



## **Project Agreement**

Abbotsford Hospital and  
Cancer Centre

**CONFIDENTIAL**



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**THIS AGREEMENT** is made as of the \_\_\_\_ day of December, 2004

**BETWEEN:**

**ABBOTSFORD HOSPITAL AND CANCER CENTRE INC.**, a  
company incorporated under the laws of British Columbia  
  
("Health Co")

**AND:**

**AHA ACCESS HEALTH ABBOTSFORD LTD.**, a company  
incorporated under the laws of British Columbia  
  
("Project Co")

**WHEREAS:**

- A. The Health Authorities wish to operate a new regional hospital and cancer centre in Abbotsford, British Columbia (the "AHCC").
- B. Health Co wishes to supply the Health Authorities with a commissioned and serviced AHCC.
- C. Project Co wishes to provide to Health Co the part of the AHCC comprised of the Project Operations hereunder (the "Project").
- D. Health Co wishes to grant to Project Co a non-exclusive licence to the Site and Facility for the purposes of performing the Project Operations.
- E. Health Co and Project Co wish to enter into this Agreement, which sets out the terms and conditions upon which Project Co shall perform the Project Operations.

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

**PART A. PRELIMINARY**

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions and Interpretation**

- (a) This Agreement shall be interpreted according to Schedule 1 - Definitions and Interpretation.
- (b) This Agreement ("Agreement") is comprised only of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Agreement:

<b>Schedule No.</b>	<b>Description</b>
1	Definitions and Interpretation
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- (c) The documents comprising this Agreement are complementary and what is called for by any one of them shall be as binding as if called for by all, except in the event of conflict, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co's proposals, if any, incorporated by reference into this Agreement by the Project Co Proposal Extracts, Project Co's proposals are superseded entirely by this Agreement and rendered null and void, and shall not be relied upon or used by Project Co, Health Co or anyone else (including anyone pursuant to Schedule 30 - Dispute Resolution Procedure or any arbitral tribunal or any court) in

any way to interpret or qualify the scope of the Project Operations, any obligations or liabilities of Project Co, or anything else contained in this Agreement.

## 1.2. Conflict in Documents

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (i) the provisions establishing the higher quality manner or method of performing the Project Operations, using the more stringent standards, with the intent that the provisions which produces the higher quality with the higher levels of safety, reliability, durability, performance and service shall govern;
  - (ii) the provisions of Variation Confirmations and subsequent amendments in writing to this Agreement signed by the Parties shall govern and take precedence only over those specific provisions of this Agreement expressly amended thereby;
  - (iii) the executed Agreement portion of this Agreement;
  - (iv) Schedule 1 - Definitions and Interpretation;
  - (v) Schedule 9 - Financial Close Information;
  - (vi) Schedule 30 - Dispute Resolution Procedure;
  - (vii) Schedule 23 - Payment Mechanism;
  - (viii) Schedule 22 - Utilities;
  - (ix) Schedule 24 - Market Testing Procedure;
  - (x) Schedule 28 - Insurance Requirements;
  - (xi) Schedule 25 - Variation Procedure;
  - (xii) Schedule 11 - Review Procedure;
  - (xiii) Schedule 17 - Outline Commissioning Program;
  - (xiv) Schedule 31 - Refinancing;
  - (xv) Schedule 26 - Compensation on Termination;
  - (xvi) Schedule 29 - Record Provisions;
  - (xvii) Schedule 27 - Expiry Transition Procedure;
  - (xviii) Schedule 18 - Output Specifications;

- (xix) Schedule 16 - Project Co Proposal Extracts; and
- (xx) the other Schedules in the order in which they are listed.
- (b) If the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or Health Co upon discovery of same shall immediately give notice to Health Co's Representative and, if such notice is prior to Substantial Completion, to the Independent Certifier. Health Co's Representative shall in such an instance in writing, within 10 Business Days after such notice, make the determination of which provisions govern and give notice of such determination to Project Co.
- (d) If any ambiguity, conflict or inconsistency resolved by the foregoing provisions of this Section 1.2 reduces or impairs the ability of Project Co to achieve the Design/Construction Requirements, the Output Specifications or the Method Statements or of Health Co or the Health Authorities to provide or perform the Clinical/Non-Clinical Services, then Project Co or Health Co upon discovery of same shall immediately give notice to Health Co's Representative and, if such notice is prior to Substantial Completion, to the Independent Certifier of the manner and extent of the impairment, and Health Co's Representative shall in such an instance in writing, within 10 Business Days after such notice, make the determination of which provision governs and give notice of such determination to Project Co.
- (e) Within 7 days of any notice of a determination in writing by Health Co's Representative pursuant to this Section 1.2 which occurs prior to the Substantial Completion Date, Project Co shall be entitled to refer any such determination of Health Co's Representative for determination by the Independent Certifier.
- (f) Health Co and Project Co shall comply with the determination of Health Co's Representative or the Independent Certifier, as applicable, pursuant to this Section 1.2 unless Health Co or Project Co disputes the decision of Health Co's Representative or the Independent Certifier, as applicable, in which event such Dispute will be resolved in accordance with Schedule 30 - Dispute Resolution Procedure.

## **2. EXECUTION OF DOCUMENTS AND PROJECT TERM**

### **2.1. Execution and Delivery of Documents**

- (a) Prior to the execution and delivery of this Agreement:
  - (i) Project Co shall have delivered to Health Co the documents referred to in Schedule 2-1 - Project Co's Completion Documents, unless the requirement to deliver any such document is waived by Health Co; and



- (ii) Health Co shall have delivered to Project Co the documents referred to in Schedule 2-2 - Health Co's Completion Documents, unless the requirement to deliver any such document is waived by Project Co.

## **2.2. Commencement of Agreement**

- (a) This Agreement commences on the date of this Agreement and shall terminate on the termination of the Project Term.

## **3. SCOPE OF AGREEMENT**

### **3.1. Scope of Agreement**

- (a) Subject to and in accordance with the provisions of this Agreement, Project Co shall have the right and obligation to exercise its rights and perform its obligations under this Agreement at its own cost and risk without recourse to Health Co except as otherwise provided in this Agreement.

## **4. BUSINESS OPPORTUNITIES**

### **4.1. Business Opportunities**

- (a) Project Co acknowledges that, except as provided in Section 4.1(d), Health Co reserves the right to all commercial and other opportunities for the Facility and the Site ("Business Opportunities"). To encourage the development of Business Opportunities, Project Co may from time to time propose Business Opportunities for Health Co's consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both Parties. Acceptance of any such proposal shall be subject to such terms and conditions as Health Co may require, and Health Co will not be required to accept any such proposals.
- (b) Without limiting Health Co's rights set out in Section 4.1(a), Health Co will have the exclusive right, directly or through arrangement with others, to the following commercial opportunities at the Facility:
  - (i) sales of gifts, flowers and other articles typical of a gift and flower shop at a major acute care hospital facility; and
  - (ii) sale of lottery tickets,

and Project Co will not engage in or allow any activity which competes with any gift and flower shop (or the merchandise sold therein), or the sale of lottery tickets.

- (c) Project Co shall not use the Facility and Site for any Business Opportunities that are incompatible with the Vision and Guiding Principles of the AHCC, that may detract from the general reputation of Health Co or the Health Authorities in the community, or that are otherwise not acceptable to Health Co or the Health Authorities, acting reasonably. Non-compatible uses of the Site include the following, which is not an exhaustive list:
  - (i) a casino or gaming facility;

- (ii) adult or sexually-themed entertainment or sales operations;
  - (iii) alcohol or tobacco sales;
  - (iv) provision of non-licensed health care or other health care services, except with the prior written consent of Health Co; and
  - (v) retail services or products which Health Co considers may detract from the image and reputation that Health Co and the Health Authorities wish to promote for the AHCC and themselves.
- (d) Subject to Sections 4.1(b) and 4.1(c), and without limiting Project Co's rights in respect of Business Opportunities granted to Project Co pursuant to Section 4.1(a), Health Co hereby acknowledges that the following represent Business Opportunities granted to Project Co:
- (i) patient entertainment within patient bedrooms, other than within the ten bed ICU unit, Adolescent Psychiatry unit and Mental Health unit;
  - (ii) retail uses, other than as set out in Sections 4.1(b) and 4.1(c), only for the following:
    - (A) retail space situated on the ground floor of the Facility, in the approximate size and location set out in the Project Co Proposal Extracts (or as otherwise agreed by the Parties);
    - (B) a coffee shop in the main lobby area of the Facility, in the approximate size and location set out in the Project Co Proposal Extracts (or as otherwise agreed by the Parties); and
  - (iii) non-patient food services as follows:
    - (A) as provided in Section E4 of the FM Output Specifications; and
    - (B) the coffee shop referred to in Section 4.1(d)(ii)(B).
- (e) The Parties shall work cooperatively to develop protocols and procedures for the approvals of Health Co required under this Section 4.1 in respect of Business Opportunities granted to Project Co pursuant to this Section 4.1, and in respect of the granting of licence or other rights to third parties as may reasonably be required in respect of such Business Opportunities.

**PART B. GENERAL PROVISIONS****5. REPRESENTATIONS AND WARRANTIES****5.1. Project Co Representations**

- (a) Project Co represents and warrants to Health Co that as of the date of this Agreement:
- (i) Project Co is a company incorporated and validly existing under the laws of the Province of British Columbia, is in good standing at the Office of the Registrar of Companies of British Columbia with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Agreement and to perform its obligations hereunder;
  - (ii) Project Co and the Project Co Parties, collectively, are experienced and knowledgeable in the design, construction and operation of hospital facilities and the design and construction of cancer treatment facilities and have the required ability, experience, skills and capacity to perform the Project Operations in a timely and professional manner as set out in this Agreement;
  - (iii) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Agreement to be done, executed, delivered or performed;
  - (iv) Project Co has obtained all necessary Permits, Licences and Approvals required as of the date of this Agreement to commence the Project Operations;
  - (v) No steps or proceedings have been taken or are pending to supersede or amend its constating documents or its articles or by-laws in a manner that would impair or limit its ability to perform its obligations under this Agreement;
  - (vi) This Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies to bankruptcy, reorganization, insolvency, moratorium and other laws relating to or affecting creditors' rights generally; and
    - (B) the availability of equitable remedies such as specific performance and injunction;
  - (vii) The execution, delivery, and performance by Project Co of this Agreement does not and will not violate or conflict with, or constitute a default under any Applicable Law, any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its constating documents or organizational documents;

- (viii) No event has occurred that constitutes or that, with the giving of notice, lapse of time or otherwise, would constitute a Project Co Event of Default;
- (ix) All of the information and statements regarding Project Co set out in Schedule 3 - Project Co Information, are true and correct;
- (x) To Project Co's knowledge, there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or the Project Co Parties at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Agreement, and it has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that may result in any such materially adverse effect or such impairment;
- (xi) Project Co has carefully reviewed the whole of this Agreement, including all of the Output Specifications, and to Project Co's knowledge nothing contained herein inhibits or prevents Project Co from completing the Facility and performing the Project Operations in accordance with this Agreement in a good and safe manner so that it achieves and satisfies the requirements of this Agreement;
- (xii) Project Co is able to pay its debts as they mature;
- (xiii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada); and
- (xiv) To Project Co's knowledge, the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Project Operations in accordance with this Agreement.

## **5.2. Health Co Representations**

- (a) Health Co represents and warrants to Project Co that as of the date of this Agreement:
  - (i) Health Co is a company incorporated and validly existing under the laws of the Province of British Columbia, is in good standing at the Office of the Registrar of Companies of British Columbia with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Agreement and to perform its obligations hereunder;
  - (ii) Health Co has the requisite power, authority and capacity to execute and deliver and perform this Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Agreement to be done, executed, delivered or performed;

- (iii) No steps or proceedings have been taken or are pending to supersede or amend its constating documents or its memorandum or articles in a manner that would impair or limit its ability to perform its obligations under this Agreement;
- (iv) This Agreement has been duly authorized, executed, and delivered by Health Co and constitutes a legal, valid, and binding obligation of Health Co, enforceable against Health Co in accordance with its terms, subject only to:
  - (A) limitations with respect to the enforcement of remedies to bankruptcy, reorganization, insolvency, moratorium and other laws relating to or affecting creditors' rights generally; and
  - (B) the availability of equitable remedies such as specific performance and injunction;
- (v) The execution, delivery, and performance by Health Co of this Agreement does not and will not violate or conflict with, or constitute a default under any Applicable Law, any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its constating documents or organizational documents;
- (vi) No event has occurred that constitutes or that, with the giving of notice, lapse of time or otherwise, would constitute a Health Co Event of Default;
- (vii) To Health Co's knowledge, there are no actions, suits, proceedings, or investigations pending or threatened against Health Co or the Health Co Parties at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Health Co or in any impairment of its ability to perform its obligations under this Agreement, and it has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that may result in any such materially adverse effect or such impairment;
- (viii) Health Co is able to pay its debts as they mature; and
- (ix) Health Co is the legal and beneficial owner in fee simple of the Site.

## **6. BACKGROUND INFORMATION**

### **6.1. Project Co Investigation**

- (a) Project Co acknowledges and confirms that subject to Section 6.4, Project Co and the Project Co Parties have conducted their own analysis and review of the Background Information and have, before the execution and delivery of this Agreement, relied solely on their own independent professional advice and independent analysis and, subject to Section 6.4, satisfied themselves as to the accuracy, completeness and fitness for purpose of any such Background Information.

**6.2. No Warranty**

- (a) Subject to Section 6.4, Health Co, the Health Co Parties and the Health Authorities give no warranty or undertaking of whatever nature in respect of the Background Information and, without limitation, subject to Section 6.4, do not warrant that the Background Information represents all of the information in their possession or power either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Agreement relevant or material to or in connection with the Project or the obligations of Project Co under this Agreement or under any of the Project Documents.

**6.3. No Claims**

- (a) Subject to Section 6.4, Project Co and the Project Co Parties shall not be entitled to and Project Co shall not, and shall require that the Project Co Parties shall not, make any claim against Health Co, any Health Co Party or the Health Authorities, whether in contract, tort or otherwise, including any claim in damages, for extensions of time or for additional payments under this Agreement, on the grounds:
- (i) of any misunderstanding or misapprehension in respect of the Background Information; or
  - (ii) that incorrect or insufficient information relating to the Background Information was given to it by any person, whether or not Health Co, a Health Co Party or the Health Authorities,

nor, except as provided in Section 6.4, shall Project Co be relieved from any of its obligations or liabilities under this Agreement on any such ground.

**6.4. Reliance Background Documents**

- (a) Health Co agrees that if at the date of this Agreement, except (i) as disclosed in any Reliance Background Documents, (ii) as disclosed in Section 6.4(b) or (iii) as otherwise disclosed by Health Co, the Health Authorities or the Health Co Parties or known by Project Co or the Project Co Parties, any of the information in the Reliance Background Documents provided to Project Co is, to the actual knowledge of the HC/HA Listed Management, incorrect or to the actual knowledge of any of the HC/HA Listed Management there is relevant information in the possession or control of Health Co or the Health Authorities that has not been disclosed that would make such Reliance Background Documents incorrect, then if there is a material adverse effect on the Project Operations as a direct result of such Reliance Background Documents being incorrect, Project Co shall be entitled to a Variation for such compensation or extensions of time as would place Project Co in no better or no worse position than if correct information in the Reliance Background Documents had been provided prior to the date of this Agreement. Section 6.1.7 shall not apply to this Section 6.4.
- (b) For the purposes of this Agreement, "Reliance Background Documents" means the documents described in the column entitled "Reliance Background Documents" in the following table.

Item	Reliance Background Documents
1.	Nonscheduled Toxic Substances Update to "Supplementary Stage 1 and Stage 2 Preliminary Site Investigation, Proposed New Hospital Site," reports prepared by: Golder Associates, dated Feb. 10, 2004 and Supplementary Stage 1 and Stage 2 Preliminary Site Investigation Proposed New Hospital Site, by Golder Associates, dated March 20, 2002, including Appendices
2.	Supplementary Stage 1 Preliminary Site Investigation Proposed New Hospital Site (for additional lands) prepared by Golder Associates July 22, 2003 including Appendices
3.	Pre-demolition Hazardous Materials Assessment, 1895, 1905 and 1923 Gladwin Road, report prepared by Golder Associates dated July 16, 2003, and Appendix

## 7. PROJECT DOCUMENTS

### 7.1. Project Documents

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a Party, including so that other parties to such Project Documents shall not be entitled to terminate same.

### 7.2. Ancillary Documents

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 32.3, 45.1, 59.3, 60.3 or otherwise to cure a Project Co Event of Default or to prevent a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure a Project Co Event of Default);
  - (ii) make or agree to any variation of any Ancillary Document that materially and adversely affects the ability of Project Co to perform its obligations under this Agreement or that has the effect of increasing any liability of Health Co, whether actual or potential;
  - (iii) breach obligations, or waive or allow to lapse any rights it may have, or permit others to breach their obligations, or waive or allow to lapse any rights they may have, under any Ancillary Document, that materially and adversely affect the ability of Project Co to perform its obligations under this Agreement or that have the effect of increasing any liability of Health Co, whether actual or potential; or

- (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in circumstances referenced in Section 7.2(a)(i),

without the prior written consent of Health Co, such consent not to be unreasonably withheld, provided that where consent is requested in respect of Section 7.2(a)(i) or 7.2(a)(iv) such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 7.2(a)(i) or 7.2(a)(iv) will not materially and adversely affect the ability of Project Co to perform its obligations under this Agreement or have the effect of increasing any liability of Health Co, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 7.2(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Subcontractors, including Section 59.3.

### **7.3. Changes to Funding Agreements and Refinancing**

- (a) Project Co shall not enter into, terminate, amend, waive its rights, or exercise rights under the Funding Agreements unless:
  - (i) it is a Permitted Borrowing;
  - (ii) if Project Co wishes to enter into or terminate a Funding Agreement, Project Co has obtained the prior written consent of Health Co, not to be unreasonably withheld or delayed, and which consent shall not be withheld if at the time such action is contemplated and effected the same shall not materially and adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Agreement or shall not have the effect of increasing any liability of Health Co, whether actual or potential;
  - (iii) in the case of amendment to or the waiver or exercise of its rights under the Funding Agreements where the same will materially and adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Agreement or shall have the effect of increasing any liability of Health Co, whether actual or potential, Project Co has obtained the prior written consent of Health Co, not to be unreasonably withheld; or
  - (iv) such action is a Refinancing, which shall be performed only in accordance with Schedule 31 - Refinancing.

