co, submit, or cause to be submitted, items for review, acceptance, approval or confirmation in accordance with the Updated Project Schedule, or otherwise in a timely way so as to permit the Authority's Design Representative or the Authority's Construction Representative, as the case may be, a reasonable time to consider the submission and to consult with other representatives of the Authority as required; and
- (b) subject to Section 2.4(a) above, the Authority's Design Representative or the Authority's Construction Representative will in a timely way respond to a request for review, acceptance, approval or confirmation so as to facilitate the efficient completion of the Design or Construction and either:
 - (1) agree that the submission conforms; or
 - (2) advise that the submission does not conform and provide written reasons.

If the Authority's Design Representative or the Authority's Construction Representative, as the case may be, has not responded to a request for review and comment where

required under this Schedule within 15 Business Days after the request is made, then the Authority's right of review and comment will be deemed to be waived.

2.5 Authority Not Responsible for Design or Construction

The Authority's rights of review, acceptance, approval or confirmation with respect to any aspect of the Design or the Construction will be for the Authority's benefit only, and no approval or confirmation of compliance by the Authority's Design Representative, the Authority's 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.

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 from the earlier of that date which is 20 Business Days after the Effective Date and the date of termination of the Independent Certifier's appointment, 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 25 Business Days of the request from the Authority under Section (a) above, 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

Under its agreement with the parties the Independent Certifier will:

- (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 will 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

The Independent Certifier will prepare and deliver to the Authority and Project Co a certificate certifying the Cost to Date as described in Section 9.5 of Schedule 8 [Payments] no later than the 10th day of each month (or other time in the case of payment under Section 9.4 of Schedule 8 [Payments]). The Authority and Project Co specifically agree to the following with respect to the preparation and delivery of the payment certificates by the Independent Certifier:

- (a) the Cost to Date certificate will certify actual costs incurred by Project Co without review or commentary on the quality of Design or Construction or the appropriateness or reasonableness of the costs;
- (b) the Independent Certifier will not have or assume any responsibility whatsoever for any of the Design or Construction and nothing in the Section or the parties' agreement with the Independent Certifier will in any way whatsoever relieve Project Co of its obligations for Design and Construction under this Agreement; and
- (c) except as required under Section 3.3 the Independent Certifier will have no role in monitoring or inspecting, or in giving any directions or instructions, with respect to any aspect of the Design or the Construction.

3.5 Application for Certificate of Service Commencement

The Independent Certifier will, no later than 5 Business Days after application by Project Co for a Certificate of Service Commencement, in cooperation with Project Co's Construction Representative and the Authority's Construction Representative make an inspection of the Facility and then within a further 5 Business Days either:

- (a) issue a certificate indicating that Service Commencement has been achieved (a "**Certificate of Service Commencement**"); or
- (b) provide Project Co and the Authority's Construction Representative with a list of all incomplete Design and Construction that must be completed prior to Service Commencement.

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.

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 advice or approvals that the Independent Certifier may give with respect to Design or Construction.

4. PROJECT CO'S RESPONSIBILITIES

4.1 Design/Build Responsibility

Without limiting Section 5.1 of Schedule 6 [Changes, Minor works and Innovation Proposals], but 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) including the scope as described in Appendix 2J [Scope Information];
 - (3) so as to provide a new patient care facility that at Service Commencement:
 - (A) is complete and operational and fit for the Program Requirements as specified in the Design and Construction Specifications and the Proposal Extracts (Design and Construction);
 - (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 buildings or structures at the Campus (except for greater certainty the service connections to the Building will be as expressly required by this Agreement); and
 - (4) 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), 4.1(b)(3) and 4.1(b)(4) 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 and Approvals for the Design and Construction

Except as otherwise expressly provided in this Agreement, Project Co will obtain all Permits required for the Design and Construction. Project Co will keep each of the Authority's Design Representative 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 Representative or Construction Representative Project Co will provide to the Authority copies of all documentation and correspondence with a Government Authority relating to such Permits. Except as otherwise expressly provided in this Agreement, Project Co will assume the risk of and all costs of delays to the Project Schedule arising from delays in obtaining Permits, or amendments to such Permits as may be required.

The Authority will provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to all Permits for which Project Co is responsible.

4.6 LEED Gold Certification

Project Co will obtain LEED Gold Certification of the Building as follows:

- (a) within 60 days of the Effective Date Project Co will register the Building 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 Project Co will achieve the credit for Energy and Atmosphere Credit 1.4 - Optimize Energy Performance: 38% (MNECB);
- (c) the Authority will cooperate with Project Co by providing supporting material as reasonably required to achieve an additional 3 credits that would not be available to Project Co without the Authority's support. The purpose of these 3 additional credits will be to serve as a contingency for the Authority's benefit that will apply if Project Co fails to achieve the 39 credits minimum required for LEED Gold Certification.
- (d) Project Co will not be entitled to rely on the 3 Authority credits to meet its obligations under this Section;
- (e) if at any time after Project Co obtains registration with the CaGBC in accordance with Section 4.6(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 of the Building, then Project Co will forthwith notify Authority of such change and such change will be a Change pursuant to Schedule 6 [Changes, Minor Works and Innovation Proposals];

- (f) if for any reason Project Co fails to achieve the Energy and Atmosphere Credit 1.4 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 4.6(g) of this Schedule, immediately pay to the Authority \$500,000;
- (g) if for any reason Project Co fails to obtain LEED Gold Certification, without reliance on any of the Authority's credits under Section 4.6(c) of this Schedule, within 18 months of the Service Commencement Date then Project Co will, upon written demand from the Authority, immediately pay to the Authority \$100,000 for every point less than 39, to a maximum payment amount of \$500,000;
- (h) upon payment of amounts, if any, owing under this Section 4.6 Project Co will have no further obligations in respect of obtaining LEED Gold Certification, except to provide 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.

4.7 Energy

Project Co will comply with the requirement of Appendix 2K [Energy].

4.8 Pemberton OR

Project Co will be responsible for the construction, remediation, restoration, and repair works as necessary to the Pemberton Heritage Pavilion as a museum, plus meeting, archives, two offices, reception, pantry, lounge, storage, washroom, mail and library space (all as described in the design documents relating to such work made available by the Authority in the Data Room) (collectively the "**Pavilion Work**") as follows:

- (a) within 90 days of the Effective Date Project Co will submit to the Authority a proposal for the Pavilion Work;
- (b) within 30 days of submitting its proposal for the Pavilion Work under Section 4.8(a), Project Co will consult with the Authority with respect to such proposal;
- (c) if requested by the Authority, Project Co will, at its cost, obtain competitive prices from subcontractors and suppliers for the completion of the Pavilion Work, including the cost of permits and fees and all Project Co's costs:
 - (1) in a form(s);
 - (2) on the terms including price; and

- (3) with contractor(s)
- all as satisfactory to and as approved by the Authority; and
- (d) the Authority may at its election:
 - (1) delete the Pavilion Work from Project Co's responsibilities; or
 - (2) direct Project Co to proceed with the Pavilion Work, in which event:
 - (A) Project Co will obtain a separate building permit for Pemberton Heritage Facility work and any other related permits including approval by heritage authorities;
 - (B) the parties will jointly appoint, retain and share equally in the payment of the fees of an independent qualified design professional (the "Pavilion Consultant") acceptable to both the Authority and Project Co to provide professional consulting services related to the Pavilion Work;
 - (C) the Authority will pay for the Pavilion Work by making monthly, progress payments, as certified by the Pavilion Consultant; and
 - (D) Project Co will undertake and complete the Pavilion Work to the satisfaction of Pavilion Consultant.

If Project Co performs the Pavilion Work then when completed the Pemberton Heritage Pavilion will be turned over to the Authority and Project Co and, except for the correction of deficiencies or warranty items will not be responsible for operating or maintaining the Pemberton Heritage Facility during the Term.

In any event, and regardless of whether Project Co undertakes the Pavilion Work, Project Co will be responsible for maintaining the grounds around the Pemberton Heritage Pavilion that are within the Demarcation Area.

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) 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 Designs Supplied by the Authority or Others

If in accordance with the provisions of this Agreement any component or element of the Facility is to be designed by the Authority or a third party then Project Co will remain fully responsible for the integration of such design with the Design, and no such design will relieve Project Co of its obligation to satisfy the requirements of Section 4.1 of this Schedule.