### **7.4. Compliance with Funding Principles**

- (a) Project Co shall keep the Funding Agreements in good standing to the extent necessary to perform its obligations under this Agreement and shall ensure that, notwithstanding any consent provided by Health Co pursuant to Section 7.3, none of the terms and conditions of the Funding Agreements shall prevent Project Co from performing its obligations under this Agreement and the other Project Documents.



## 8. HEALTH CO RESPONSIBILITIES

### 8.1. General

- (a) Health Co shall at its own cost and risk:
- (i) comply with this Agreement and perform all of its obligations under this Agreement in compliance with all Applicable Laws;
  - (ii) cooperate with Project Co in the fulfilment of the purposes and intent of this Agreement, provided however that Health Co shall not be under any obligation to perform any of Project Co's obligations under this Agreement;
  - (iii) inform Project Co as soon as reasonably practicable if at any time Health Co becomes unable to meet any of its financial obligations under this Agreement and, in such case shall inform, and keep Project Co informed, of any course of action to remedy the situation recommended or required by any Governmental Authority; and
  - (iv) use or permit the use of the Facility during the term of the Agreement for the predominant purpose of the Clinical/Non-Clinical Services, a hospital and cancer care centre, any other health care related purposes and for ancillary uses compatible with the foregoing, including for Business Opportunities compatible with the foregoing and for development as contemplated in Section 14.2(b).
- (b) Nothing in Section 8.1(a) shall in any way fetter the right, authority and discretion of Health Co or any of the Health Authorities in fulfilling its or their statutory or other functions under Applicable Laws.

## 9. PROJECT CO RESPONSIBILITIES

### 9.1. Other Business

- (a) Project Co may engage in any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project, provided that:
- (i) such additional business or activities shall not materially and adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Agreement or shall have the effect of increasing any liability of Health Co, whether actual or potential; and
  - (ii) such additional business or activities are not inconsistent with the AHCC's role as a hospital and cancer centre, or the mandate of the Health Authorities so as to potentially compromise the reputation or integrity of the AHCC, Health Co or any Health Authority, or the nature of the Province's health care system so as to potentially affect public confidence in that system.

**9.2. General**

- (a) Project Co shall at its own cost and risk:
- (i) perform all Project Operations:
    - (A) in accordance with the Output Specifications;
    - (B) in accordance with Good Industry Practice;
    - (C) in a manner consistent with the Quality Plans;
    - (D) in a timely and professional manner;
    - (E) in a manner that is not likely to be injurious to health or to cause damage to property;
    - (F) subject to the other provisions of this Agreement, in a manner consistent with Health Co, the Health Authorities and other Health Co Parties performing the Clinical/Non-Clinical Services;
    - (G) in compliance with all Applicable Laws and Permits, Licences and Approvals (including the giving of notices and the obtaining of any such Permits, Licences and Approvals) and so as not to prejudice the renewal or continued effectiveness of any such Permits, Licences and Approvals; and
    - (H) in compliance with all other terms of this Agreement; and
  - (ii) cooperate with Health Co in the fulfilment of the purposes and intent of this Agreement, provided however that Project Co shall not be under any obligation to perform any of Health Co's obligations under this Agreement.

**9.3. [\*Reserved]****9.4. Project Co Parties**

- (a) Project Co shall not be relieved or excused of or from any liability or obligation under this Agreement by the appointment of any Project Co Party, and Project Co shall cause each Project Co Party, to the extent such Project Co Party performs, or is specified hereunder to perform, the Project Operations, to comply with the obligations of Project Co to Health Co and such other obligations hereunder in the same manner and to the same extent as Project Co to the extent applicable to the Project Co Party's obligations thereunder. Project Co shall include terms in all Subcontracts requiring such compliance or incorporating the terms hereof insofar as it is relevant to the scope of the Subcontract in question, and require Subcontractors to include such terms in other Subcontracts to which those Subcontractors are a Party, and Project Co shall enforce, and require the enforcement of, all such terms.

**9.5. Permits, Licences and Approvals**

- (a) Subject to Sections 16.2, 16.3, 22.1, 22.2, 22.4 and 22.5 Project Co shall:
- (i) obtain, and as applicable renew, all Permits, Licences and Approvals which may be required for the performance of the Project Operations; and
  - (ii) comply with each Permit, Licence and Approval within the period of its validity in accordance with its terms, except to the extent not related to the Project Operations.
- (b) Where Permits, Licences and Approvals have requirements that may impose any conditions, liabilities, obligations or costs on Health Co, the Health Authorities or Health Co Parties, Project Co shall not obtain such Permits, Licences and Approvals without the prior written consent of Health Co, not to be unreasonably withheld; provided however that Health Co shall not be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence or Approval. Health Co shall comply, or shall require compliance, with any such conditions, liabilities, obligations or costs as are imposed on Health Co, the Health Authorities or Health Co Parties.
- (c) Where Project Co is unable by Applicable Law to apply for or to complete the process of obtaining one of the Permits, Licences and Approvals without obtaining information or administrative assistance from Health Co, or without submitting the application for such Permit, Licence or Approval in Health Co's name, Health Co shall at no cost promptly provide Project Co with such information and administrative assistance, such as executing applications or consents, as Project Co may reasonably require and Health Co may reasonably be able to provide, to assist Project Co to obtain the Permit, Licence or Approval.

**9.6. Safety**

- (a) Project Co shall throughout the progress of the Works and the conduct of the other Project Operations:
- (i) keep the Site, the Works and the Facility in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site;
  - (ii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access onto the Site and the Facility of any persons or creatures not entitled to be there; and
  - (iii) comply with all Applicable Law relating to health and safety, including without limitation the *Workers Compensation Act* (British Columbia) and all regulations thereto,

except to the extent Project Co is unable to do so as a result of the limitations of the rights to the Site granted to Project Co hereunder.

**9.7. Prime Contractor and WCB Coverage**

- (a) For the purposes of Section 118 of the *Workers Compensation Act* (British Columbia), as amended, and all regulations thereto, Project Co shall at all times throughout the Project Term be the “prime contractor” as defined in such Act for the whole of the Site and Facility to the extent applicable to Project Co’s obligations under this Agreement, and Project Co shall fulfil all functions and duties of such a “prime contractor” under such Act and regulations in that regard. If the Workers Compensation Board of British Columbia refuses to recognize or accept Project Co at any time as the “prime contractor” as defined in such Act for the whole of the Site and Facility in that regard, then Project Co shall be responsible to Health Co, and to those for whom Project Co would have been responsible if Project Co had been designated as the “prime contractor”, for fulfilling all obligations, duties and liabilities imposed on Health Co or the Health Co Parties pursuant to such Act and regulations in the same manner and to the same extent and for the same purposes as if Project Co undertook the obligations of a “prime contractor” for the whole of the Site and Facility to the extent applicable to Project Co’s obligations under this Agreement.
- (b) At Health Co’s request from time to time Project Co will provide Health Co with evidence satisfactory to Health Co of compliance of Project Co and the Project Co Parties with the *Workers Compensation Act* (British Columbia) to the extent applicable to Project Co’s obligations under this Agreement, including being registered, in good standing and current in respect of all assessments, levies, penalties and fines under the *Workers Compensation Act* (British Columbia).

**9.8. General Duty to Mitigate**

- (a) Without limiting but in addition to all other obligations to mitigate required by this Agreement, in all cases where either Project Co or Health Co is entitled to receive from the other any additional compensation, damages or extensions of time, including for or resulting from Variation Confirmations, suspensions of some or all parts of the Project Operations, or termination of some or all parts of the Project Operations, Project Co or Health Co, as the case may be, shall use all reasonable efforts to mitigate such amount required under this Agreement to be paid by Health Co to Project Co or by Project Co to Health Co, as the case may be, or the length of the extension of time. Any costs incurred by Project Co or Health Co, as the case may be, or those parts of any additional compensation or extensions of time, including for Variation Confirmations or otherwise, that Project Co or Health Co, as the case may be, could have mitigated against, reduced or otherwise avoided by the exercise of all reasonable efforts as required in accordance with the foregoing provisions of this Section 9.8 shall be taken into consideration in determining any additional compensation, damages or extensions of time to which Project Co or Health Co, as the case may be, shall be entitled hereunder. This Section 9.8 shall not apply to any amount that may be payable by Health Co to Project Co, or deducted from any such amount, by operation of the Payment Mechanism or Section 24.6.
- (b) Upon request from Health Co, Project Co shall promptly submit a detailed description, supported by all such documentation as Health Co may require, of the measures and steps taken by Project Co to mitigate and meet the aforesaid obligations.

**10. REPRESENTATIVES****10.1. Health Co's Representative**

- (a) Health Co's Representative shall exercise the functions and powers identified in this Agreement as functions or powers to be performed by Health Co's Representative and such other functions and powers of Health Co under this Agreement as Health Co may notify to Project Co from time to time.
- (b) Health Co's Representative shall be entitled at any time, by written notice to Project Co, to authorize any other person to exercise the functions and powers of Health Co's Representative, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of Health Co's Representative and all references to "Health Co's Representative" in this Agreement shall be taken as references to such person in relation to matters within the scope of such person's authority.
- (c) Health Co may from time to time by written notice to Project Co change Health Co's Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in the written notice.
- (d) During any period when no Health Co's Representative has been appointed, or when Health Co's Representative is unable through illness, incapacity or any other reason whatsoever to perform Health Co's Representative's functions under this Agreement, Health Co shall perform or may by written notice to Project Co promptly appoint an alternative Health Co's Representative to perform the functions which would otherwise be performed by Health Co's Representative. Upon receipt of such written notice, Project Co and Project Co's Representative shall be entitled to treat any act of such alternative Health Co's Representative which is authorized by this Agreement as being authorized by Health Co, and Project Co and Project Co's Representative shall not be required to determine whether authority has in fact been given.
- (e) Health Co's Representative shall not, except as otherwise provided in this Agreement, be entitled to modify or waive any provision of this Agreement or to authorize a Variation.
- (f) Except as previously notified in writing before such act by Health Co to Project Co, Project Co and Project Co's Representative shall be entitled to treat any act of Health Co's Representative which is authorized by this Agreement as being authorized by Health Co, and Project Co and Project Co's Representative shall not be required to determine whether authority has in fact been given.

**10.2. Project Co's Representative**

- (a) Project Co's Representative shall have full authority to act on behalf of Project Co for all purposes of this Agreement.
- (b) Project Co may from time to time by written notice to Health Co change Project Co's Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in the written notice.

- (c) During any period when Project Co's Representative is unable through illness, incapacity or any other reason whatsoever to perform Project Co's Representative's functions under this Agreement, Project Co shall perform or may by written notice to Health Co promptly appoint an alternative Project Co's Representative to perform the functions which would otherwise be performed by Project Co's Representative. Upon receipt of such written notice, Health Co and Health Co's Representative shall be entitled to treat any act of such alternative Project Co's Representative which is authorized by this Agreement as being authorized by Project Co, and Health Co and Health Co's Representative shall not be required to determine whether authority has in fact been given.
- (d) Project Co's Representative shall not, except as otherwise provided in this Agreement, be entitled to modify or waive any provision of this Agreement.
- (e) Except as previously notified in writing before such act by Project Co to Health Co, Health Co and Health Co's Representative shall be entitled to treat any act of Project Co's Representative which is authorized by this Agreement as being authorized by Project Co and Health Co and Health Co's Representative shall not be required to determine whether authority has in fact been given.

### **10.3. Communications to Representatives**

- (a) At the time that a Party appoints or changes the appointment of Health Co's Representative or Project Co's Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute notices to the Party appointing such representative.

### **10.4. Key Individuals**

- (a) Project Co represents to Health Co that the key individuals for the Project Operations are identified in Schedule 8 - Key Individuals. Project Co shall make all reasonable efforts to cause such persons to remain involved in the Project Operations in the capacity set out in that Schedule and shall make all reasonable efforts not to change any such individuals or their capacity set out in that Schedule without the prior written consent of Health Co (which shall not be withheld where such change is outside Project Co's control).
- (b) Project Co shall not select or permit a replacement for any of the key individuals identified in Schedule 8 - Key Individuals without the prior written consent of Health Co (which shall not be withheld where the proposed replacement individual is suitably qualified and experienced).

## **11. PROJECT MANAGEMENT OVERSIGHT COMMITTEE**

### **11.1. Establishment**

- (a) Health Co and Project Co shall within 30 days after the date of this Agreement establish a committee (the "Project Management Oversight Committee" or "PMOC") consisting of:

- (i) 4 senior representatives of Health Co appointed by Health Co from time to time, one of whom shall be Health Co's Representative; and
- (ii) The following 4 representatives appointed by Project Co from time to time:
  - (A) two representatives of Project Co, including Project Co's Representative;
  - (B) one representative of the Constructor; and
  - (C) such other representative as appointed by Project Co from time to time who may be the senior architect or a representative of the Service Providers, and Project Co shall take into account any reasonable requests from Health Co for particular representatives to attend.
- (b) The Independent Certifier shall be entitled to, but is not required to, attend meetings as a non-voting member of the PMOC.
- (c) Health Co's Representative shall be the chairperson of the PMOC.

#### **11.2. Function and Role**

- (a) The PMOC shall use reasonable efforts to assist the Parties to promote cooperative and effective communication.
- (b) The PMOC shall be responsible for receiving and reviewing matters concerning the Works, including:
  - (i) design and construction issues;
  - (ii) Detailed Works Schedule;
  - (iii) issues arising from reports or documents provided by Project Co;
  - (iv) any significant changes expected to the Submittal Schedule;
  - (v) issues of public concern;
  - (vi) quality assurance and safety issues;
  - (vii) community and media relations issues;
  - (viii) any special matters referred to the PMOC by Health Co, Project Co or the Project Co Parties;
  - (ix) receiving and considering Works Period Reports; and
  - (x) receiving and considering other issues pertaining to the Works.
- (c) The role of the PMOC is to make recommendations to the Parties, which they may accept or reject at their sole discretion. Neither the PMOC, nor its members acting in

that capacity, shall have any authority to vary or amend this Agreement or to make any decision which is binding on the Parties.

- (d) Neither Party shall rely on any act or omission of the PMOC, or any member of the PMOC acting in that capacity, so as to give rise to any waiver or estoppel in respect of any right, benefit or obligation of either Party.

### **11.3. Term of Project Management Oversight Committee**

- (a) Unless otherwise agreed, the PMOC shall only continue until the Final Completion Date, including in relation to any outstanding issues arising prior to or in connection with Final Completion.

### **11.4. Appointment and Replacement**

- (a) A Party may appoint and remove its respective representatives on the PMOC by written notice delivered to the other Party at any time.

### **11.5. Procedures and Practices**

- (a) The members of the PMOC may:
  - (i) adopt such procedures and practices for the conduct of the activities of the PMOC as they consider appropriate from time to time;
  - (ii) invite to any meeting of the PMOC such other persons as the members of the PMOC may agree; and
  - (iii) receive and review reports from any person or organization agreed to by the members of the PMOC.
- (b) Once established, the PMOC shall meet at least once each month from the date of this Agreement until the issue of the Final Completion Certificate, unless otherwise agreed by the members of the PMOC or the Parties, and from time to time as necessary.
- (c) Any member of the PMOC may convene a meeting of the PMOC at any time. Meetings of the PMOC shall be convened on not less than 7 days notice to all members of the PMOC identifying the agenda items to be discussed at the meeting, provided that in emergencies a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the PMOC, the PMOC shall meet at the Site, at the Facility or in a location in the Lower Mainland Area.
- (e) Minutes of all recommendations and meetings of the PMOC, including those made by telephone or other form of communications, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes promptly to the Parties, normally within 7 days of the making of the recommendation or the holding of the meeting. A complete set of all minutes of the meetings of the PMOC shall be made available by



Project Co for inspection by Health Co during regular business hours, upon reasonable request of Health Co.

- (f) A representative of a Party on the PMOC may appoint and remove an alternate representative by written notice delivered to the other Party at any time. If a representative of a Party is unavailable for a meeting of the PMOC:
  - (i) an alternate representative of such Party may attend such meeting and shall have the same rights and powers as the representative; and
  - (ii) the other Party's representatives may rely on the alternate representative's statement that the representative is unavailable.

## **12. PROJECT OPERATIONS COMMITTEE**

### **12.1. Establishment**

- (a) Health Co and Project Co shall not less than 180 days prior to the commencement of the Operational Term establish a committee (the "Project Operations Committee" or "POC") consisting of:
  - (i) 3 senior representatives of Health Co appointed by Health Co from time to time, one of whom shall be Health Co's Representative; and
  - (ii) 3 senior representatives of Project Co appointed by Project Co from time to time, one of whom shall be Project Co's Representative.
- (b) Health Co's Representative shall be the chairperson of the POC.
- (c) Members of the POC may arrange for such advisers and consultants as they require from time to time to attend meetings and provide briefings to the POC.

### **12.2. Function and Role**

- (a) The POC shall meet to discuss any strategic issues relating to the Project Operations, including the following as they relate to the Operational Term:
  - (i) any changes of the Service Providers or other Subcontractors;
  - (ii) issues of public concern;
  - (iii) Business Opportunities;
  - (iv) any joint reviews of the Services or other matters referred to the POC; and
  - (v) any changes to Services Quality Plans and performance issues.
- (b) The role of the POC is to make recommendations to the Parties, which they may accept or reject at their sole discretion. Neither the POC, nor its members acting in that

capacity, shall have any authority to vary this Agreement or to make any decision which is binding on the Parties.

- (c) Neither Party shall rely on any act or omission of the POC, or any member of the POC acting in that capacity, so as to give rise to any waiver or estoppel in respect of any right, benefit or obligation of either Party.

### **12.3. Appointment and Replacement**

- (a) A Party may appoint and remove its respective representatives on the POC by written notice delivered to the other Party at any time.