5.3 Zoning Approval

The Authority has obtained rezoning to permit the construction of the Facility and will pay all applicable development cost charges. Project Co will, at its cost:

- (a) undertake the Design to satisfy the City that the Design conforms to the design requirements that the City requires to be registered against title to the Lands; and
- (b) satisfy the Authority’s obligations as set out in the following sections of the Master Development Agreement:
 - (1) section 3.4;
 - (2) sections 4.1, 4.2, 4.3 and 4.4, but excluding any obligations relating to the sanitary sewer system as described in section 7.0 of the Master Development Agreement (and for greater certainty the Authority will be responsible for the obligations as set out in section 7.0 of the Master Development Agreement);
 - (3) the design obligations applicable to the design of the Facility as described in sections 8.1 and 8.2;
 - (4) sections 10.1, 10.2 and 10.3;
 - (5) section 12.1; and
 - (6) sections 17.1 and 17.2.

5.4 Design Process

Project Co will cause the Design-Builder to undertake the Design:

- (a) in co-operation with the Authority in accordance with Appendix 2D [Design Review Procedure] and in consultation with representatives of Facility Users as described in Section 5.5 of this Schedule and Appendix 2E [User Consultation Process];
- (b) so that the Design for each component is completed in progressive phases that will provide to the Authority the level of detail and documentation that a health care authority would customarily receive for a facility similar to the Facility in accordance with Good Industry Practice, including:
 - (1) dimensioned floor plans showing all millwork;
 - (2) the integration of furniture and equipment in the Facility;
 - (3) interior elevations for inpatient rooms and key functional areas;
 - (4) exterior building elevations;
 - (5) completed Site and landscaping plans;
 - (6) room finish schedules; and
 - (7) room data sheets.

Project Co will only issue drawings and specifications for construction purposes based on Reviewed Drawings and Specifications that have been initialled by the Authority's Design representative as described in Appendix 2D [Review Procedure] or with respect to drawings for which the Authority's right of review and comment has been deemed to have been waived under Section 2.4.

5.5 User Consultations

The Design must be carried out with appropriate consultation with users of the Facility and accordingly Project Co will, at its cost, as part of the Design process, conduct consultations with Users as described in Appendix 2E [User Consultation Process].

5.6 Design Development

Revisions to drawings and specifications and additional Design requested by the Authority as contemplated under the consultation processes described in Section 5 of this Schedule, including Section 5.4 (Design Process) and Section 5.5 (User Consultations), are not Changes and will be completed at Project Co's cost (except to the extent that any such requested revision would constitute a change to the Design and Construction Specifications or to Reviewed Drawings and 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).

5.7 Submittal Requirements

Project Co will ensure that each Submittal submitted to the Authority as part of the Design process, including the Design Review Procedure and User Consultation Process:

- (a) is in English, clearly identified as a Submittal and delivered with appropriate covering documentation;
- (b) clearly and accurately describes, in writing (and by identifying on drawings as appropriate), the component of the Design to which it relates that is subject to review by the Authority or the Users;
- (c) is recorded on a schedule describing the changes to drawings and documents as compared to previous Submittals;
- (d) includes an explanation of how any design changes comply with the requirements of this Agreement;
- (e) is provided in a format and number of copies reasonably acceptable to the Authority (unless otherwise specified by the Authority's Design Representative, the Design-Builder will issue 3 printed copies of all Submittals to the Authority, together with an electronic copy in a format agreed by the Parties acting reasonably and one printed copy of each Submittal to the Independent Certifier); and
- (f) is submitted in accordance with the Submittal Schedule.

Project Co will compile and maintain a register of the date and contents of the submission of all Submittals and the date of receipt and content of all returned Submittals and comments thereon.

5.8 Mock-Up Rooms

Project Co will, at its cost, prepare a "mock up" of standard rooms that are repeated in the Building (such as inpatient rooms) in sufficient detail to include all finishes, millwork, services, equipment and furniture so that the Authority, users and the Design-Builder's Sub-Contractors can visualize all features of the final design.

5.9 Life Cycle Report

On or before the Service Commencement Date, Project Co will prepare in consultation with the Design-Builder and the Service Provider a report ("**Life Cycle Report**") that sets out the proposed parameters for the anticipated life of major elements in the Facility and the Life Cycle Requirements relating thereto, to be used as a basis for the Life Cycle Plan referred to in Section 4.4 of Schedule 4 [Services Protocols and Specifications], and deliver such report to the Authority. The Authority will, acting reasonably, make its staff who work in building maintenance and repair available for consultation with Project Co, the Services Provider(s) and the Design-Builder regarding Design issues and the Life Cycle Report.

5.10 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 license 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 6.18 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 5.10(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 Representative for review to confirm compliance with the requirements of this Agreement (which review and confirmation will be indicated by initialling by the Authority's Design Representative) and upon review and acceptance such drawings and specifications will be deemed to be included in the Reviewed Drawings and Specifications. For clarity, the review by the Authority's Design Representative, and the initialling of the Reviewed Drawings and Specifications will be subject to Section 2.5 of this Schedule.

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

6.3 Construction Off-Site

Except as expressly required by this Agreement, Project Co will not be responsible for performing any Construction outside of the Site.

6.4 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.

6.5 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 Representative, the Authority's Construction Representative or any other representative or agent of the Authority, or to the Independent Certifier.

6.6 Existing Campus Utilities

Project Co will be responsible to relocate any existing services that conflict with the Construction. All existing services to existing buildings and structures must remain in operation at all times with interruption only with the approval of the Authority's Representative. Project Co will be responsible to confirm the location of, and protect, all existing utilities that may be affected by the Construction.

6.7 Site Investigation

By entering into this Agreement, Project Co will be deemed to have inspected the Site 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 (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; and
- (c) temporary storage of building materials and equipment.

6.8 Geotechnical Conditions

The Authority has made available certain geotechnical reports (the "**Geotechnical Reports**") as listed in Appendix 2C [Site Plan and Geotechnical Reports]. Project Co may rely on the accuracy of the geotechnical information as set out and contained in the Geotechnical Reports but only as specifically set out below:

- (a) Project Co may rely only on information, if any, contained in a Geotechnical Report describing the location of a test bore hole completed on the Site, and also the description of the soil and geotechnical material in a specific bore hole;
- (b) Project Co may not rely on any other information whatsoever that may be contained in a Geotechnical Report, including the adequacy of the number or locations of the described bore holes, or any opinions or recommendations interpreting the bore hole information for any purpose.

The Authority's responsibility for the information in the Geotechnical Reports is limited as set out above, and Project Co specifically acknowledges that it assumes and accepts all risks that the bore hole information, as may be available in the Geotechnical Reports, may not accurately or completely describe actual Site conditions including geotechnical or soil conditions (including risk of boulders, rock and low-strength soil) and ground water conditions (including risk of underground streams or water table conditions) that may affect Design or Construction.

6.9 Site Issues

Project Co will:

- (a) take reasonable steps to ensure that Construction workers do not use any portion of the Campus outside of the Site or any city streets within 1 km of the Site for vehicular parking by workers or suppliers;
- (b) post an information phone number in a prominent location near the Site such that neighbours and passersby can phone in and contact Project Co;
- (c) ensure that its delivery of materials and removal of construction debris and waste will not take place over residential streets and will utilize Fort Street and Bay Street whenever possible; and
- (d) provide a Community Liaison Officer to provide a single point of contact with Project Co regarding construction and development issues;

6.10 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 Representative and Construction Representative, and their respective 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 Representative and the Authority's Construction Representative will have the right to attend all monthly progress meetings and site meetings.

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 the Facility during the Construction Period without the consent of Project Co, such consent not to be unreasonably withheld or delayed.

6.11 Inspection

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

Construction Representative any part of the work on the Facility which the Authority's 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 6.11(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.

6.12 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) no builders lien holdback will be retained by the Authority under this Agreement, and 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
- (c) 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.

6.13 Safety and Protection of Property

Project Co will be solely responsible for safety at the Site during the Construction Period, including the safety of all persons on the Site (whether on the Site 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. Project Co will protect the Authority's property and any third party's property from damage in the performance of the Construction.

6.14 Control of Dust and Noise

Project Co will take all reasonable steps to minimize dust and noise from the Construction so that the operation and use of the other buildings, facilities and programs, and the delivery of health care services on the Campus are not materially adversely affected.