### **12.4. Procedures and Practices**

- (a) The members of the POC may:
  - (i) adopt such procedures and practices for the conduct of the activities of the POC as they consider appropriate from time to time;
  - (ii) invite to any meeting of the POC such other persons as the members of the POC may agree; and
  - (iii) receive and review reports from any person or organisation agreed to by the members of the POC.
- (b) Once established, the POC shall meet at least once each quarter during the Operational Term, unless otherwise agreed by the members of the POC or the Parties, and from time to time as necessary.
- (c) Any member of the POC may convene a meeting of the POC at any time. Meetings of the POC shall be convened on not less than 7 days notice to all members of the POC identifying the agenda items to be discussed at the meeting, provided that in emergencies a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the POC, the POC shall meet at the Facility.
- (e) Minutes of all recommendations and meetings of the POC, including those made by telephone or other form of communications, shall be recorded and maintained by Health Co.
- (f) A representative of a Party on the POC may appoint and remove an alternate representative by written notice delivered to the other Party at any time. If a representative of a Party is unavailable for a meeting of the POC:
  - (i) an alternate representative of such Party may attend such meeting and shall have the same rights and powers as the representative; and

- (ii) the other Party's representatives may rely on the alternate representative's statement that the representative is unavailable.

### 13. QUALITY ASSURANCE

#### 13.1. Quality Plans and Systems

- (a) Project Co shall cause all of the Project Operations to be the subject of quality management systems, which shall include the following (the "Quality Plans"):
  - (i) a Design Quality Plan and a Construction Quality Plan, which may be incorporated into one document; and
  - (ii) a Services Quality Plan for each Service.
- (b) All Quality Plans shall be consistent with the requirements of the Output Specifications, applicable Health Authority policies, the Final Commissioning Program and ISO 9001 or 9002 (such ISO references being applicable only to the Services Quality Plans) and Canadian Council on Health Service Accreditation, as the case may be, or any equivalent standard which is generally recognised as having replaced them, or any of them, but Project Co shall not require accreditation with such standards.
- (c) The Design Quality Plan is attached as part of Schedule 12 - Design Quality Plan and Construction Quality Plan. The Construction Quality Plan shall at a minimum also be consistent with the outline Construction Quality Plan attached as part of Schedule 12 - Design Quality Plan and Construction Quality Plan. Project Co shall submit its draft proposed Construction Quality Plan to Health Co within 60 days after the date of this Agreement.
- (d) The Services Quality Plan for each Service shall at a minimum comply with the requirements of the outline of the Services Quality Plan attached as Schedule 13 - Services Quality Plan Outline. Project Co shall submit its proposed Services Quality Plan for each Service to Health Co not less than 90 days prior to the Substantial Completion Date.
- (e) All Quality Plans (except the Design Quality Plan) shall be subject to review by Health Co pursuant to Schedule 11 - Review Procedure, and Project Co shall not be entitled to implement or cause the implementation of any Quality Plan (except the Design Quality Plan) unless and until Project Co is entitled to proceed with such implementation pursuant to Schedule 11 - Review Procedure.
- (f) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Project Operations in compliance with the Quality Plans, including by causing:
  - (i) the Constructor to implement the Design Quality Plan and the Construction Quality Plan; and
  - (ii) each Service Provider to implement the relevant Services Quality Plan for the Service being provided by that Service Provider.

- (g) Where any aspect of the Project Operations is performed by more than one Project Co Party, then this Section 13, in so far as relevant or appropriate to the activities to be performed by such Project Co Party, shall apply in respect of each of them and references in this Section 13 to such Project Co Party, including “the Constructor” or “the Service Provider”, shall be construed accordingly.

**13.2. Changes to Plans**

- (a) Project Co shall from time to time submit to Health Co in accordance with Schedule 11 - Review Procedure any changes to any of the Quality Plans required to comply with Section 13.1, and shall amend such Quality Plans as required pursuant to Schedule 11 - Review Procedure.

**13.3. Quality Manuals and Procedures**

- (a) If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts of it shall be submitted to Health Co at the time that the relevant Quality Plan or part of, or change to, a Quality Plan is submitted in accordance with Schedule 11 - Review Procedure, and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan or part of, or change to, a Quality Plan in accordance with Schedule 11 - Review Procedure.

**13.4. Quality Monitoring**

- (a) Without limiting Health Co’s other rights pursuant to this Agreement, including Sections 31 and 37.2, Health Co may from time to time perform periodic monitoring, spot checks and auditing of Project Co’s quality management systems, including all relevant Quality Plans and any quality manuals and procedures. Health Co shall make all reasonable efforts to prevent interference with the Project Operations in exercising such rights. Project Co shall ensure that Health Co shall have the same right in respect of the Constructor and any Service Providers. Project Co shall cooperate and shall cause the Constructor and Service Providers to cooperate with Health Co including providing Health Co with all information and documentation reasonably required in connection with Health Co’s rights under this Section 13.4.

**PART C. LICENCES AND SITE****14. LICENCES****14.1. Licence to Site**

- (a) Effective from the date of this Agreement until the Termination Date, Health Co hereby provides, and shall continuously until the Termination Date provide, Project Co, the Subcontractors and their respective employees, officers, agents and advisors, such non-exclusive licence rights of use and access to, on and over the Site and Facility as are required and sufficient by and for Project Co for the purposes of performing the Project Operations (including for the purposes of Section 18.6(c)) and for Business Opportunities granted to Project Co pursuant to Section 4.1. Without derogating from Health Co's rights hereunder, Health Co acknowledges that in respect of the Works Project Co requires and shall have access to the Site without obstruction by Health Co, the Health Authorities or Health Co Parties.
- (b) In consideration for the licence granted pursuant to Section 14.1(a), Project Co shall provide the Works subject to and in accordance with this Agreement.
- (c) None of the rights granted pursuant to this Section 14.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests which benefit the Site, obtained after the date of this Agreement, to the extent the same are necessary for the Project Operations.
- (d) The licence provided in this Section 14.1 shall automatically terminate as of the Termination Date.

**14.2. Non-exclusive Licence/Development of Site**

- (a) Project Co acknowledges and agrees that the rights granted to Project Co, the Subcontractors and their respective employees, officers, agents and advisors hereunder shall be non-exclusive and that Health Co and the Health Authorities, and any person authorized by Health Co or the Health Authorities, may occupy and possess the Site and Facility, including for the purposes of the Clinical/Non-Clinical Services. In exercising such rights Project Co shall not, and shall require that its Subcontractors, and their respective employees, officers, agents and advisors shall not, disrupt the Clinical/Non-Clinical Services or compromise patient care and safety.
- (b) Without limiting Section 14.2(a), Project Co acknowledges that Health Co may from time to time use or develop (including by way of subdivision), or permit the use or development for any purpose, of portions of the Site other than that portion of the Site contained within the building footprint of the main hospital and cancer centre building. To the extent that such use or development does materially and adversely interfere with Project Co's licence granted hereunder or materially and adversely interferes with Project Co's ability to carry out the Project Operations, to address such interference, Health Co shall make a Variation to the Project Operations with a resulting change to the licence rights granted to Project Co hereunder, including to modify such licence rights, pursuant to Schedule 25 - Variation Procedure. If Health Co proposes any major

development in accordance with the foregoing, then Health Co shall provide Project Co with advance notice of such development.

**14.3. Limited Access Areas**

- (a) For the purposes of the Clinical/Non-Clinical Services or for any safety, operational efficiency or other reasons, effective upon Substantial Completion of the Facility, Health Co may designate portions of the Site or the Facility that limit or restrict the access of anyone including Project Co's personnel unless a person seeking access obtains the prior written consent of Health Co, which consent may be upon such reasonable conditions as are imposed by Health Co. Such designation shall constitute a deliberate act by Health Co under Section 42.1(a)(ii) if such designation results in undue interference with Project Co's ability to carry out the Project Operations (and Section 42.1(a)(ii)(C) shall not apply to such designation notwithstanding it is provided for in this Section 14.3).

**14.4. Naming and Signage**

- (a) Project Co acknowledges that Health Co reserves all rights to designate the name for the Facility and any part of the Facility and reserves all rights to signage in relation to the Site and the Facility and that Health Co and the Health Authorities reserve and retain all rights, Trade-marks, naming or branding regarding the Facility or any part of the Facility. It is agreed, however, that with the prior written consent of Health Co, not to be unreasonably withheld and which may take into consideration any applicable governmental guidelines, Project Co and the Project Co Parties may:
- (i) for the period prior to Substantial Completion, erect and maintain signage (which may include such parties' logos and trade names) identifying their respective roles in connection with the Project; and
  - (ii) after Substantial Completion, erect and maintain signage in relation to the retail uses permitted by Section 4.1(d)(ii) hereof at the location of such retail uses.

**14.5. No Interest in Land**

- (a) Project Co agrees that it acquires no estate or interest in the Site or the Facility or any other interest in land pursuant to this Agreement or otherwise.

**14.6. Health Co Mortgage**

- (a) If Health Co mortgages the Site, Health Co shall on the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee of the Site permitting Project Co to continue its access and use under its licence granted pursuant to this Section 14 free from interference from the mortgagee or any person claiming by or through the mortgagee and agreeing to perform the obligations of Health Co under this Agreement for any period of actual possession or control of the Site by the mortgagee, subject to the provisions of this Agreement (including as to the performance by Project Co of Project Co's obligations hereunder and as to termination of the licence upon termination of this Agreement or upon a Project Co Event of Default), provided that Project Co agrees with such mortgagee, in a document

in form satisfactory to such mortgagee acting reasonably, to (in the event of any realization under the mortgage) attorn to and become the licensee of such mortgagee. This Section 14.6 shall not apply in respect of any portion of the Site used or developed pursuant to Section 14.2(b) if neither the licence granted pursuant to Section 14 or Project Operations pertain to such portion of the Site.

## **15. TITLE ENCUMBRANCES**

### **15.1. Title Encumbrances**

- (a) Project Co shall perform all Project Operations such that:
- (i) Project Co performs all obligations under the Title Encumbrances as, in the place and stead of, Health Co, other than such obligations which Project Co is not legally capable of performing on behalf of or for Health Co (including the giving of consents, granting of rights or interests or waiving of rights required from the owner of the Site in connection with Development Approvals) and other than:
    - (A) such obligations the Parties agree are not the obligation of Project Co under any Title Encumbrances added after the date of this Agreement;
    - (B) Health Co's obligations under Sections 22.1, 22.2, 22.4 and 22.5;
    - (C) obligations in respect of the "Off-site Parking Mitigation Plan" as set out in the Design Control Covenant; and
    - (D) obligations under the Title Encumbrances which the City of Abbotsford may formally relieve or waive with respect to the Development Approval.
  - (ii) all Project Operations performed by or on behalf of Project Co, whether before, during or after the completion of the Works, shall be performed in a manner which does not breach the Title Encumbrances; and
  - (iii) subject to Encumbrances that Project Co shall remove pursuant to Section 15.2, there shall be no action, or omission to act, by Project Co or a Project Co Party, which shall give rise to a right for any person to obtain title to or any interest in the Site or any part of it, except in accordance with the terms of this Agreement.
- (b) If any additional Title Encumbrances are reasonably required in connection with the development of the Facility and the Project Operations, including as referenced under Sections 22.1 and 22.5, but can only be granted by Health Co, Project Co may request that Health Co grant such Title Encumbrances. Health Co shall act reasonably in considering such request, and shall grant such Title Encumbrances within a reasonable time.

### **15.2. No Site Encumbrances**

- (a) Except with the prior written consent of Health Co, not to be unreasonably withheld (including if such Encumbrance is required for the Project Operations), Project Co shall

not create, incur or permit any Encumbrance to be filed, issued or registered against the Site or any part thereof.

- (b) Except with the prior written consent of Project Co, not to be unreasonably withheld, Health Co shall not create, incur or permit any Encumbrance (including any modification to any of the Other Encumbrances) to be filed, issued or registered against the Site or any part thereof, provided however that such consent shall not be withheld for any Encumbrance that does not materially and adversely interfere with Project Co's licence granted hereunder and with Project Co's ability to carry out the Project Operations. Notwithstanding such consent after the date hereof by Project Co, any impact on the Project Operations shall constitute a Variation. Project Co acknowledges that it has, as of the date of this Agreement, consented to the Other Encumbrances.
- (c) Sections 15.2(a) and 15.2(b) shall not preclude Health Co's rights under Section 14.2.
- (d) In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance which has not been consented to in writing by Health Co or Project Co, as the case may be, or permitted hereunder, the Party that created, incurred or permitted the same shall immediately take all necessary steps to remove such Encumbrance. If such Encumbrance is not removed within 15 days of its coming into existence then, without prejudice to any other rights or remedies it may have, the other Party will be at liberty to take whatever steps it deems necessary and appropriate to remove the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from the responsible Party of the amount of any such payment and any associated costs, including legal costs, which shall be payable on demand.
- (e) The Parties acknowledge that the foregoing provisions of this Section 15.2 shall apply to claims of builders lien made against the Site and shall also apply to claims made against the holdback under the Builders Lien Act (British Columbia) as though such a claim were an Encumbrance against the Site as referred to therein.
- (f) Project Co shall withhold from its Subcontractors the holdback under the Builders Lien Act (British Columbia) and shall deposit such holdback into a separate holdback account.
- (g) Project Co shall, as a condition of final payment under all Subcontracts for which lien rights may be claimed under the Builders Lien Act (British Columbia), require that a certificate of completion for such Subcontracts be issued, that the relevant Subcontractor provide statutory declarations or other assurances confirming payments that have been made and that all those engaged by that Subcontractor have been paid and that the Subcontractor provide a release of claims on appropriate terms (which release may be subject to identified outstanding claims) in accordance with Applicable Law.
- (h) Project Co, a Subcontractor, or the Independent Certifier (if agreed by the Parties) shall be the payment certifier under Subcontracts. Prior to issuing a certificate of completion, Project Co shall require the payment certifier to consult with Health Co, provide Health Co with relevant information required by Health Co to assess the status of completion and obtain Health Co's comments on whether completion has been achieved under the



Builders Lien Act (British Columbia). Project Co shall follow the requirements of the Builders Lien Act (British Columbia) and reasonable industry practice for posting and advertising certificates of completion when issued.

## 16. SITE CONDITION

### 16.1. Acceptance of Site Condition

- (a) Subject to Sections 6.4, 16.2 and 16.3, Project Co acknowledges and agrees that it has inspected all matters relating to the Site, including the Background Information, prior to executing this Agreement and agrees to accept the Site and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing but subject to Sections 6.4, 16.2 and 16.3, Project Co shall not be entitled to make any claim of any nature whatsoever against Health Co, the Health Authorities, the Health Co Parties and their respective directors, officers, employees, agents and representatives on any grounds relating to the Site, including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not Health Co, the Health Authorities or a Health Co Party.
- (b) Subject to Sections 6.4, 16.2 and 16.3, Project Co acknowledges and agrees that, other than as would duplicate the due diligence and investigation set out in the Reliance Background Documents, it has, and shall be deemed to have:
- (i) performed all necessary Site due diligence and investigation, including a Ground Physical And Geophysical Investigation, and to have inspected and examined the Site and its surroundings and (where applicable) any existing structures or works on, over or under the Site;
  - (ii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works;
  - (iii) satisfied itself as to the presence of any Contamination on, in or under the Site, or migrating to or from the Site, including as disclosed in or reasonably anticipated from, the Background Information, including the Environmental Reports;
  - (iv) satisfied itself as to the adequacy of the rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement, including additional land or buildings outside the Site;
  - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever, other than Health Co, with access to or use of, or rights in respect of, the Site, with particular regard to the owners of any land adjacent to the Site; and

- (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (c) Subject to Section 6.4, Project Co further acknowledges and agrees that, other than as referred to or contained in this Agreement, no representations or warranties have been made, nor documentation delivered, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

**16.2. Contamination**

- (a) Health Co shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination:
  - (i) that was disclosed in or could have been reasonably anticipated from, the Environmental Reports;
  - (ii) that could have been reasonably discovered or anticipated on the basis of any investigations, inspections, or other due diligence of the Site, including as referred to in Section 16.1, other than as would duplicate the due diligence and investigation set out in the Reliance Background Documents; or
  - (iii) that is caused by Project Co or the Project Co Parties.
- (b) Upon the discovery of any Contamination for which Health Co is responsible pursuant to Section 16.2(a), Project Co shall immediately inform Health Co's Representative and shall comply with all Applicable Law in respect thereof at Health Co's cost pursuant to Section 16.2(d).
- (c) In the event that Health Co wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.2(b), then Health Co shall issue an instruction to Project Co specifying what action Health Co requires Project Co to take in relation to such discovery. Project Co shall promptly and diligently comply with all such instructions at Health Co's cost pursuant to Section 16.2(d).
- (d) If Sections 16.2(b) and 16.2(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination for which Health Co is responsible pursuant to Section 16.2(a) and which would not otherwise be required under this Agreement, then any such alteration, addition, demolition or extension or variation:
  - (i) in the Works shall, subject to and in accordance with Section 40, be a Delay Event pursuant to Section 40.1 and shall be a Compensation Event pursuant to Section 41.1; and
  - (ii) in the Services shall constitute a Variation.

**16.3. Items of Geological, Historical or Archaeological Interest or Value**

- (a) As between the Parties, all fossils, remains, coins, articles of value or antiquity, and other objects having archaeological, artistic, historic or monetary interest or value, including all heritage objects (as such term is defined in the *Heritage Conservation Act* (British Columbia)) which may be found on or at the Site are or shall be the sole and absolute property of Health Co.
- (b) Upon the discovery of any of the foregoing items referred to in Section 16.3(a) during the course of the Works, Project Co shall:
- (i) immediately inform Health Co's Representative;
  - (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such Works would endanger the object or prevent or impede its excavation;
  - (iii) take all necessary steps to preserve the item in the same position and condition in which it was found; and
  - (iv) comply with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including pursuant to the *Heritage Conservation Act* (British Columbia).
- (c) In the event that Health Co wishes Project Co to perform procedures which are in addition to any required pursuant to Section 16.3(b), then Health Co shall issue an instruction to Project Co specifying what action Health Co requires Project Co to take in relation to such discovery. Project Co shall promptly and diligently comply with all such instructions.
- (d) If Sections 16.3(b) and 16.3(c) require Project Co to perform any alteration, addition, demolition or extension or variation in the Works as a result of such discovery and which would not otherwise be required under this Agreement, then such alteration, addition, demolition or extension or variation in the Works shall, subject to and in accordance with Section 40, be a Delay Event pursuant to Section 40.1 and shall be a Compensation Event pursuant to Section 41.1.

**17. DEVELOPMENT APPROVALS****17.1. Development Approvals**

- (a) Without limiting Project Co's obligations under Section 9.5, but subject to Sections 22.1, 22.2, 22.4 and 22.5, Project Co shall at its sole cost and risk apply for, obtain and comply with all Development Approvals which may be required for the development of the Site and the Facility to achieve Substantial Completion on or before the Scheduled Substantial Completion Date. Health Co shall promptly provide Project Co with information and administrative assistance and consents as provided under Section 9.5(c) in relation to such Development Approvals.