6.15 Signage

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

6.16 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;
- (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; and
- (c) at its cost replace or repair any amenities, services or structures affected by the Design or the Construction located on the Campus outside the Site including landscaping, light standards and hydrants.

6.17 Project Meetings

At the Authority's request, Project Co's 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.

6.18 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 Representative), including all final shop drawings, so as to produce accurate 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 Representative for review to permit the Authority's Design Representative to monitor Project Co's compliance with the requirements of this Section; and
 - (3) provide a hard copy of the completed as-built drawings and specifications to the Authority's Design 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 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: Project Co will retain minutes of meetings between the Authority and Project Co relating to the Design and Construction, and will circulate such minutes to the Authority's Design or Construction Representative for review and comment;
- (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.

6.19 Equipment 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 of the Authority staff to enable the Authority to properly utilize such equipment and systems.

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 2F [Equipment]. 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 electrical and plumbing connections, structural accommodation and 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]).

8. QUALITY MANAGEMENT

8.1 Quality of the Design and Constructions

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 expert in quality management ("**Project Co's Quality Consultant**") to develop a Quality Assurance Program.

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] (including Section 2.1);
- (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 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 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
- (g) provide that professionals of record will 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.

8.5 Quality Assurance Plan

Within 5 Business Days of the Effective Date, Project Co will deliver to the Authority a draft quality plan (the “**Quality Assurance Plan**”) that describes the implementation of the Quality Assurance Program. The Authority may, within 30 days of receipt of the Quality Assurance Plan, provide comments on it to Project Co and Project Co will, acting reasonably, take account of the comments in finalizing the Quality Assurance Plan. Project Co will promptly implement and strictly comply with the Quality Assurance Plan as recommended by Project Co's Quality Consultant.

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 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 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 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 of the Construction, including the Authority, the Authority's 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 2I [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, 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 5.4 of this Schedule; and

- (2) the commencement of Construction;
- (c) the planned start and completion dates of the major activities of Construction; and
- (d) the Target Service Commencement Date, which may not be updated or otherwise changed within 6 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 Schedule

Project Co acknowledges that the Authority will rely on 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 Service Commencement Date, Project Co will deliver to the Authority's Construction Representative a move-in schedule (the "**Move-in Schedule**") indicating the anticipated dates when the areas in the Facility will become available for occupation by the Authority so as to facilitate and permit the Authority to progressively take up occupation in the Facility in an efficient manner. The Authority's 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 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 (other than due to a Supervening Event or a Change) and will not achieve Service Commencement by the Target Service Commencement Date, then the Authority may deliver notice to Project Co's 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 Service Commencement by the Target Service Commencement Date.

11.2 Service Commencement Delay Costs

If Project Co fails to achieve Service Commencement by the Target Service Commencement Date (other than due to a Supervening Event or a Change), then Project Co will reimburse the Authority for any additional incremental direct, arm's length out of pocket costs which the Authority reasonably incurs and evidences to Project Co related to the move of health care personnel and equipment into the Facility because the Authority relied on the 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 Move-In Schedule (other than due to a Supervening Event or a Change). Notwithstanding anything contained in this Agreement (including any Schedule), the liability of Project Co for failing to achieve Service Commencement by the Target Service Commencement Date will not exceed \$10,000 per day.

11.3 Acceleration to Advance Service Commencement Date

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, and if the Authority acting reasonably decides to proceed with the acceleration then Project Co will implement the directed acceleration and the Authority will pay Project Co's costs of the acceleration.

12. COMPLETION

12.1 LEED Project Checklist

As a condition of application for Service Commencement Project Co will prepare and deliver to the Authority a LEED Project Checklist together with a commentary and explanation confirming that, in Project Co's judgement:

- (a) the Energy and Atmosphere Credit 1.4 - Optimize Energy Performance: 38% (MNECB) will be achieved as required by Section 4.6 of this Schedule; and
- (b) LEED Gold standard will be achieved for the Building as required by Section 4.6(a) of this Schedule.