**PART D. DESIGN AND CONSTRUCTION****18. DESIGN AND CONSTRUCTION OBLIGATIONS AND PROCESS****18.1. Overall Responsibility**

- (a) Project Co shall perform and complete the Works:
- (i) so as to satisfy the Design/Construction Requirements;
  - (ii) in accordance with the Project Co Proposal Extracts;
  - (iii) in accordance with the Design Data; and
  - (iv) in accordance with the terms of this Agreement.

**18.2. Rectification of the Project Co Proposal Extracts**

- (a) Without limiting Section 18.1, to the extent that the Project Co Proposal Extracts do not fulfil the Design/Construction Requirements, Project Co shall at its own expense amend the Project Co Proposal Extracts and rectify the Works or any part affected. Such amendment and rectification shall have the effect that the Project Co Proposal Extracts shall satisfy the Design/Construction Requirements.

**18.3. Fitness for Purpose**

- (a) Project Co shall design, engineer, construct, commission, performance test and provide to Health Co on a turnkey basis a complete and operational Facility fit for the purposes of, and the uses specified in, the Output Specifications and Project Co Proposal Extracts, including to allow Project Co to perform the Services and to allow Health Co and the Health Authorities to perform the Clinical/Non-Clinical Services, all on the terms and conditions contained in this Agreement.

**18.4. Performance of Design Obligations**

- (a) In the design and engineering of the Facility, Project Co, its consultants and the Project Co Parties shall as a minimum exercise the standard of care normally exercised by licensed or registered professional architectural and engineering personnel having specialized knowledge and experience in performing design activities of a similar nature, scope and complexity to the Facility.
- (b) Project Co shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of British Columbia. Such architects and engineers shall certify, and if required by Applicable Law sign and seal, all design, drawings and technical reports confirming that they comply with the applicable standards, specifications and codes specified in the Design/Construction Requirements, with all prevailing design standards and design practices for such work in the Province of British Columbia, and as otherwise required by Applicable Law.

**18.5. Substitutions**

- (a) Whenever equipment (other than Equipment as provided for in Section 21), components, materials, supplies, tools, and other items are specified or otherwise described in this Agreement (including the Design/Construction Requirements, Project Co's Proposal Extracts, Design Data or through the Review Procedure) by using the name of a manufacturer, a proprietary item, or the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name, description or the like, the naming or identification of the item is intended to establish the type and the minimum function and quality required and substitution shall not be permitted except as provided in this Section 18.5. Equipment (other than Equipment as provided for in Section 21), components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors may be substituted with the prior written consent of Health Co, not to be unreasonably withheld, provided that Health Co shall not withhold its consent if the item proposed is equivalent or superior to that named or described.

**18.6. General Construction Obligations**

- (a) Project Co is responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, materials and plant) necessary for the design, construction and commissioning and other performance of the Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Agreement:
- (i) construct the Works regularly, diligently, expeditiously and in a thorough and worker-like manner;
  - (ii) subject to the Business Opportunities, ensure that no works other than the Works under this Agreement are constructed on the Site by Project Co or any person for whom Project Co is responsible at law;
  - (iii) procure all Plant;
  - (iv) procure Equipment as provided in Section 21;
  - (v) install all Plant as necessary;
  - (vi) install Equipment as provided in Section 21; and
  - (vii) in respect of plant, equipment and materials incorporated in the Works, use plant, equipment and materials that:
    - (A) are of a kind that are suitable and fit for their purpose and consistent with their intended use;
    - (B) are new, of good quality and are not hazardous or dangerous; and

- (C) where they differ from the Design/Construction Requirements, are in accordance with Section 18.5.
- (c) Without limiting Project Co's obligations pursuant to Section 9.6 or Project Co's indemnity pursuant to Section 56.1, Project Co shall at all times throughout the progress of the Works be responsible for maintaining and securing the Site to prevent access onto the Site and the Facility of any persons not entitled to be there, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.

**18.7. Development of Design**

- (a) Project Co shall at its own cost develop and complete the design of the Facility, and all Design Data, in accordance with the requirements of this Agreement, and which design must be in accordance with Schedule 11 - Review Procedure and this Section 18.7.
- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Agreement.
- (c) The Parties agree that the Submittal Schedule attached as Appendix A to Schedule 11 - Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale required by the Health Co Representative) for each of the following:
  - (i) secondary design development documentation (being design development drawings and draft specifications progressed from the date of this Agreement with extensive user group input showing all architectural, engineering and landscape design sufficient to allow for the development of working drawings. Documentation shall include dimensioned 1:50 floor plans showing all millwork, furniture and equipment, interior elevations for all rooms, exterior building elevations, completed site and landscape plans, appropriate engineering drawings to completely document to the design development level, room finish schedule, completed room data sheets and room area schedule);
  - (ii) a design development report detailing issues of planning, design, energy efficiency, material selection, constructability, equipment selection and building services which have been co-ordinated and integrated into the design development documentation;
  - (iii) schedules of Plant and equipment (including, where applicable, Equipment) that are to be provided or maintained by Project Co;
  - (iv) final design and working drawings (being completed working drawings to meet requirements of design in accordance with the requirements of the Agreement);
  - (v) Permit, Licence and Approval drawings (phased if applicable); and
  - (vi) Equipment selection and procurement.

Such list and all items on such list shall be subject to the Review Procedure. Health Co, acting reasonably, may require additional items to be included on such list.

- (d) Project Co shall submit to Health Co's Representative for review in accordance with the Review Procedure all Design Data and other items listed as specified in Section 18.7(c).
- (e) The Design Data and other items listed as specified in Section 18.7(c) shall be submitted to Health Co's Representative and must contain as a minimum the following additional information:
  - (i) identification of the stage of design or construction to which the documentation relates;
  - (ii) all necessary design or construction drawings and specifications for the stage to which it relates, to enable Health Co's Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 11 - Review Procedure;
  - (iii) for each stage of the design or construction documentation (with the exception of the first stage) a schedule showing all changes to the relevant drawings and documentation that has occurred from the previous design or construction submittal; and
  - (iv) where changes have been submitted, Project Co shall indicate how these meet the requirements of this Agreement.
- (f) All design review meetings held by Project Co which Health Co wishes to attend shall be held in the Lower Mainland Area unless Health Co otherwise agrees in writing in respect of any particular meeting.
- (g) Project Co shall not commence or permit the commencement of the next level of design or construction of the part or parts of the Facility to which any submittal relates until Project Co has submitted the appropriate design and is entitled to proceed in accordance with Schedule 11 - Review Procedure.
- (h) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Facility prior to being entitled to proceed in accordance with Schedule 11 - Review Procedure, and it is subsequently determined in accordance with Schedule 11 - Review Procedure or pursuant to Schedule 30 - Dispute Resolution Procedure that the design or construction does not comply with this Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site, replace and restore any parts of the design or construction that do not comply with this Agreement.
- (i) Neither Health Co, the Health Authorities nor any Health Co Party will have any liability:
  - (i) if a document submitted by Project Co and accepted by Health Co or Health Co's Representative results in non-compliance with this Agreement by Project Co or a breach by Project Co of any Applicable Law; or

- (ii) for any loss or claim arising due to some defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (j) Project Co and Health Co will cooperate with each other in the design review and acceptance process, but notwithstanding such cooperation and review of the design by Health Co, or acceptance of a design review by or on behalf of Health Co, such review or acceptance shall not constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Agreement.
- (k) Project Co shall allow Health Co's Representative, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to Health Co's Representative as soon as practicable following receipt of any written request from Health Co's Representative.
- (l) Project Co shall cause the Constructor to establish and maintain a computerized design database which Project Co and Health Co's Representative may access remotely by computer to view drawings comprised within the Design Data and electronically store and print copies of such Design Data. In the event of Health Co's Representative being unable to access such design database, Project Co shall make it available for inspection by Health Co's Representative, or any other person authorized by Health Co's Representative.
- (m) Health Co acknowledges that Project Co wishes to obtain informal user input into the development of the design of the Facility during the preparation of, and prior to submitting, the schematic design and related Submittals (including 1:200 drawings) (the "Schematic Design Submittals") referred to in the Submittal Schedule and the 1:50 drawings and related Submittals referred to in the Submittal Schedule (the "1:50 Design Development Submittals"), and that to provide such user input, the Parties have agreed to user group workshops (the "Workshops") upon the following terms:
  - (i) Project Co's Representative shall arrange Workshops in consultation with Health Co's Representative.
  - (ii) The Parties shall mutually cooperate to develop a reasonable schedule for the Workshops.
  - (iii) Project Co shall pre-circulate to Health Co's Representative an agenda for each proposed Workshop.
  - (iv) Workshops shall generally be held in-person, except where otherwise agreed, acting reasonably.
  - (v) Project Co shall maintain minutes of the Workshop discussions and possible design solutions and changes in design. Within two Business Days after each Workshop Project Co shall provide Health Co's Representative with a copy of the minutes to Health Co, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Workshop and the agenda for the next Workshop, as provided in 18.7(m)(iii) above.



- (vi) Health Co and Project Co agree that the subject matter of the Workshops shall not be regarded as "Submittals" to which the Review Procedure applies, and that Health Co shall not be bound by the input provided in connection with the Workshops.
- (vii) Project Co shall submit to Health Co the complete Schematic Design Submittals and the complete 1:50 Design Development Submittals for review as Submittals pursuant to the Review Procedure. The Parties hereby agree that for the purposes of the review of the Schematic Design Submittals and the 1:50 Design Development Submittals under the Review Procedure, the period for review shall be 15 Business Days rather than the 10 Business Days described in Section 3.2 of Schedule 11 - Review Procedure.

#### **18.8. Clinical Functionality**

- (a) When Project Co submits the secondary design development documentation and design development reports as set out in Sections 18.7(c)(i) and 18.7(c)(ii) to Health Co for its review pursuant to Schedule 11 - Review Procedure, Project Co shall prepare a report (the "Clinical Functionality Report") to specifically identify such matters of Clinical Functionality, including with reference to the Clinical Output Specifications and Non-Clinical Output Specifications, that Project Co wishes Health Co to review and consider as part of the Submittals. The Clinical Functionality Report shall demonstrate how the Output Specifications are satisfied in respect of Clinical Functionality. Health Co shall review the Clinical Functionality Report pursuant to Schedule 11 - Review Procedure, and shall notify Project Co whether, and the extent to which, Health Co is satisfied that such Submittals satisfy the Output Specifications in respect of Clinical Functionality, so far as can reasonably be determined given the level of detail of Design Data which has been disclosed to Health Co.

#### **18.9. Post Occupancy Evaluation**

- (a) Project Co shall, not earlier than 12 months but not later than 16 months after Substantial Completion, provide Health Co with a post occupancy evaluation, incorporating and focussing on the reliability and adequacy of:
  - (i) building function, materials and form;
  - (ii) furniture, fittings and equipment;
  - (iii) user group and staff assessment of functionality; and
  - (iv) general building services.

#### **18.10. Communications Protocol**

- (a) The provisions of Schedule 21 - Communications Protocol are incorporated herein.

**18.11. Change in Standards**

- (a) Where this Agreement requires Project Co to comply with a technical standard in respect of the design and construction of the Facility, and that standard has changed between the date of this Agreement and the date that such compliance is required, then Project Co shall give notice to Health Co of such change. If after such notice Health Co continues to require compliance with the changed standard (rather than the standard applicable as of the date of this Agreement), then to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice (except for those changes to Good Industry Practice that arise due to a change in such standard), such changed standard shall constitute a Variation. If Health Co does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Agreement, without a Variation therefor. This Section 18.11 shall not apply where a change in a technical standard is also a Change in Law.

**18.12. Constructor's Collateral Agreement**

- (a) Without prejudice to Health Co's rights under Section 45 and to any other rights under this Agreement, but without duplication, if Health Co exercises its step-in rights under the Constructor's Collateral Agreement, Project Co shall reimburse Health Co for all obligations of Project Co assumed by Health Co under the Construction Contract and for all reasonable costs and expenses incurred by Health Co in relation to the exercise of Health Co's rights until the date of termination of this Agreement or step-out under the Construction Contract or the Constructor's Collateral Agreement, if applicable.

**19. HEALTH CO ACCESS AND MONITORING****19.1. Health Co Access**

- (a) Without limiting any of Health Co's rights in respect of the Site, Project Co acknowledges and agrees that subject to complying with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of Project Co's Representative from time to time, Health Co and its representatives shall, prior to Substantial Completion, have unrestricted access at all reasonable times during normal working hours to:
- (i) view the Works at the Site on reasonable prior notice appropriate to the circumstances, provided that no notice shall be required for Health Co's Representative, staff and visitors to the office and other facilities provided at the Site for Health Co's use; and
  - (ii) subject to obtaining the consent of the relevant Supplier, which Project Co agrees to use all reasonable efforts to obtain, to visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Works for the purposes of general inspection and of attending any test or investigation being performed in respect of the Works,

provided that at all times they shall be accompanied by a representative of Project Co or a Subcontractor and provided that Health Co's exercise of the rights in this Section 19.1(a) shall not limit or restrict Project Co's responsibilities or obligations hereunder.

- (b) Health Co and its representatives shall also have unrestricted access at all times to the Site:
  - (i) in relation to the matters described in Sections 16.2 or 16.3; and
  - (ii) in an emergency as Health Co, acting reasonably, considers suitable in the circumstances.

### **19.2. Increased Monitoring**

- (a) If, following any viewing, visit or inspection made pursuant to Section 19.1(a), it is discovered that there are defects in the Works or that Project Co has failed to comply with a material requirement of this Agreement (including the Design/Construction Requirements, the Project Co Proposal Extracts, and the Design Data), Health Co may, without prejudice to any other right or remedy available to it, by notice to Project Co increase the level of its monitoring of Project Co and the performance of the Works until such time as Project Co shall have demonstrated to the satisfaction of Health Co that it is capable of performing and shall perform the requirements under this Agreement which have given rise to the monitoring in question or which are discovered in the course of such monitoring and would have entitled Health Co to an increased level of monitoring hereunder. Project Co shall compensate Health Co for any reasonable additional costs (including the costs of personnel and other administrative costs) incurred by Health Co as a result of such increased monitoring to the extent that such additional costs are incurred in respect of the increased monitoring relating to the discovered defects in the Works or Project Co's failure to comply with a material requirement of this Agreement.

### **19.3. Right to Open Up**

- (a) Health Co's Representative shall have the right at any time prior to the Substantial Completion Date to request Project Co to open up and inspect any part or parts of the Works where Health Co's Representative reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Agreement (including the Design/Construction Requirements, the Project Co Proposal Extracts, and the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. Health Co's Representative shall include reasonably detailed reasons with such request.
- (b) If the inspection shows a defect or defects in the relevant part or parts of the Works or that Project Co has failed to comply with the requirements of this Agreement (including the Design/Construction Requirements, the Project Co Proposal Extracts, and the Design Data) relevant to such part or parts of the Works, Project Co shall:
  - (i) bear the cost of such inspection (including the cost to open up the Works and repair the Works as a result of the inspection), if such cost of such inspection is less than the greater of either the costs to rectify the defects and non-

compliances (including the costs that would have been incurred to open up the Works and repair the Works had the inspection not already opened up the Works) or the costs to Project Co, Health Co and the Health Authorities if such defects and non-compliances were not remedied; and

- (ii) rectify all such defects and non-compliances diligently and in a timely manner,

and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto. For greater certainty, if the cost of such inspection (including the cost to open up the Works and repair the Works as a result of the inspection) is greater than the greater of either the costs to rectify the defects or non-compliances (including the costs that would have been incurred to open up the Works and repair the Works had the inspection not already opened up the Works) or the costs to Project Co, Health Co and the Health Authorities if such defects and non-compliances were not remedied, then Health Co shall bear the cost of such inspection but Project Co shall remain liable for the cost and consequences of any rectification arising from such inspection and shall not be entitled to any additional compensation or extension of time in relation thereto other than pursuant to Sections 40 and 41 if applicable.

- (c) If Health Co's Representative exercises such right to an inspection and the inspection shows that the relevant part or parts of the Works are not defective and that Project Co has not failed to comply with the requirements of this Agreement (including the Design/Construction Requirements, the Project Co Proposal Extracts, and the Design Data), any delay caused to the Works by the exercise of such rights shall, subject to and in accordance with Section 40, be a Delay Event pursuant to Section 40.1 and any cost or loss shall be compensated to the extent such cost or loss would be compensated as a Compensation Event pursuant to Section 41.1.

#### **19.4. No Relief from Obligations**

- (a) The Parties acknowledge that the exercise by Health Co or Health Co's Representative of the rights under this Section 19 shall in no way affect the obligations of Project Co under this Agreement except as set out in this Section 19.

### **20. SCHEDULE**

#### **20.1. Completion of Works**

- (a) Project Co shall complete all of the Works in accordance with this Agreement and achieve:
- (i) Substantial Completion on or before the Scheduled Substantial Completion Date; and
  - (ii) Final Completion on or before the Scheduled Final Completion Date.

#### **20.2. The Detailed Works Schedule**

- (a) Within 30 days after the date of this Agreement, Project Co shall prepare and submit to Health Co a proposed complete, detailed schedule of the performance of the Works that

supports the completion of the Works pursuant to Section 20.1 (the "Detailed Works Schedule").

- (b) The Detailed Works Schedule shall be prepared in accordance with Good Industry Practice and shall be in sufficient detail so as to enable Health Co's Representative and, if applicable the Independent Certifier, to monitor the progress of the Works, including all commissioning activities and the likely future progress of the Works.
- (c) On a monthly basis, Project Co shall provide to Health Co's Representative and Independent Certifier the Works Period Reports, including an updated Detailed Works Schedule.

### **20.3. Failure to Maintain Schedule**

- (a) Without limiting any other provision of this Agreement but subject to Section 40, if it appears to Health Co at any time that the actual progress of the Works has significantly fallen behind and Project Co will not meet Substantial Completion on or before the Scheduled Substantial Completion Date, then Health Co's Representative shall be entitled to require Project Co to produce and submit to Health Co's Representative a report identifying the reasons for the delay. Health Co may require Project Co to demonstrate the steps which are to be taken by Project Co to eliminate or reduce the delay, and Project Co shall at Project Co's cost perform such steps to perform the Works as required to meet Substantial Completion on or before the Scheduled Substantial Completion Date.

### **20.4. Notification of Early Substantial Completion**

- (a) Unless Project Co obtains Health Co's prior written consent, Project Co shall not be entitled to the Substantial Completion Certificate, and the Substantial Completion Date and Payment Commencement Date shall not be, earlier than the Scheduled Substantial Completion Date.
- (b) Project Co shall notify Health Co's Representative if Project Co requests Substantial Completion earlier than the Scheduled Substantial Completion Date.
- (c) Health Co's Representative shall be entitled to require Project Co to produce and submit to Health Co's Representative, in accordance with Schedule 11 - Review Procedure, a revised Detailed Works Schedule showing the manner and the periods in which the Works shall be performed and what the revised date for Substantial Completion would be to enable Health Co to consider at its sole discretion:
  - (i) whether to agree to an earlier Scheduled Substantial Completion Date; and
  - (ii) what modifications, if any, shall be required to this Agreement in order to accommodate such earlier Scheduled Substantial Completion Date.
- (d) In the event that Health Co does not agree to an earlier Scheduled Substantial Completion Date pursuant to Section 20.4(c), nevertheless, strictly for the purposes of satisfying certain requirements pertaining to the release of security in the Construction Contract, Project Co may request the Independent Certifier to issue the Substantial

Completion Certificate prior to the Scheduled Substantial Completion Date. In the event that Project Co has satisfied the requirements for issuance of the Substantial Completion Certificate prior to the Scheduled Substantial Completion Date, the Independent Certifier may issue the Substantial Completion Certificate. However, in such circumstances, such Certificate will only be effective for the purpose of satisfying the requirements pertaining to the release of security in the Construction Contract referred to above and not for establishing an earlier Scheduled Substantial Completion Date.

- (e) Health Co acknowledges that in the event that the Substantial Completion Certificate is issued pursuant to Section 20.4(d), the only remaining requirement for the certificate to become effective for establishing Substantial Completion shall be the passage of time until the Scheduled Substantial Completion Date is reached.

## **21. EQUIPMENT**

### **21.1. Category A: Medical Equipment and Category B1: Other Equipment (Cash Allowance Equipment)**

- (a) Project Co shall procure, expedite, deliver, unpack and remove packing material, store, offload and handle on the Site, assemble and test, install (including management of installation) and undertake all Cash Allowance Equipment Commissioning, and procure and provide warranties, services agreements, training, supplies, spare parts and start-up consumables, as specified in the Equipment List and the Equipment Data Sheets. Health Co shall reimburse Project Co for any incremental storage costs for Cash Allowance Equipment if as a result of Health Co requiring Project Co to take early delivery of such equipment in advance of the delivery date shown in or reasonably anticipated from the Procurement Schedule (without making provision for the Supplier thereof to store such equipment) such equipment arrives materially in advance of such delivery date. Health Co shall bear credit risk (including risk of bankruptcy) of Suppliers of Cash Allowance Equipment.
- (b) The Parties acknowledge and agree that the form of Procurement Schedule attached as Schedule 33 is preliminary, with the dates set out therein as established by the Parties as of the date of this Agreement for the categories of Equipment set out therein, and that Health Co and Project Co, both acting reasonably, will after the date of this Agreement revise and finalize the Procurement Schedule in accordance with the following principles:
  - (i) Health Co will require that in order to take advantage of the most recent technological advances for Cash Allowance Equipment, final decisions on the selection of the Cash Allowance Equipment, together with any training or service requirements, will not be made by Health Co until as late as possible into the Works;
  - (ii) Project Co will require adequate time to issue requests for proposals to Suppliers, receive proposals, clarify aspects of proposals, and prepare written procurement recommendations to Health Co as contemplated by this Section;

- (iii) Health Co will require adequate time to evaluate Project Co's procurement recommendations as contemplated by this Section;
- (iv) Health Co will require the ability to take advantage of bulk or other purchase opportunities advantageous to it, including in coordination with the Health Authorities;
- (v) Project Co will require the Procurement Schedule to allow adequate time to achieve the matters contemplated by this Section without any adverse impact on design and construction of the Facility (including design and construction of the Facility to accommodate the Cash Allowance Equipment, including the electrical and mechanical requirements associated with Cash Allowance Equipment) and without any adverse impact on Project Co's ability to achieve Substantial Completion by the Substantial Completion Date; and
- (vi) Health Co will require that procurement where possible should be structured and carried out to optimize the benefits of any purchasing leverage available to the Parties,

provided however that revisions to the preliminary Procurement Schedule attached hereto that do not achieve all of the foregoing principles shall only be made with the agreement of both Parties.

- (c) The Parties acknowledge and agree that the Equipment Data Sheets for Cash Allowance Equipment are preliminary and that Health Co may provide to Project Co updated Equipment Data Sheets on or before the applicable dates indicated in the Procurement Schedule in the column with the heading "Date for Health Co to Provide Specifications". Such updated Equipment Data Sheets may also include specifications for minimum warranty requirements, Supplier Installation, service agreements, training, spare parts, supplies and start-up consumables and may indicate whether particular items of Cash Allowance Equipment may be procured under a lease, managed equipment program, usage based pricing or other arrangement.
- (d) Project Co shall obtain proposals for each item of Cash Allowance Equipment according to the following:
  - (i) If the Equipment Data Sheets indicate that only a specific make or model number is acceptable for an item of Cash Allowance Equipment, then Project Co shall obtain pricing for such item.
  - (ii) If the Equipment Data Sheets specify one or more alternative specific makes or model numbers for an item of Cash Allowance Equipment, then Project Co shall obtain pricing for each such item.
  - (iii) If the Equipment Data Sheets indicate that an item of Cash Allowance Equipment must meet or exceed the specifications of the referenced make and model number, then Project Co shall obtain and submit to Health Co prices sought on a competitive basis from any Supplier and for any make or model number that shall meet or exceed the specifications indicated. Project Co will issue competitive

bidding documents to at least two different Suppliers for at least two different makes and models (unless less than two Suppliers and less than two models for such Equipment exist) for each referenced make and model number, such prices to be on comparable terms and conditions.

- (iv) Project Co shall comply with the requirements of the Agreement on Internal Trade (including Chapter 5 and Annex 502.4 thereof) to the same extent that such requirements are, by policy of the Province, the Health Authorities or Health Co, or by Applicable Law, applicable to any one or more of the Health Authorities or Health Co. Health Co shall, upon the request of Project Co from time to time, provide guidelines to Project Co for such compliance.
- (e) Based on the proposals received in Section 21.1(d), Project Co shall make recommendations to Health Co for the procurement of items of Cash Allowance Equipment on or before the date indicated in the Procurement Schedule in the column with the heading "Date for Project Co to Provide Recommendations". Each such recommendation shall include the following:
  - (i) item description, item number, and quantities;
  - (ii) the manufacturer, model number, Supplier, specifications and options for the item;
  - (iii) an analysis, including consideration of compliance with the relevant Clinical Output Specifications and specifications in the Equipment Data Sheets, and recommendation as to which make, model number and Supplier of the item provides the overall best value for Health Co, and any other benefits of the recommendation;
  - (iv) an analysis of the effect of the items on the overall design of the Facility and the relevant areas within the Facility;
  - (v) details of the warranties, Supplier Installation, service agreements, training, supplies, spare parts and start-up consumables included with the items by the relevant manufacturer or Supplier;
  - (vi) the dates and times when the items shall be delivered to the Site;
  - (vii) all Cash Allowance Equipment Costs, with a breakdown of applicable GST and PST and net of all direct or indirect discounts, rebates, refunds, chargebacks, credits, price adjustments or any other allowances obtained across all categories of Equipment that effectively reduce the net selling price;
  - (viii) based on the information in Section 21.1(e)(vii), the total amounts and timing of the Equipment Cash Allowance cash flows required to implement the recommendation and the full details of the calculation of such amounts;
  - (ix) whether the procurement is a purchase, a lease, part of a managed equipment program, based on usage pricing or other arrangement, and the terms and timing of payments thereof;



- (x) any Taxes applicable to the items;
  - (xi) if so requested by Health Co, a copy of each quote or proposal and all other relevant information in respect of the items and such other documentation as Health Co may reasonably require, all of which shall be provided on a fully transparent and open basis to Health Co;
  - (xii) the latest date by which a final procurement decision on the item is required from Health Co without causing delays to the construction of the Facility or additional costs for that item; and
  - (xiii) if no proposals for items of Cash Allowance Equipment are available or have been received by Project Co, an alternate recommended course of action for procurement by Project Co including possible substitutes for such items.
- (f) Health Co may request additional information from Project Co regarding the recommendations of Project Co, which Project Co shall provide to Health Co as soon as reasonably practicable thereafter.
- (g) In response to the recommendations for items of Cash Allowance Equipment made by Project Co to Health Co under Section 21.1(e), Health Co may, on or before the date indicated in the Procurement Schedule in the column with the heading "Date for Health Co to Approve Recommendations", do any of the following with respect of some or all of the items:
- (i) instruct Project Co to proceed with the procurement;
  - (ii) withdraw the requirement for Project Co to proceed with the procurement;
  - (iii) increase or decrease the quantities (provided that any such increase or decrease shall constitute a Variation referred to in Section 21.1(y) if it impacts the Works), require the procurement of other items in substitution for such items, or otherwise change the items to be procured;
  - (iv) reject any Supplier or item of Cash Allowance Equipment as unacceptable to Health Co, acting reasonably;
  - (v) elect to obtain certain items of Cash Allowance Equipment for the Project by obtaining, transferring or relocating existing equipment from Health Authorities or others (provided that any impact on the Services shall constitute a Variation); or
  - (vi) elect to procure directly certain items of Cash Allowance Equipment.
- (h) Notwithstanding that certain items of Equipment may, pursuant to Sections 21.1(g)(v) or 21.1(g)(vi), be obtained or procured by Health Co, Project Co shall install and commission such items upon delivery to the Site to the extent such items are in substitution for, and not in addition to, the items of Equipment identified in the Equipment List, and Project Co shall not be responsible for the condition of any previously used items of Equipment, including any failure of such Equipment to meet commissioning

requirements or to satisfy any of the requirements of Section 21.17 as a result of such condition.

- (i) If Health Co elects to obtain or procure certain items of Equipment pursuant to Sections 21.1(g)(v) or 21.1(g)(vi), Health Co shall deliver or cause to be ordered such items of Equipment in accordance with the Procurement Schedule.
- (j) Project Co shall deposit funds into the Equipment Cash Allowance Account in the amounts and at the times indicated in the Equipment Cash Allowance Drawdown Schedule and shall manage the Equipment Cash Allowance Account in trust for, for the benefit of, and as directed by, Health Co pursuant to Section 21.1(x).
- (k) Project Co shall ensure that all manufacturer's and Supplier's warranties for Cash Allowance Equipment commence no earlier than the Substantial Completion Date, and are in Health Co's name or alternatively shall transfer to Health Co the benefit of all such warranties effective as of the date Health Co obtains title to the Cash Allowance Equipment (and in any event no later than as of the Substantial Completion Date). Health Co shall make available to Project Co the benefit of such warranties to the extent required by Project Co and the Service Providers in connection with the performance of the Basic Maintenance and First Response Maintenance.
- (l) Project Co shall transfer and deliver to Health Co, as provided in the Final Commissioning Program (and in any event on or before the Substantial Completion Date), all guidance and training material and manuals relating to Cash Allowance Equipment produced and provided by the manufacturer or the Supplier of Cash Allowance Equipment.
- (m) The Parties acknowledge that Health Co's preference is that items of Cash Allowance Equipment procured by Project Co shall be purchased, but that in some circumstances, including without limitation as may be indicated on the Equipment Data Sheets, there may be advantages to procuring specific items of Cash Allowance Equipment under a lease, managed equipment program, usage based pricing or other arrangement. Project Co shall present such options to Health Co in its recommendation pursuant to Section 21.1(e), but shall procure items of Cash Allowance Equipment under a lease, managed equipment program, usage based pricing or other arrangement only with the prior written consent of Health Co.
- (n) Project Co shall use reasonable and diligent commercial efforts to minimize Cash Allowance Equipment Costs including the cost of Cash Allowance Equipment and to conduct its procurement so as to minimize any reasonably avoidable adverse effect on Cash Allowance Equipment Costs.
- (o) As procurements are completed, Project Co shall keep and update an overall budget for the Equipment Cash Allowance and shall provide access to and copies of such budget to Health Co monthly and as otherwise required by Health Co.
- (p) Project Co shall provide monthly and as at the date of Substantial Completion reports to Health Co that include the following information:

- 
- (i) financial reporting: itemized and aggregate amounts committed to date for all Cash Allowance Equipment Costs;
  - (ii) completed acquisitions: which Cash Allowance Equipment item numbers have been procured and the itemized and aggregate Cash Allowance Equipment Costs of such items;
  - (iii) future acquisitions: the projected procurement of remaining Cash Allowance Equipment, the projected effect of such procurement on the Equipment Cash Allowance, and whether such procurement shall be conducted by the dates indicated in the Procurement Schedule or whether Project Co requests Health Co to consent to revisions to the Procurement Schedule, which consent Health Co shall not unreasonably withhold or delay;
  - (iv) the delivery dates for each item procured;
  - (v) any authorized or agreed changes in the Equipment List and Equipment Data Sheets since the previous report, and the financial impact of such changes; and
  - (vi) any commentary on communication methods, the reporting method/approval process, frequency of communication and similar matters regarding Cash Allowance Equipment procurement and selection.
- (q) In addition to the monthly report as described in Section 21.1(p) above, Project Co shall provide a request for payment approval that will include the following (the "Request for Payment Approval"):
- (i) details of all supplier invoices that are due for payment that month, including relevant supporting documentation;
  - (ii) reconciliation of the Cash Allowance Equipment being paid for with the Equipment List;
  - (iii) evidence that the commitment to purchase each item of Cash Allowance Equipment has, where required, been approved by Health Co;
  - (iv) any excess amount of the Cash Allowance Equipment Costs as described in Section 21.1(u);
  - (v) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Equipment as described in Section 21.1(v); and
  - (vi) the cash flow process with respect to the Equipment Cash Allowance as set out in Section 21.1(x).
- (r) Health Co shall, within 7 days of receipt of a Request for Payment Approval, advise Project Co in writing whether or not payment of the invoices set out in such Request for Payment Approval are approved. In the event that Health Co does not approve payment

of any invoice set out in a Request for Payment Approval, Health Co shall provide full details as to the reason for nor approving any such payment.

- (s) Project Co shall, within 7 days of receipt of Health Co's approval of a Request for Payment Approval, as agent for Health Co only for purposes of payment from the Equipment Cash Allowance Account, make payment to the relevant Suppliers as set out in the invoices in such Request for Payment Approval.
- (t) Project Co acknowledges that the Cash Allowance Equipment Costs and the Equipment Cash Allowance exclude all mark-ups for overhead, other costs and profit of Project Co and any other Project Co Parties other than the Suppliers of Cash Allowance Equipment. There shall be no adjustment to the Cash Allowance Equipment Costs or to the payment out of the Equipment Cash Allowance Account on account of profit, overhead, or other costs associated with procuring, expediting, installing (except as provided in Section 21.1(y)), delivering, unpacking (except as provided in Section 21.1(y)) and removing packing material, training (except as provided in Section 21.15(d)), assembling and testing, and commissioning Cash Allowance Equipment by Project Co and any other Project Co Parties other than the Suppliers of Cash Allowance Equipment, all of which Project Co has already included in, and shall be paid by Health Co to Project Co as part of, the Total Annual Service Payment.
- (u) Except as made by a Variation Confirmation, there shall be no adjustment to the Total Annual Service Payment in the event that the Cash Allowance Equipment Costs contained in any Supplier contract at the time such contract is entered into in accordance with Health Co's instructions pursuant to Section 21.1(g)(i) are exceeded for any reason, and any such excess shall be at Project Co's cost and risk.
- (v) All discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Equipment, shall be attributed solely to and shall benefit the pricing of Cash Allowance Equipment.
- (w) In the case of payments in respect of Cash Allowance Equipment that are payable to a Supplier after the Substantial Completion Date under leases, managed equipment programs, usage based pricing and other such arrangements or for service agreements, Health Co will assume the obligation to make such payments. For clarity, nothing in this Section will relieve Project Co of its obligations specified in Section 21.1(a) or waive, modify or otherwise affect the matters contained in Section 21.1(t).
- (x) The cash flow process with respect to the Equipment Cash Allowance will be as follows:
  - (i) Project Co will deposit the Equipment Cash Allowance into the Equipment Cash Allowance Account in instalments at the times indicated in the Equipment Cash Allowance Drawdown Schedule.
  - (ii) Subject to Section 21.1(t), Health Co shall make deposits into the Equipment Cash Allowance Account in the event that the payment requirements, including applicable GST and PST, for procurements instructed by Health Co pursuant to Section 21.1(g)(i) exceed the then balance of the Equipment Cash Allowance Account.

- (iii) Project Co will manage all monies in the Equipment Cash Allowance Account in trust for and as directed by Health Co.
- (iv) Interest earned on the Equipment Cash Allowance Account will accrue in the Equipment Cash Allowance Account and will be for the benefit of Health Co.
- (v) Project Co will, as agent for Health Co only for purposes of payment from the Equipment Cash Allowance Account, withdraw monies from the Equipment Cash Allowance Account as and at the times directed by Health Co, subject to Section 21.1(t) and Section 21.1(u), as required to pay for procurements instructed by Health Co pursuant to Section 21.1(g)(i) and Section 21.1(s), including for applicable PST and GST, net of all direct or indirect discounts, rebates, refunds, chargebacks, credits, price adjustments or any other allowances obtained across all categories of Equipment that effectively reduce the net selling price. In addition, but without duplication, to the Cash Allowance Equipment Costs, Health Co shall direct that up to \$100,000 shall be paid to Project Co for Direct Costs and the applicable margin for overhead and profit set out in Schedule 25 - Variation Procedure for costs incurred by Project Co for labour for unpacking and installation costs related to Cash Allowance Equipment. Health Co may direct that monies not required for such procurements shall be paid to Health Co or as otherwise directed by Health Co.
- (vi) [\*Reserved]
- (vii) Project Co shall provide a reconciliation of the Equipment Cash Allowance Account to Health Co on a monthly basis.
- (viii) If at Substantial Completion, there exists a positive balance in the Equipment Cash Allowance Account, such balance is the property of Health Co and will be paid by Project Co as directed by Health Co (less any amounts provisioned for settlement on certain equipment).
- (ix) The Parties agree to mutually review the operation of the Equipment Cash Allowance Account on a regular basis and mutually make any appropriate modifications to ensure its efficient operation.
- (y) Without duplication of 21.1(z), if Health Co increases or decreases the quantities of Cash Allowance Equipment and there is an impact on the Works, such increase or decrease and the impact thereof shall constitute a Variation.
- (z) Without duplication of 21.1(y), if Health Co increases or decreases the total dollar amount of the Equipment Cash Allowance, then any change in Direct Costs incurred by Project Co (including for insurance) arising from the increase or decrease in the total dollar amount, shall constitute a Variation, provided however that the total amount of the applicable margin of the Constructor for overhead and profit shall be **[\*DELETION]** % rather than **[\*DELETION]** % as set out in Schedule 25 - Variation Procedure.
- (aa) For greater certainty, the Parties agree that the cost of any Cash Allowance Equipment shall be paid from the Equipment Cash Allowance, and accordingly whenever there is a

Variation, including as described in Section 21.1(y) and 21.1(z), in relation to the Cash Allowance Equipment, the amount of Direct Costs shall not include, and margins for overhead and profit shall not be calculated on, the amount paid to Suppliers of Cash Allowance Equipment.