12.2 Deficiency List

Immediately upon issuance of the Certificate of Service Commencement under Section 3.5 of this Schedule the Independent Certifier will, in cooperation with Project Co's Construction Representative and the Authority's Construction Representative, prepare a complete list of Defects that are apparent upon inspection of the Facility (the "**Deficiencies**") and deliver the list of Deficiencies to Project Co and the Authority's Construction Representative. The Authority or Project Co may refer matters relating to the accuracy or completeness of the list of Deficiencies to the Dispute Resolution Procedure, but 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. For greater certainty failure to obtain LEED Gold Certification will not be included as a Deficiency.

12.3 Correction of Deficiencies

Upon issuance of the Certificate of Service Commencement Project Co will proceed expeditiously to correct all Deficiencies. If Project Co fails or refuses to correct any Deficiency as required by this Section 12.3 then the Authority may exercise its rights under Section 11 of this Agreement.

APPENDIX 2A

INDEPENDENT CERTIFIER AGREEMENT

[NTD: see separate document]

APPENDIX 2B

PROPOSAL EXTRACTS (DESIGN AND CONSTRUCTION)

[NTD: see separate document]

APPENDIX 2C

SITE PLAN AND GEOTECHNICAL REPORTS

1. **Site Plan:** As attached to this Schedule 2C and marked as "Schedule 2 Appendix 2C".
2. **Geotechnical Reports:** "Royal Jubilee Hospital Proposed In-Patient Facility Geotechnical Assessment: Report to Zeidler Partnership Architects" dated May 18, 2007 by Thurber Engineering Ltd.

APPENDIX 2D

DESIGN REVIEW PROCEDURE

1. OVERVIEW

- 1.1 The procedure described in this Appendix (the “**Design Review Procedure**”) will be followed by Project Co in undertaking the Design in order to complete the Design in co-operation with the Authority and in consultation with the Users. See Section 5.4 of Schedule 2 [Design and Construction Protocols].
- 1.2 The Authority acknowledges that Project Co intends that the Design-Builder will perform Project Co’s Design obligations and accordingly this Design Review Procedure refers to the Design-Builder rather than Project Co. Notwithstanding references to the Design-Builder nothing in this Appendix 2D will be interpreted as relieving Project Co of its obligations for Design or for compliance with this Design Review Procedure.
- 1.3 This Design Review Procedure is intended to describe the design review procedure which the parties will follow to finalize the Design, and will not be interpreted to amend or relieve Project Co from its obligations relating to Design as otherwise set out in this Agreement.
- 1.4 Submittals for a component of the Design will not be made until the conclusion of the User Consultation Process in Appendix 2E in respect of such component.

2. GENERAL REQUIREMENTS FOR SUBMITTALS

- 2.1 All Submittals will comply with the requirements of Section 5.7 of Schedule 2 [Design and Construction Protocols].

3. DESIGN REVIEW PROCEDURE

- 3.1 Before commencing Construction of a particular component of the Design, the Design-Builder will submit to the Authority:
 - (a) in accordance with the Submittal Schedule, a Submittal for which the User Consultation Process in Appendix 2E has been concluded;
 - (b) all necessary design information, including any design reports and calculations, reasonably necessary for the Authority to conduct an appropriate review; and
 - (c) such other information as the Authority may reasonably request.
- 3.2 Within 15 Business Days of receipt, the Authority will review the Submittal and the Authority will give notice to the Design-Builder that the Design component to which the Submittal relates:
 - (a) appears to be in conformance with the Design and Construction Specifications and the Proposal Extracts (Design and Construction);