**21.2. Category B2: Furniture**

- (a) Project Co shall procure, deliver, install and commission all Category B2 Furniture items as specified in the Equipment List, Equipment Data Sheets and the Output Specifications.
- (b) Project Co shall submit to Health Co for review, 30 calendar days prior to the applicable dates indicated in the Procurement Schedule in the column with the heading "Order Date", detailed ordering information including the manufacturer, model number, Supplier, specifications, quantities, and details of warranties and spare parts.
- (c) If the information submitted by Project Co to Health Co under Section 21.2(b) varies from the specifications provided on the Equipment List, Equipment Data Sheets and Output Specifications, and if Health Co determines that the proposed items of Category B2 Furniture do not meet the minimum required specifications, Health Co may notify Project Co not to proceed with the order until appropriate changes are made to the order. Health Co shall provide any such notification within 10 Business Days after receiving the detailed ordering information from Project Co pursuant to Section 21.2(b).
- (d) In response to any notification by Health Co not to proceed with an order for Category B2 Furniture, Project Co shall revise its ordering specifications for the refused Category B2 Furniture item to meet the required specifications, or until Health Co determines that the proposed Category B2 Furniture item meets the minimum required specifications. If the Parties are unable to come to agreement under this Section 21.2(d), either Party may refer the matter to be resolved pursuant to the Dispute Resolution Procedure.
- (e) If Project Co does not receive from Health Co a notification not to proceed with any order within the first 10 Business Days after Project Co's submittal of the detailed ordering information, then Project Co shall be entitled to proceed with the order. Notwithstanding whether or not Health Co provides a notice not to proceed with any order, Project Co shall remain responsible to procure, deliver, install and commission all Category B2 Furniture items as specified in the Equipment List, Equipment Data Sheets and the Output Specifications.
- (f) Project Co either shall ensure that all manufacturer's and Supplier's warranties for Category B2 Furniture items commence no earlier than the Substantial Completion Date, and are in Health Co's name or alternatively shall transfer to Health Co the benefit of all such warranties effective as of the date Health Co obtains title to the Category B2 Furniture items (and in any event no later than as of the Substantial Completion Date).
- (g) Project Co shall transfer and deliver to Health Co, as provided in the Final Commissioning Program (and in any event on or before the Substantial Completion Date), all guidance material and manuals relating to Category B2 Furniture items as

produced and provided by the manufacturer or the Supplier of such Category B2 Furniture items.

- (h) Project Co shall provide monthly reports to Health Co that include the following information:
- (i) completed acquisitions: which Category B2 Furniture item numbers have been procured;
  - (ii) future acquisitions: the projected procurement of remaining Category B2 Furniture items and whether such procurement shall be conducted by the dates indicated in the Procurement Schedule or whether Project Co requests Health Co to consent to revisions to the Procurement Schedule, which consent Health Co shall not unreasonably withhold or delay;
  - (iii) the delivery dates for each item of Category B2 Furniture procured;
  - (iv) any authorized or agreed changes in the Equipment List and Equipment Data Sheets since the previous report; and
  - (v) any commentary on communication methods, the reporting method/approval process, frequency of communication and similar matters regarding Category B2 Furniture procurement and selection.

### **21.3. Category C: IMT/End Use Devices**

- (a) Health Co in its sole discretion shall procure and deliver any or all Category C Equipment to the Facility on or before the dates shown on the Procurement Schedule. The Parties acknowledge and agree that the form of Procurement Schedule attached as Schedule 33 is preliminary and shall be revised and finalized as described in Section 21.1(b). The Parties acknowledge and agree that the items of Category C Equipment shown on the Equipment List are provided for information purposes only and do not obligate Health Co to purchase such items.
- (b) Health Co will supply Category C Equipment to the Site pre-loaded (meaning that all required hardware and software has been installed), pre-staged (meaning that all pre-loaded hardware and software has been pre-tested), and pre-labelled (meaning that the relevant department and location have been identified). Project Co will not be responsible for any post delivery configuration of Category C Equipment.
- (c) Subject to delivery by Health Co on or before the date shown on the Procurement Schedule, Project Co shall be responsible at its cost for receiving and unpacking, distributing, installing and commissioning Category C Equipment and all related infrastructure, including as outlined in the Output Specifications, prior to, and as a condition of, Substantial Completion. Any increase or decrease in the number of Category C Equipment items shall constitute a Variation if it impacts the Works.

**21.4. Category D: Start Up Equipment**

- (a) Health Co in its sole discretion shall procure and deliver any or all Category D Equipment. The Parties acknowledge and agree that the items of Category D Equipment shown on the Equipment List are provided for information purposes only and do not obligate Health Co to purchase such items.
- (b) Health Co shall procure and deliver items of Category D Equipment to the Site after the Substantial Completion Date at such times as are mutually agreeable to the Parties, acting reasonably.
- (c) Project Co shall be responsible at its cost for receiving unpacking, and distributing Category D Equipment after Substantial Completion, unless otherwise required for the commissioning and installation of Equipment that is required to be commissioned as a requirement of Substantial Completion.

**21.5. Category E: Project Co Supplied Equipment for Services under Section 4 of the Output Specifications**

- (a) Project Co shall procure, deliver, install, commission and maintain all Category E Equipment required by Project Co to provide the services described in and required by the FM Output Specifications. Without limiting the foregoing, the Parties acknowledge that the Category E Equipment shown on the Equipment List is provided for information purposes only, provides a general description for and areas of location of the Category E Equipment, is not intended to be exhaustive or to be relied upon by Project Co, does not limit the requirements of the FM Output Specifications, and is only an indication of the Category E Equipment expected to be provided by Project Co.

**21.6. Category F: Equipment in Construction Specifications**

- (a) Project Co shall procure, deliver, install, commission and maintain all Category F Equipment required by Project Co to satisfy the requirements of Sections 5 and 6 of the Output Specifications. Without limiting the foregoing, the Parties acknowledge and agree that the Category F Equipment shown on the Equipment List is for information purposes only, does not list specific Category F Equipment (except for the Specified Category F Equipment), is not intended to be exhaustive or to be relied upon by Project Co, does not limit the requirements of Sections 5 and 6 of the Output Specifications, and specifies only an indication of the Category F Equipment expected to be provided by Project Co. Any increase or decrease in the number of items of Specified Category F Equipment items shall constitute a Variation if it impacts the Works.

**21.7. Integration of Equipment with Design of Facility**

- (a) Project Co shall ensure that all Category A Equipment, Category B1 Equipment, Category B2 Furniture, Category C Equipment (to the extent that Health Co provides Project Co with detailed equipment data sheets, specifications and information therefor), Category E Equipment and Category F Equipment is integrated with the overall design of the Facility and shall include such Equipment as part of the design development process under Section 18 and the submittal process under Schedule 11 – Review



Procedure. To the extent practicable, any required changes to the design of the Facility as a result of changes to Equipment requirements shall be resolved as part of the design development process under Section 18.

#### **21.8. Equipment Variations**

- (a) Variations to Equipment and Project Co's activities contemplated by this Section 21 shall be processed in accordance with and subject to the procedures set out in Schedule 25 – Variation Procedure, except that the Parties will endeavour to agree to an expedited Variation process to deal with Equipment changes.

#### **21.9. Addition of Additional Equipment or Replacement of Existing Equipment**

- (a) Health Co may identify additional and replacement equipment and furniture (which equipment and furniture do not include the Equipment under this Section 21) to be procured, delivered, installed, commissioned and/or maintained by Project Co over the term of this Agreement, in accordance with and subject to the procedures set out in Schedule 25 – Variation Procedure. Alternatively, Health Co itself may perform any of the activities described in this Section 21.9.

#### **21.10. Substitutions of Equipment**

- (a) Project Co shall not substitute different equipment for Cash Allowance Equipment specified in the Equipment List, Equipment Data Sheets and Output Specifications except with the prior written consent of Health Co or as otherwise permitted by this Section 21. Consent will only be provided if sufficient information is submitted by Project Co to allow Health Co to determine that the proposed substitute is equivalent or superior to the item it is to replace. This Section 21.10 shall not limit any other restrictions on substitutions of Equipment under the Project Agreement.

#### **21.11. Title, GST and PST**

- (a) Notwithstanding Section 55.1(a), title may be reserved by third party unpaid Suppliers until the earlier of the date of payment and the Substantial Completion Date. Project Co shall, as agent for Health Co only for purposes of payment from the Equipment Cash Allowance Account, pay all such unpaid Suppliers prior to the Substantial Completion Date for amounts owing on outstanding invoices.
- (b) The procurement arrangements for Equipment shall provide for a direct transfer of title to Equipment from the Suppliers to Health Co.
- (c) On the transfer of title to Equipment from the Suppliers to Health Co, Health Co shall be responsible for remitting all GST and PST payable on such transfer directly to Project Co for payment thereof as agent for Health Co only for purposes of payment from the Equipment Cash Allowance Account.
- (d) Where Health Co has provided to Project Co a valid certification for PST exemption, Project Co shall provide such documentation to the Suppliers in order to effect the eligible PST exemption. If subsequently it is determined that such PST is applicable, then Health Co shall pay such PST or reimburse Project Co therefor when due.

**21.12. Standards for Equipment**

- (a) Without limiting Section 28.1, Project Co shall cause all Category A Equipment, Category B1 Equipment, Category B2 Equipment, Category E Equipment and Category F Equipment procured by Project Co to be:
  - (i) new (except for any used items of Category A Equipment transferred by Health Authorities or others to Health Co as contemplated hereunder);
  - (ii) of good quality, fit for its intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice;
  - (iii) integrated with the overall design for the Facility;
  - (iv) of the type specified in the Output Specifications and the Method Statements, where applicable; and
  - (v) in compliance with all Applicable Law.
- (b) Project Co shall, as soon as practicable after receiving a request from Health Co's Representative, supply to Health Co's Representative evidence to demonstrate its compliance with this Section 21.12.

**21.13. Decommissioning of Equipment at the End of Useful Life**

- (a) Health Co may, at its discretion through the Variation Procedure at Health Co's cost, require Project Co to arrange for the safe disposal of all Equipment at the end of its useful life in accordance with Good Industry Practice, all Applicable Law and the requirements of Governmental Authorities.
- (b) Any and all net proceeds of such disposition shall, at Health Co's option acting reasonably, either be credited to Health Co or paid to Health Co.

**21.14. Minimizing Disruptions**

- (a) Project Co shall ensure that its procurement, delivery, installation, commissioning, maintenance, repair, decommissioning, upgrade and replacement of Equipment shall be effective and efficient so as to minimize to the greatest extent reasonably possible all disruptions of Project Operations and of Health Co's operations and any additional costs to Health Co.

**21.15. Training**

- (a) For and in respect of each item of Equipment procured by Project Co (with the exception of Cash Allowance Equipment), Project Co shall, in accordance with Schedule 17 – Outline Commissioning Program, provide or at its cost arrange for adequate, appropriate and timely training in the item's proper operation and maintenance for all applicable staff of Project Co, Health Co and the Health Authorities.

- (b) In addition to all training based on the manufacturer's or Supplier's suggested requirements or specified in the Output Specifications, Project Co shall provide such training as may be required by the appropriate governing or regulating body, including Governmental Authorities, or as may be required by a prudent hospital facility operator or hospital equipment service provider operating and maintaining similar equipment procured for a major acute care hospital and cancer treatment centre in Canada.
- (c) For and in respect of Cash Allowance Equipment, Project Co shall procure training as provided in Section 21.1, as well as the following training for the Category B1 Equipment and Category B2 Furniture that Project Co is responsible to maintain under Section 21.17:
  - (i) operator level start-up training and start-up "train the trainer" classes that will permit Project Co personnel to perform Basic Maintenance; and
  - (ii) specialized start-up training and start-up "train the trainer" classes that will permit Project Co personnel to perform First Response Maintenance.
- (d) The cost of the training referred to in Section 21.15(c) will be the responsibility of Health Co and will be paid from the Equipment Cash Allowance in accordance with procurements instructed by Health Co pursuant to Section 21.1(g)(i).

#### **21.16. Final Commissioning Program**

- (a) Project Co shall incorporate its Equipment commissioning responsibilities under this Section 21 into its commissioning activities developed under and conducted pursuant to Section 24, Schedule 17 - Outline Commissioning Program and the Final Commissioning Program. Commissioning of Cash Allowance Equipment referred to in this Section 21 shall be the Cash Allowance Equipment Commissioning as defined in Schedule 17 - Outline Commissioning Program. Project Co shall perform all such Equipment commissioning as part of the Project Co Commissioning.

#### **21.17. Maintenance**

- (a) Project Co shall provide Basic Maintenance and First Response Maintenance as provided in the FM Output Specifications.

### **22. BC HYDRO/LEED/CITY OF ABBOTSFORD FEES/SHAW, TELUS, TERASEN/OFF-SITE WORK**

#### **22.1. BC Hydro Works**

- (a) Definitions
  - (i) "BC Hydro Works" means the works to be performed by BC Hydro to provide the Electrical Service Requirements to the point of demarcation, including:
    - (A) the hydro related works as described in section 1(c)(iii) of the Development Agreement; and

- (B) all other work offsite (excluding City of Abbotsford offsite works) directly required to complete such works,
- but excluding the underground civil works on the former Gladwin Road and the civil works to the Facility from the former Gladwin Road or from Marshall Road.
- (ii) "Electrical Service Requirements" means a 25Kv, 3 phase, 4 wire shared single circuit, consisting of two services from the same circuit, one primary and one standby and 2 separate dip services.
- (iii) "Final BC Hydro Design Requirements" means all design documentation to the satisfaction of BC Hydro, acting reasonably, required to meet BC Hydro's design calculation and design and service installation.
- (iv) "Initial BC Hydro Design Requirements" means all design requirements according to BC Hydro's guidelines required to initiate BC Hydro's design calculation and design.
- (b) Project Co shall:
- (i) enter into a contract with BC Hydro for the performance of the BC Hydro Works on terms acceptable to Health Co, acting reasonably;
- (ii) provide the Initial BC Hydro Design Requirements in full to BC Hydro, with a copy to Health Co, not later than 3 months from the date of this Agreement;
- (iii) provide the Final BC Hydro Design Requirements in full to BC Hydro, with a copy to Health Co, not later than 11 months from the date of this Agreement; and
- (iv) make available to BC Hydro the electrical service room in the Facility, on terms acceptable to BC Hydro, at a time sufficient that BC Hydro can complete the BC Hydro Works within 24 months after the date of this Agreement.
- (c) Health Co shall be responsible for all costs and all other amounts payable under the contract with BC Hydro for the performance of the BC Hydro Works, and shall pay all such costs and other amounts incurred by Project Co within 10 days of request for payment by Project Co. For greater certainty, Project Co shall perform at its cost the underground civil works on the former Gladwin Road and the civil works to the Facility from the former Gladwin Road or from Marshall Road.
- (d) Subject to Section 22.1(e) below, failure by BC Hydro to complete the BC Hydro Works within 24 months after the date of this Agreement shall constitute a Delay Event and a Compensation Event.
- (e) Project Co shall not be entitled to claim an extension of time or additional compensation to the extent of, and shall compensate Health Co on demand for, any increased costs Health Co incurs as a direct result of:
- (i) any failure of Project Co to satisfy its obligations under Section 22.1(b); or

- (ii) any change to the Electrical Service Requirements by Project Co, except as permitted under Section 22.1(f), below.
- (f) Project Co confirms that the Electrical Service Requirements are adequate to enable it to perform the Project Operations as defined at the date of this Agreement. Project Co shall not propose any change to the Electrical Service Requirements or any change to the design that shall require a change to the Electrical Service Requirements other than in response to a Variation Enquiry issued by Health Co that would require a change to the Electrical Service Requirements (save where the Variation Enquiry is issued pursuant to Section 2.2(b) of Schedule 25 - Variation Procedure).

## **22.2. Off-Site Parking Mitigation Plan and Highland Park**

- (a) The parties acknowledge that Health Co shall be solely responsible for and shall undertake the obligations of the off-site parking mitigation plan as required under the Design Control Covenant, and shall be responsible for reimbursing the City of Abbotsford for any land and tree loss on Highland Park, as required.

## **22.3. LEED**

- (a) Definitions:
  - (i) “CaGBC” means the Canada Green Building Council.
  - (ii) “GBC” means CaGBC if Project Co elects to pursue LEED Silver Certification with the CaGBC, and means USGBC if Project Co elects to pursue LEED Silver Certification with the USGBC.
  - (iii) “LEED Canada - NC Version 1.0” means CaGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System For New Construction & Major Renovations LEED Canada-NC Version 1.0.
  - (iv) “LEED Rating System” means LEED Canada - NC Version 1.0 if Project Co elects to pursue LEED Silver Certification with the CaGBC, and means LEED US - NC Version 2.1 if Project Co elects to pursue LEED Silver Certification with the USGBC.
  - (v) “LEED Silver Certification” means the award of a LEED Silver certification from the GBC.
  - (vi) “LEED US - NC Version 2.1” means USGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System For New Construction And Major Renovations, LEED - NC Version 2.1.
  - (vii) “USGBC” means the U.S. Green Building Council.
- (b) Project Co shall elect to pursue LEED Silver Certification from either CaGBC or USGBC and shall register the Project with either CaGBC or USGBC, as applicable, within 60 days after the date of this Agreement.

- (c) Project Co shall perform and complete the Works and the Facility to obtain, and Project Co shall apply to the GBC and shall obtain, LEED Silver Certification for the Facility and Project as soon as possible, and in any event within 12 months after the Substantial Completion Date.
- (d) Project Co shall achieve all necessary prerequisites, credits and points under the LEED Rating System required to achieve the LEED Silver Certification and except as set out in Section 22.3(e) may in its discretion determine which credits and points to pursue.
- (e) Project Co shall at a minimum achieve:
  - (i) all prerequisites for the Performance Category: Energy & Atmosphere under the LEED Rating System; and
  - (ii) 3 points for “Credit 1 - Optimize Energy Performance” under the Performance Category: Energy & Atmosphere under the LEED Rating System.
- (f) Health Co acknowledges that as of the date of this Agreement, Project Co is seeking to obtain the following credits under the LEED Rating System:
  - (i) “Credit 1 - Site Selection” under the Performance Category: Sustainable Sites;
  - (ii) “Credit 3 - Brownfield Redevelopment” under the Performance Category: Sustainable Sites;
  - (iii) “Credit 1.2 - Innovation in Design: User Manual” under the Performance Category: Innovation in Design;
  - (iv) “Credit 1.3 - Innovation in Design: Specific Title” under the Performance Category: Innovation in Design;
  - (v) “Credit 3.2 – Construction IAQ Management Plan” under the Performance Category: Indoor Environmental Quality, in respect of LEED Canada - NC Version 1.0 only, utilizing the option which achieves this point prior to Substantial Completion; and
  - (vi) “Credit 6 – Green Power” under the Performance Category: Energy and Atmosphere, only in the event that Project Co obtains less than four of the five previous credits as set out in Sections (i), (ii), (iii), (iv) and (v) above, and only if Project Co requires one additional credit for LEED Silver Certification.

In respect of the credits set out in Sections (i), (ii), (iii), (iv) and (vi) above, upon request from Project Co, Health Co shall in a timely manner prepare and deliver such information, documents and materials and provide such other assistance as Project Co may reasonably require relative to such credits, and Health Co shall bear the direct costs thereof. Health Co shall also bear the cost of obtaining the credit set out in Section (vi) above, if required. Health Co acknowledges that Project Co is relying on obtaining two of the six credits set out in this Section 22.3(f), and if, despite reasonable efforts in performing Project Co's obligations in this Section 22.3(f), Project Co fails to do so then

to the extent of such failure, Project Co shall be relieved of its obligation to obtain LEED Silver Certification.

- (g) If after application is made for registration with the GBC within the time provided in Section 22.3(b), there is a change in the requirements for achievement of LEED Silver Certification under the LEED Rating System, and Project Co is required by the GBC to comply with such change, then Project Co shall notify Health Co of such change and such change shall be a Variation pursuant to Schedule 25 – Variation Procedure.
- (h) Health Co acknowledges that if Project Co does not obtain LEED Silver Certification on or before Substantial Completion, then obtaining such LEED Silver Certification shall be deemed to be a Minor Deficiency hereunder. Project Co shall complete such Minor Deficiency within the time period set out in the Minor Deficiency List, and in any event no later than 12 months after the Substantial Completion Date, and in respect thereof Health Co shall have all rights provided hereunder in respect of Minor Deficiencies, including for withholding payment and performing work necessary to complete and rectify such Minor Deficiency at Project Co's cost. If after such 12 month period, and after a reasonable period thereafter for Health Co to exercise its rights hereunder in respect of completing and rectifying such Minor Deficiency, LEED Silver Certification will not be able to be obtained by either Project Co or Health Co, then Project Co's obligations in respect of LEED Silver Certification will be at an end, in which event Health Co shall not be entitled to terminate this Agreement for failure of Project Co to obtain LEED Silver Certification or exercise any other rights in respect of a failure to achieve LEED Silver Certification.

#### **22.4. City of Abbotsford Fees**

- (a) Health Co shall pay to the City of Abbotsford, when due and upon request by Project Co, all fees and costs (and applicable Taxes thereon) chargeable by the City of Abbotsford for the Project for the following:
  - (i) development cost charges (building and site area related);
  - (ii) building permit fees; and
  - (iii) engineering administration and inspection fees and any required security deposits arising from works and services performed by Project Co as required under the Development Agreement.
- (b) The Parties agree that any refund, partial rebate or credit, including a credit in respect of sanitary sewer, granted by the City of Abbotsford relating to the fees and costs referred to in Section 22.4(a) or any off-site works, including as referred to in the Development Agreement, shall be for the benefit of Health Co only.

**22.5. Terasen, Telus and Shaw****(a) Definitions**

- (i) “Shaw Service Requirements” means the suitable and sufficient utility services provided by Shaw and required to handle the design loads and the utility service requirements of the Project.
- (ii) “Shaw Works” means the works to be performed by Shaw (or its subcontractors) to provide the Shaw Service Requirements to the demarcation point at the Facility including all other work offsite (excluding City of Abbotsford offsite works) directly required to complete such works, and including conversion to an underground installation along Marshall Road and the former Gladwin Road as described in section 1(c)(iii) of the Development Agreement but excluding the underground civil works on the former Gladwin Road and the civil works to the Facility from the former Gladwin Road or from Marshall Road.
- (iii) “Telus Service Requirements” means the suitable and sufficient utility services provided by Telus and required to handle the design loads and the utility service requirements of the Project.
- (iv) “Telus Works” means the works to be performed by Telus (or its subcontractors) to provide the Telus Service Requirements to the demarcation point at the Facility including all other work offsite (excluding City of Abbotsford offsite works) directly required to complete such works, and including conversion to an underground installation along Marshall Road and the former Gladwin Road as described in section 1(c)(iii) of the Development Agreement but excluding the underground civil works on the former Gladwin Road and the civil works to the Facility from the former Gladwin Road or from Marshall Road.
- (v) “Terasen Service Requirements” means the suitable and sufficient utility services provided by Terasen and required to handle the design loads and the utility service requirements of the Project.
- (vi) “Terasen Works” means the works to be performed by Terasen (or its subcontractors) to provide the Terasen Service Requirements to the demarcation point at the Facility including all other work offsite (excluding City of Abbotsford offsite works) directly required to complete the works.

**(b) Project Co shall:**

- (i) enter into a separate contract with each of Terasen, Telus and Shaw for the performance of the Terasen Works, Telus Works and Shaw Works, respectively, on their standard terms; and
- (ii) provide any design requirements or documentation in respect of the Facility required to complete the Terasen Works, Telus Works and Shaw Works in full to Terasen, Telus or Shaw, respectively, with a copy to Health Co, in the manner and as requested by Terasen, Telus or Shaw.



- (c) Health Co shall be responsible for all costs and other amounts payable under each of the Terasen, Telus and Shaw contracts for the performance of the Terasen Works, Telus Works and Shaw Works, respectively, and shall pay all such costs and other amounts incurred by Project Co within 10 days of request for payment by Project Co.
- (d) Project Co shall compensate Health Co on demand for, any increased costs Health Co incurs as a direct result of any failure of Project Co to satisfy its obligations under Section 22.5(b).

**22.6. Off-Site Works**

- (a) Subject only to off-site work of BC Hydro, Telus, Terasen and Shaw as provided in Sections 22.1 and 22.5, respectively, Project Co shall perform and provide all off-site works required for the completion of the Facility and the Works, including all off-site and other works required by the Development Approvals.

**23. INDEPENDENT CERTIFIER****23.1. Appointment**

- (a) The Parties agree that they have, pursuant to the Independent Certifier Contract, appointed the Independent Certifier for the purposes of this Agreement.

**23.2. Role of Independent Certifier**

- (a) The general role, obligations and functions of the Independent Certifier are described in Schedule 6 - Independent Certifier Contract.
- (b) Health Co and Project Co are entitled to attend and participate in all meetings attended by the Independent Certifier.

**23.3. Changes to Terms of Appointment**

- (a) Neither Health Co nor Project Co shall without the other's prior written approval (not to be unreasonably withheld or delayed):
  - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
  - (ii) vary the terms of the Independent Certifier Contract or the service performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Contract.

**23.4. Right to Change Appointment**

- (a) The Parties acknowledge that the Independent Certifier shall perform services that relate to matters in connection with Project Co and the Funders and Constructor in addition to the functions of the Independent Certifier under this Agreement, and that either Party

may, at its option, acting reasonably, terminate the Independent Certifier Contract upon 30 days notice to the other Party and the Independent Certifier. If either Party gives such notice, then the Parties shall pursuant to Section 23.7 appoint a new Independent Certifier for the functions under this Agreement. The Parties agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed. Health Co acknowledges and agrees that in the event of such an appointment of a new Independent Certifier as a result of a termination by Health Co, Project Co's liability to pay such new Independent Certifier shall be limited to \$250,000 plus GST, less any amounts Project Co has paid to the previous Independent Certifier.

**23.5. Cooperation**

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Contract. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and both Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

**23.6. Payment of Independent Certifier**

- (a) Project Co and Health Co shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.

**23.7. Replacement**

- (a) In the event of the Independent Certifier's appointment being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Contract.
- (b) In the event the Parties fail to agree upon either the identity and terms of a replacement Independent Certifier within 7 days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
  - (i) each Party shall within 7 days thereafter select three suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
  - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and

- (iii) if the Parties have not selected a common replacement, then the determination of the new replacement shall be determined by the British Columbia International Commercial Arbitration Centre.

### **23.8. Independence and Impartiality**

- (a) The Independent Certifier will act fully independently and impartially and to the highest professional standards in fulfilling its duties and functions.

## **24. COMMISSIONING AND COMPLETION**

### **24.1. Project Co Commissioning**

- (a) Project Co shall perform all Project Co Commissioning pursuant to the Final Commissioning Program.

### **24.2. Final Commissioning Program**

- (a) Project Co shall prepare the draft Final Commissioning Program and shall provide a copy to the Independent Certifier and to Health Co's Representative not less than 365 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall:
  - (i) describe the requirements necessary and the timing and sequence of each of such requirements, including a detailed breakdown of the Project Operations to meet such requirements, in order that the Project Co Commissioning shall be completed to achieve:
    - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
    - (B) Final Completion on or before the Scheduled Final Completion Date;
  - (ii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
  - (iii) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on Health Co than those set out in the Outline Commissioning Program, unless otherwise agreed to by Health Co;
  - (iv) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
  - (v) include a schedule of each of the Project Co Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates; and
  - (vi) list the required Governmental Authorities, manufacturers and any other persons that are necessary to meet the requirements of the Final Commissioning

Program, Applicable Laws and any other obligation hereunder to ensure the completion of commissioning of the Works.

- (c) Health Co shall provide Project Co with comments on the draft Final Commissioning Program in accordance with the Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent required through the Review Procedure within 30 days of receipt of any comments from Health Co.
- (d) Any proposed delay shall be promptly reported to the Independent Certifier and Health Co's Representative with the proposed rectification required to enable the Scheduled Substantial Completion Date and Scheduled Final Completion Date to be met.

### **24.3. Commencement of Project Co Commissioning**

- (a) Project Co shall give 30 days written notice to the Independent Certifier and Health Co of the commencement of the Project Co Commissioning.
- (b) Project Co shall give a minimum of 7 days notice to, and shall invite, both the Independent Certifier and Health Co's Representative to witness, and to comment on, each aspect of the Project Co Commissioning. Project Co shall, together with such notice to Health Co and the Independent Certifier, provide them with all information they may reasonably require in relation thereto, including:
  - (i) tests proposed;
  - (ii) test methodology; and
  - (iii) expected test results.

### **24.4. Substantial Completion Certificate**

- (a) Project Co shall give the Independent Certifier and Health Co notice at least 14 days prior to the date upon which Project Co anticipates all requirements for Substantial Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and Health Co notice (the "Substantial Completion Notice") upon the satisfaction of all requirements for Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied.
- (c) Health Co shall, within 7 days after receipt of the Substantial Completion Notice, provide the Independent Certifier and Project Co with Health Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied and if applicable any reasons as to why it considers that the Substantial Completion Certificate should not be issued.
- (d) Within 7 days after Project Co's receipt of Health Co's opinion pursuant to Section 24.4(c), the Parties shall cause the Independent Certifier to consider whether the conditions for issuance of the Substantial Completion Certificate have been satisfied,

having regard for the opinions of Project Co and Health Co, and to issue to Health Co and to Project Co either:

- (i) the Substantial Completion Certificate, setting out in such certificate the Substantial Completion Date; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co.
- (e) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining:
- (i) liquidated damages payable pursuant to Section 24.7; and
  - (ii) the Payment Commencement Date,

and shall not be referred for resolution pursuant to the Dispute Resolution Procedure, provided however that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

- (f) Where the Independent Certifier has issued a report referred to in Section 24.4(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution pursuant to the Dispute Resolution Procedure, Project Co shall within 7 days after receipt of such report provide the Independent Certifier and Health Co with details of all additional rectification actions and Project Co Commissioning that need to be performed as a result of all matters raised in such report, including the following:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning. Upon completion thereof, Project Co may give a further Substantial Completion Notice and Sections 24.4(c) to (f) inclusive shall be repeated until the Substantial Completion Certificate has been issued.

#### **24.5. Operation and Maintenance Manuals**

- (a) Project Co shall prepare all necessary Facility operation and maintenance manuals 30 days prior to the Substantial Completion Date. From and after such date and throughout the remainder of the Project Term, Project Co shall prepare and keep current, and at all reasonable times make available at the Facility to Health Co, such operation and maintenance manuals and all other such manuals prepared from time to time for the Facility.

**24.6. Health Co Operational Commissioning**

- (a) Health Co acknowledges that the Health Co Operational Commissioning shall be performed from and after the Substantial Completion Date, provided that Project Co shall give access to Health Co prior to Substantial Completion for any preliminary Health Co Operational Commissioning at such times as may be set out in the Final Commissioning Program or as otherwise agreed, provided that in respect of the grant of access to Health Co prior to Substantial Completion for such purpose, Health Co, its employees, consultants and subcontractors and those for whom Health Co is in law responsible, shall at all times adhere to the directions, procedures and safety guidelines established by Project Co for the Site and the Project and shall, if required by Project Co, acting reasonably, confine their activities to a specified location on the Site or remove themselves from the Site if, in Project Co's reasonable discretion, the presence of Health Co, its employees, consultants and subcontractors, or those for whom Health Co is in law responsible, and/or their activities are materially interfering with the Construction activities or the ability of Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date or posing a threat to the safety of any persons present at the Site. In the event that Project Co so confines or removes Health Co, it shall provide Health Co with an alternate time to conduct such activities unless doing so would materially interfere with the Construction activities or the ability of Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date.
- (b) Health Co acknowledges that during the HCOCP Project Co and its Subcontractors will be active in the Facility in both the rectification of Minor Deficiencies and in Project Co Operational Commissioning, and Health Co shall take reasonable steps to allow such activities to proceed.
- (c) Health Co shall by the later of 180 days prior to the Scheduled Substantial Completion Date, or 14 days after receipt of the Countdown Notice pursuant to Section 24.7(a), give notice to Project Co of the period of time, commencing the day following the Substantial Completion Date, that Health Co anticipates it will require for Health Co Operational Commissioning (such period of time, as may be changed by Section 24.6(d), defined herein as the "Health Co Operational Commissioning Period" or "HCOCP").
- (d) Health Co may from time to time, not less than 30 days prior to the end of the HCOCP, change the end date of such period.
- (e) Until the completion of the HCOCP, Project Co shall provide the following Services to a level that achieves the requirements of the FM Output Specifications for the specified Services given the opening bed level specified by Health Co pursuant to Section 25.4:
- (i) General Management Services;
  - (ii) Helpdesk Services;
  - (iii) Plant Services;
  - (iv) Utilities Management;
  - (v) Protection Services; and

- (vi) Parking Services.
- (f) Until the completion of the HCOCP, Project Co shall provide the following Services to a level that achieves the requirements of the FM Output Specifications for the specified Services given the level of Services to be provided pursuant to Appendix J of the Payment Mechanism:
  - (i) Non-Patient Food Services;
  - (ii) Housekeeping Services;
  - (iii) Laundry/Linen Services; and
  - (iv) Materiel Services.
- (g) During the HCOCP, Project Co shall not be required to provide the following Services:
  - (i) Patient Portering Services; and
  - (ii) Food Services
- (h) The Payment Mechanism, as modified by Appendix J thereto, shall apply during the HCOCP.

#### **24.7. Countdown Notice and Liquidated Damages**

- (a) Project Co shall deliver a notice (the "Countdown Notice") to Health Co not less than 180 days prior to the anticipated Substantial Completion Date, specifying the best estimate by Project Co of the anticipated Substantial Completion Date (the "Anticipated Substantial Completion Date"). If Project Co fails to give Health Co the Countdown Notice not less than 180 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.
- (b) Project Co acknowledges and agrees that Health Co requires a minimum of 180 days notice prior to the Anticipated Substantial Completion Date to prepare for the Health Co Operational Commissioning.
- (c) Unless Project Co obtains Health Co's prior written consent, the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date.
- (d) In the event that the Substantial Completion Certificate is not issued on or before the Anticipated Substantial Completion Date, Project Co shall pay to Health Co liquidated damages in the sum of \$10,000 per day or part thereof from the Anticipated Substantial Completion Date until the Substantial Completion Certificate has been issued. Health Co and Project Co agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Health Co will suffer as a result of the happening of the specified event, and which Health Co and Project Co agree would be difficult or impossible to quantify upon the happening of the specified event and, subject to the other remedies of Health Co herein (including remedies for

termination for Project Co Event of Default) other than for the recovery of damages for the delay in achieving Substantial Completion for such period, such payment shall constitute full and final satisfaction of any and all damages that may be claimed by Health Co as a result of Project Co not achieving Substantial Completion by the Scheduled Substantial Completion Date. Health Co and Project Co agree that such liquidated damages shall be payable whether or not Health Co incurs or mitigates damages, and that Health Co shall not have any obligation to mitigate any such damages. Project Co agrees that it is and shall be estopped from alleging that, and shall not allege that, such liquidated damages are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages are not incurred. Health Co and Project Co agree that Project Co has taken into account such liquidated damages in its pricing of its compensation hereunder, that such liquidated damages are integral to the provisions of this Agreement, and that Health Co has relied on such liquidated damages in entering into this Agreement.