- (b) appears to not be in conformance with the Design and Construction Specifications and the Proposal Extracts (Design and Construction); or
 - (c) is, in the opinion of the Authority, insufficient for the purposes of a Design review.
- 3.3 If the Authority gives notice to the Design-Builder in accordance with Section 3.2(b) or 3.2(c) of this Appendix 2D that the Submittal does not conform to the Design and Construction Specifications or the Proposal Extracts (Design and Construction), or is insufficient, then the Design-Builder will:
- (a) provide further information necessary to demonstrate to the reasonable satisfaction of the Authority that the information submitted is sufficient and that Design component does conform to the Design and Construction Specifications and the Proposal Extracts (Design and Construction); or
 - (b) revise the Design, taking into consideration the issues identified by the Authority, and submit the revised Design component to the Authority for Design review in accordance with Section 3.1 of this Appendix 2D, and
 - (c) the Authority will have not less than 15 Business Days to complete the Design review after receipt of the further information or revised Design component, following which the Authority will give notice to the Design-Builder in accordance with Section 3.2 of this Appendix 2D.
- 3.4 If at any time after receiving a notice from the Authority in accordance Section 3.2(b) or 3.2(c) of this Appendix 2D, the Design-Builder disputes the contents of such notice, Project Co may refer the dispute to the Dispute Resolution Procedure by delivery of a Dispute Notice. If an immediate decision is required related to the Dispute then Section 3.3 of Schedule 13 [Dispute Resolution Procedure] will apply and the parties will cooperate to resolve the Dispute without delay.
- 3.5 The lack of a response by the Authority to any Design component submitted by the Design-Builder will not relieve the Design-Builder of its obligations to perform all Design and Construction in accordance with the Design and Construction Specifications and the Proposal Extracts (Design and Construction).
- 3.6 Any inspections, evaluations, reviews, approvals, acceptances, consents, Design reviews, commentaries, audits, objections or monitoring by the Authority in connection with any of the Work will be for the limited purposes of enabling the Authority to review the conformance of the Design with the Design and Construction Specifications and the Proposal Extracts (Design and Construction).
- 3.7 If at any time in the Design Review Procedure or the User Consultation Process the Design-Builder is of the view that an Authority request is a Change, then the Design-Builder will promptly advise the Authority and the parties will meet to review the request and reach agreement on whether the Authority's request is a Change. If the parties are unable to reach agreement with respect to a request then either party may refer the matter directly to the Referee in accordance with Section 2.4 of Schedule 13 [Dispute Resolution Procedure], and if an immediate decision is

required related to the Dispute then Section 3.3 of Schedule 13 [Dispute Resolution Procedure] will apply.

4. REVIEWED DRAWINGS AND SPECIFICATIONS

- 4.1 When the Authority gives notice to the Design-Builder, in accordance with Section 3.2(a) of this Appendix 2D, that a design component appears to be in conformance with the Design and Construction Specifications and the Proposal Extracts (Design and Construction), the Authority's Design Representative will initial the drawings describing the component and such drawings will be deemed to be "**Reviewed Drawings and Specifications**", but only to the extent of the Design component described in the Submittal (refer to Section 5.7(b) of Schedule 2) as subject to review by the Authority.
- 4.2 If at any time the Authority wishes to make a revision to Reviewed Drawings and Specifications then the provisions of Section 2.8 of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.
- 4.3 If the parties are unable to reach agreement with respect to a requested revision to the Reviewed Drawings and Specifications then either party may refer the matter directly to the Referee in accordance with Section 2.4 of Schedule 13 [Dispute Resolution Procedure], and if an immediate decision is required related to the Dispute then Section 3.3 of Schedule 13 [Dispute Resolution Procedure] will apply.

APPENDIX 2E

USER CONSULTATION PROCESS

1. OVERVIEW

- 1.1 The procedure described in this Appendix (the “**User Consultation Process**”) will be followed by Project Co as prescribed by Section 5.5 of Schedule 2 [Design and Construction Protocols].
- 1.2 The Authority acknowledges that Project Co intends that the Design-Builder will perform Project Co’s Design obligations and accordingly this User Consultation Process refers to the Design-Builder rather than Project Co. Notwithstanding references to the Design-Builder nothing in this Appendix will be interpreted as relieving Project Co of its obligations for Design or for compliance with this User Consultation Process.
- 1.3 This User Consultation Process is intended to describe the consultation which the parties will follow to finalize the Design, and will not be interpreted to amend or relieve Project Co from its obligations relating to Design as otherwise set out in this Agreement.
- 1.4 The provisions of this Appendix will apply to any and all items, documents and anything else required or specified by the Agreement in respect of the Design to be submitted to the Authority for review by the Users as part of the completion of any component of the Design, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Submittal**” or “**Submittals**”).

2. GENERAL REQUIREMENTS FOR SUBMITTALS

- 2.1 All Submittals will comply with the requirements of Section 5.7 of Schedule 2 [Design and Construction Protocols].

3. CONSULTATION PROCESS

- 3.1 The Design-Builder acknowledges that consultation with the Users is an essential step in the completion of the detailed Design for all components of the Facility and accordingly the Design-Builder will submit Submittals to the Authority’s Design Representative, and conduct consultations with Users, in respect of each component of the Design.
- 3.2 The Design-Builder will, for each component of the Design:
- (a) prepare and deliver to the Authority’s Design Representative drawings and other documents together with a written design brief describing the design component in appropriate detail;
 - (b) make a presentation to the Users describing the design component;
 - (c) consult with and obtain comments from the Users at appropriate stages of the development of the Design; and
 - (d) revise the Design as appropriate to reflect comments made by the Users.

- 3.3 The Design-Builder will, in preparing or amending Submittals and in the performance of the Design, consult with the Authority's Design Representative and allow reasonable time prior to the Construction of the works that are the subject of the Submittals, for review by and consultation with Users and for Design-Builder to make changes to the Design, all as required by Section 3.2 of this Appendix.
- 3.4 The Design-Builder will prepare and maintain a schedule for Submittals, including the User Consultation Process and the Design Review Procedure (the "**Submittal Schedule**") that provides appropriate opportunity for the Design-Builder to consult with Users and to revise the Design to reflect User comments, as required by this Appendix.
- 3.5 The Design-Builder will deliver an initial Submittal Schedule to the Authority for approval within 20 Business Days of the Effective Date. If the Authority, acting reasonably, determines that the Submittal Schedule does not provide adequate opportunity for the Design-Builder to consult with Users and revise the Design as required this Appendix, then the Design-Builder will promptly revise the Submittal Schedule to the satisfaction of the Authority, acting reasonably.
- 3.6 The Design-Builder may amend the Submittal Schedule from time to time with the approval of the Authority, such approval not to be unreasonably withheld or delayed.
- 3.7 The Design-Builder will submit an up to date version of the Submittal Schedule to the Authority no less than once per calendar month until the Design is complete.
- 3.8 After the delivery of a Submittal by Design-Builder to the Authority's Design Representative under Section 3.2(a) of this Appendix, the Design-Builder and the Authority's Design Representative will meet to determine an appropriate process for User consultations, such that the User Consultation Process and the Design Review Procedure will be completed in accordance with the Submittal Schedule. The Parties acknowledge that such process will depend on the nature of the Submittal, and may require:
- (a) any number of consultation meetings within the time permitted by the Submittal Schedule; and
 - (b) any number of revisions to the detailed Design and Submittals as required to reflect comments made by the Users in the consultation process.

The Parties further acknowledge that the Design-Builder intends to fast track the Design (subject to compliance with this the provisions of this Appendix) and that maintaining the Submittal Schedule is crucial to achieving the overall Project Schedule.

- 3.9 For each Design component, the Parties will undertake and complete the consultation process agreed in Section 3.8 of this Appendix 2E at least 15 Business Days before the deadline for a Submittal respecting that Design component to become a Reviewed Drawing and Specification. Upon conclusion of such process the Design-Builder will submit a Submittal respecting the design component to the Authority in accordance with Section 3.1 of Appendix 2D [Design Review Procedure].

APPENDIX 2F

EQUIPMENT

[NTD: see separate document]

APPENDIX 2G
EQUIPMENT LIST

[NTD: see separate document]

APPENDIX 2H

EQUIPMENT DATA SHEETS

[NTD: see separate document]

APPENDIX 2I

INITIAL PROJECT SCHEDULE

[NTD: see separate document]

APPENDIX 2J

SCOPE INFORMATION

Without limiting any other provision of this Agreement except as may be expressly set out in this Agreement Project Co will be fully responsible for the Design and Construction of the following in accordance with the requirements of this Agreement:

1. all services and all connections to utilities located off the Site;
2. all necessary vehicular and pedestrian access to the Site;
3. landscaping of the entire Site;
4. a fully operational building to accommodate overnight patient stays for general medical, surgical and psychiatry, including the Program Requirements and other uses as described in this Agreement; and
5. linkages to and connections with the following buildings, including coordinating with the Authority's consultant team on the design of these elements:
 - (a) the Diagnostic and Treatment Building at levels 0, 0A and 3;
 - (b) the West Block at Level 1; and
 - (c) the Coronation Annex at level 0.

APPENDIX 2K

ENERGY

[NTD: see separate document]

APPENDIX 2L

MASTER DEVELOPMENT AGREEMENT

[NTD: see separate document]