- (e) The cumulative total of liquidated damages payable by Project Co pursuant to Section 24.7(d) shall be subject to, and shall not exceed, a limit of \$500,000.

#### **24.8. [\*Reserved]**

#### **24.9. Minor Deficiencies**

- (a) In the event that Minor Deficiencies exist when Project Co applies for the Substantial Completion Certificate, the Independent Certifier, in consultation with Project Co and Health Co, shall prepare a Minor Deficiency List for all known Minor Deficiencies identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies.
- (b) The Minor Deficiency List will contain the schedule for completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, the Independent Certifier shall minimize the impairment of Health Co's use and enjoyment of the Facility (including for the Health Co Operational Commissioning), the performance of the Clinical/Non-Clinical Services and the performance of the Services by Project Co.
- (c) The Independent Certifier shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) Health Co may waive any requirements for Substantial Completion, including with respect to Equipment, in which event any such requirements shall constitute Minor Deficiencies.

#### **24.10. Rectification of Minor Deficiencies**

- (a) Following the issuance of the Minor Deficiency List, Project Co shall, in consultation with Health Co's Representative and in such manner as to cause as little disruption as reasonably practicable to the provision of the Clinical/Non-Clinical Services, complete and rectify all Minor Deficiencies within such time as is specified in the Minor Deficiency List.



**24.11. Failure to Rectify Minor Deficiencies**

- (a) If within 30 days after the time specified in the Minor Deficiency List, Project Co has failed to complete and rectify the Minor Deficiencies specified in the Minor Deficiency List:
- (i) Health Co may withhold from the next payment or payments otherwise due to Project Co a holdback amount that is 125% of the amount estimated by the Independent Certifier to complete and rectify the Minor Deficiencies (to the extent then outstanding), which holdback shall be held in an interest bearing account; and
  - (ii) Health Co may by itself, or may engage others to, perform the work necessary to complete and rectify the Minor Deficiencies, at the risk and cost of Project Co, and Health Co may deduct such cost from the holdback amount and interest earned thereon.
- (b) Upon completion and rectification of all of the Minor Deficiencies, Health Co shall release to Project Co the then remaining amount of the holdback together with all remaining interest accrued thereon. If the cost of such completion and rectification exceeds the amount of such holdback and interest, then Project Co shall reimburse Health Co for all such excess cost.

**24.12. Final Completion Certificate**

- (a) Project Co shall give the Independent Certifier and Health Co notice at least 14 days prior to the date upon which Project Co anticipates all requirements for Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and Health Co notice (the "Final Completion Notice") upon the satisfaction of all requirements for Final Completion, including the completion and rectification of all of the Minor Deficiencies, together with Project Co's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied.
- (c) Health Co shall, within 7 days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with Health Co's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and if applicable any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within 7 days after Project Co's receipt of Health Co's opinion pursuant to Section 24.12(c), the Parties shall cause the Independent Certifier to consider whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of Health Co and Project Co, and to issue to Health Co and to Project Co either:
- (i) the Final Completion Certificate, setting out in such certificate the Final Completion Date; or

- (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co.
- (e) Any Dispute in relation to the Independent Certifier's issue or failure to issue the Final Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.
- (f) Where the Independent Certifier has issued a report in accordance with Section 24.12(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution pursuant to the Dispute Resolution Procedure, Project Co shall within 7 days after receipt of such report provide the Independent Certifier and Health Co with details of all additional rectification actions and Project Co Commissioning that needs to be performed as a result of all matters raised in such report, including the following:
  - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 24.12(c) to 24.4(f) inclusive shall be repeated until the Final Completion Certificate has been issued.

**24.13. Effect of Certificates/Use**

- (a) The issue of the Substantial Completion Certificate (including if the Substantial Completion Certificate is issued by the Independent Certifier to determine the Payment Commencement Date) and the Final Completion Certificate, any taking over or use by Health Co of any part of the Facility under the terms of this Agreement, and any commencement of any Clinical/Non-Clinical Services shall in no way limit the obligations of Project Co under this Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiency List.

**PART E. SERVICES****25. GENERAL OBLIGATIONS APPLICABLE****25.1. Overall Responsibility**

- (a) Project Co shall, following the Substantial Completion Date, perform the Services:
- (i) so as to satisfy the Output Specifications;
  - (ii) in accordance with the Method Statements; and
  - (iii) in accordance with the terms of this Agreement.

**25.2. Overall Services Obligation**

- (a) Project Co agrees that the Services shall include everything within the general scope of the Service Categories (both as expressly specified in the Output Specifications and as necessarily ancillary thereto) so that, when taken as a whole, the Services shall allow Project Co to perform the Services and shall allow Health Co and the Health Authorities to perform the Clinical/Non-Clinical Services as set out in the Output Specifications, in accordance with the terms and conditions contained in this Agreement.

**25.3. Commencement of Services**

- (a) Subject to Section 25.4, Project Co shall commence the Services on the day immediately after the Substantial Completion Date and shall provide the Services throughout until the end of the Operational Term.

**25.4. Opening Service Level and Changes to Service Level**

- (a) Health Co shall by the later of 180 days prior to the Scheduled Substantial Completion Date, or 14 days after receipt of the Countdown Notice pursuant to Section 24.7(a), give notice to Project Co of the number and location of hospital beds that the Health Authorities propose to be operated and serviced on the day after the Substantial Completion Date.
- (b) Health Co may from time to time give notice to Project Co of changes in the number and location of hospital beds to be operated and serviced, in which event the Periodic Service Payments shall be adjusted in accordance with the Payment Mechanism.
- (c) Project Co agrees that all changes to the Services resulting from changes in the number and location of hospital beds to be operated and serviced shall not, unless the location of the hospital beds is a location not designed for hospital beds or unless otherwise agreed by Health Co, constitute a Variation, that any increase or decrease in compensation shall be calculated pursuant to the Payment Mechanism, and that Project Co has taken into account prior to executing this Agreement the risk that there may be material changes from time to time in the number of hospital beds operated and serviced.

**25.5. Co-ordination and No Disruption to Health Co**

- (a) Project Co shall perform the Services so as to co-ordinate with the operations of Health Co, the Health Co Parties and the Health Authorities on the Site and the Facility and shall take reasonable care to not adversely interfere with the operations of Health Co, any Health Co Party or the Health Authorities, including the delivery of patient care at the Facility.

**25.6. No Closure of Facility**

- (a) During the Project Term, and notwithstanding any Relief Event, Project Co shall not close all or any portion of the Facility in any circumstances other than as directed or approved by Health Co, acting reasonably. This Section 25.6 shall not restrict reasonable security measures by Project Co to secure Project Co's administrative offices and retail shops included in the Business Opportunities granted to Project Co by Section 4.1, provided however, that Project Co shall not unduly restrict access to the areas in which such administrative offices and retail shops are located.

**25.7. Project Co Service Changes**

- (a) Project Co may at any time submit to Health Co's Representative in accordance with Schedule 11 - Review Procedure proposals for amendments to or substitution for the Method Statements or any part of them. If pursuant to Schedule 11 - Review Procedure, Project Co is permitted to proceed with such amendments or substitution, then the Method Statements as so amended or substituted shall be the Method Statements for the purposes of this Agreement.
- (b) An amendment to or substitution for the Method Statements proposed pursuant to this Section 25.7 shall not be a Variation for which a Variation Confirmation has been issued entitling Project Co to any payment or other compensation or to any relief from the performance of Project Co's obligations under this Agreement.

**26. MAINTENANCE PLANS****26.1. Maintenance Plans**

- (a) No later than 90 days prior to the Substantial Completion Date, Project Co shall submit to Health Co's Representative for review pursuant to Schedule 11 - Review Procedure, the Scheduled Maintenance Plan for the first Contract Year and the 5 Year Maintenance Plan for the first 5 Contract Years, and shall update such plans as provided for in the Output Specifications annually thereafter.
- (b) Project Co shall carry out the Maintenance Work as identified in the Scheduled Maintenance Plan, and without limiting Project Co's other obligations in respect of the performance of the Project Operations, shall ensure that all Maintenance Work is:
  - (i) in accordance with the times scheduled for such Maintenance Work;
  - (ii) undertaken in accordance with Good Industry Practice;

- (iii) in a manner that at all times allows the Facility to remain operational; and
- (iv) in accordance with the Scheduled Maintenance Plan.

### **26.2. Revisions to Scheduled Maintenance Plan**

- (a) No later than 30 days prior to the commencement of any Quarter, Project Co shall submit to Health Co's Representative a revision to the applicable Scheduled Maintenance Plan for the Contract Year in which the relevant Quarter falls showing the effect of the proposed changes. If Project Co is entitled to proceed with such changes pursuant to Schedule 11 - Review Procedure, then the Scheduled Maintenance Plan as so changed shall become the Scheduled Maintenance Plan in respect of that Quarter.
- (b) Without limiting the comments that may be made pursuant to Schedule 11 - Review Procedure, in relation to the submission of any Scheduled Maintenance Plan, Health Co, acting reasonably, may comment "Correct Deficiencies" or "Rejected" on any revision to any Scheduled Maintenance Plan pursuant to this Section 26.2 on the grounds that:
  - (i) carrying out the Scheduled Maintenance in the period or at the times suggested would (on the balance of probabilities) materially interfere with the Clinical/Non-Clinical Services and such material interference could be avoided or mitigated by Project Co rescheduling the Scheduled Maintenance;
  - (ii) the safety of patients or other users of the Facility would (on the balance of probabilities) be materially adversely affected and such material adverse effect could be avoided or mitigated by Project Co rescheduling the Scheduled Maintenance; or
  - (iii) the period for carrying out the Scheduled Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant work.

### **26.3. Health Co Change in Timing**

- (a) Notwithstanding the establishment of or entitlement to proceed with any Scheduled Maintenance Plan, Health Co's Representative may, at any time and from time to time, require Project Co to accelerate or defer any Scheduled Maintenance by giving written notice to Project Co, not less than 14 days prior to the scheduled date for performing such Scheduled Maintenance, which notice shall set out the time and periods at or during which Health Co requires the Scheduled Maintenance to be performed.
- (b) Project Co shall notify Health Co of the amount of any additional reasonable costs which it estimates it shall incur as a direct consequence of such acceleration or deferment (the "Estimated Increased Maintenance Costs"). Health Co shall, within a further period of 7 days following receipt by Health Co of notification of the amount of the Estimated Increased Maintenance Costs, at its option, either confirm or withdraw its request to accelerate or defer the Scheduled Maintenance. If Health Co does not respond within this 7 days period, the request shall be deemed to have been withdrawn. Health Co shall reimburse Project Co the direct and reasonable costs actually incurred by Project Co as a consequence of such acceleration or deferment up to, but not exceeding, the amount of the Estimated Increased Maintenance Costs.

**26.4. Other Maintenance Work**

- (a) The Maintenance Work specified in the Scheduled Maintenance Plan shall not limit Project Co's obligations to perform Maintenance Work.

**26.5. Plant Services Information Management System**

- (a) Prior to issuance of the Substantial Completion Certificate, Project Co shall create and commission the Plant Services Information Management System and throughout the Operational Term shall maintain same as provided in the Output Specifications.

**26.6. Surveys**

- (a) If Health Co reasonably believes that Project Co is in breach of its obligations with respect to Maintenance Work, including:
- (i) under this Section 26;
  - (ii) under the Output Specifications; or
  - (iii) in respect of any defects, deficiencies or items of outstanding work that should have been completed as part of the Works,

then Health Co may cause to be performed, by an arm's length maintenance consultant appointed by Health Co, a performance audit, inspection and survey of the Facility to assess whether the Facility has been and is being maintained by Project Co in accordance with Project Co's obligations (the "Survey"). This right may not be exercised by Health Co more often than once in every 180 days.

- (b) Health Co shall notify Project Co in writing at least 14 days prior to the date that Health Co wishes to cause a Survey to be undertaken. Health Co shall consider in good faith any reasonable request by Project Co for the Survey to be performed on an alternative date if such request is made by Project Co in writing at least 7 days prior to the date originally requested by Health Co, on the basis that performing the Survey on the date originally requested by Health Co would materially prejudice Project Co's ability to provide the Services.
- (c) When causing any Survey to be undertaken, Health Co shall use reasonable efforts to minimise any disruption caused to the provision of the Services by Project Co. The cost of a Survey, except where Section 26.6(d) applies, shall be borne by Health Co. Project Co shall provide Health Co, at no additional cost or charge, with any reasonable assistance required by Health Co from time to time during the Survey.
- (d) If a Survey shows that Project Co has not performed or is not performing its obligations in any material respect, Health Co shall:
- (i) provide Project Co with a written notice of non-compliance by Project Co of its obligations;

- (ii) provide Project Co with instructions regarding rectification or Maintenance Work required to be performed by Project Co in order for Project Co to perform its obligations;
  - (iii) specify a reasonable period of time within which Project Co must perform such rectification or Maintenance Work; and
  - (iv) be entitled pursuant to Section 26.6(e) to be paid or reimbursed by Project Co for the costs of the Survey and any administrative costs incurred by Health Co in relation to the Survey.
- (e) If a Survey shows that Project Co has not performed or is not performing its obligations, Project Co shall:
- (i) perform any rectification or Maintenance Work requested by Health Co within the reasonable period of time specified by Health Co, and be responsible for any costs that Project Co incurs in performing such rectification or Maintenance Work; and
  - (ii) pay or reimburse Health Co for the costs of such Survey and any administrative costs incurred by Health Co in relation to such Survey, provided that the Survey shows that Project Co has not performed or is not performing its obligations in a material respect,
- and Health Co shall be entitled to exercise all rights pursuant to Section 32.
- (f) Nothing in this Section 26.6 shall limit or restrict Health Co from its rights hereunder to carry out any other performance audits, inspections and surveys at its own cost and expense.

## **27. POLICIES, PERSONNEL AND LABOUR ISSUES**

### **27.1. Health Authority Policies**

- (a) Project Co shall comply with all relevant Health Authority Policies, including additions to, amendments of, or deletions from such Health Authority Policies from time to time. If there is an ambiguity, conflict or inconsistency between the requirements of the FM Output Specifications and the Health Authority Policies as of the date of this Agreement, then the FM Output Specifications shall prevail. If the Health Authorities implement any new Health Authority Policies or any modifications to any existing Health Authority Policies that impact Project Co, then Health Co shall notify Project Co as to the same, or if practicable, proposed new Health Authority Policies or modifications to existing Health Authority Policies. If such changes impose any Variation in the Services and a change in costs on Project Co, then Project Co or Health Co shall be entitled to a Variation Confirmation in respect thereof in accordance with Schedule 25 - Variation Procedure. This Section 27.1(a) is subject to Section 27.1(b).
- (b) Health Co may notify Project Co that Project Co shall not be obliged to comply with any new Health Authority Policy or any modification to an existing Health Authority Policy and that Project Co should continue to comply with the relevant Health Authority Policy

prior to any change, in which case Project Co shall not be entitled to a Variation Confirmation for any such additional costs and Project Co shall not be obligated to comply with such change in Health Authority Policies or be responsible for consequences (including any deductions under the Payment Mechanism) arising to the extent of its failure to so comply, provided however that Health Co shall not be entitled to give such notice to Project Co where such non-compliance with the new or modified Health Authority Policy would result in a failure by Project Co to comply with Applicable Law.

**27.2. Sufficient Resources and Training**

- (a) Project Co shall at all times provide sufficient staff, resources and training for the purposes of the Project Operations, such staff, resources and training to be as determined by Project Co, and so as to comply with all other applicable provisions of the Output Specifications.

**27.3. Personnel Policies**

- (a) Project Co shall comply with the provisions of the Output Specifications relating to personnel policies and procedures, including to ensure that there are set up and maintained by it and by all Project Co Parties, personnel policies and procedures covering all relevant matters, including recruitment, orientation, training and ongoing skills development, discipline, grievances, human rights matters and occupational health and safety and risk management. Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law and Good Industry Practice, shall publish them in written form and shall issue copies of them, and any revisions and amendments to them, forthwith to Health Co.

**27.4. Disciplinary Action**

- (a) Project Co shall, and shall cause its Subcontractors to take appropriate steps, in accordance with and subject to the terms and conditions of employment of the employee concerned and all applicable labour and employment laws, to enforce appropriate disciplinary action (including if applicable, termination of employment) against any employee of Project Co or any Subcontractor:
  - (i) that commits misconduct;
  - (ii) that is incompetent or negligent in the employee's or Subcontractor's duties; or
  - (iii) whose presence or conduct on the Site or at the Facility, or while acting in the course of his or her employment or the Subcontractor's duties, is otherwise undesirable or constitutes a threat to the health or safety of any users of the Facility. If requested by Health Co in writing, Project Co shall investigate and shall institute disciplinary proceedings as appropriate and shall advise Health Co in writing of the outcome of same.

The foregoing obligations of Project Co and its Subcontractors to enforce appropriate disciplinary actions shall be implemented to the extent that such disciplinary actions do not contravene applicable labour and employment laws.



**27.5. Labour Disputes**

- (a) Project Co acknowledges that some or all of the other persons working at the Facility and the Site may be union or non-union and that Health Co wishes to ensure that labour peace shall be maintained. Project Co shall take all reasonable precautions to avoid labour disputes which are caused or contributed to by Project Co or by any Subcontractors, including the Service Providers.
- (b) Project Co represents and warrants to Health Co that as of the date of this Agreement, no collective or other agreement with its workers or between any of its Subcontractors (including the Service Providers) and its or their workers would materially adversely affect performance of the Project Operations or the Clinical/Non-Clinical Services. Project Co shall use all reasonable efforts to ensure that Project Co and its Subcontractors shall not enter into collective or other agreements which shall adversely affect performance of the Project Operations or the Clinical/Non-Clinical Services.
- (c) Project Co shall take all reasonable precautions to avoid the exercise of non-affiliation rights under any collective agreements applicable to workers of Project Co or any of its Subcontractors (including the Service Providers) where such non-affiliation rights may be exercised in relation to any part of the Project Operations or the Clinical/Non-Clinical Services.
- (d) Whenever Project Co has knowledge that any actual or potential labour dispute is affecting or threatens to affect the performance of the Project Operations or the Clinical/Non-Clinical Services, Project Co shall:
- (i) immediately give notice thereof in writing to Health Co, including all relevant information with respect to such dispute or potential dispute;
  - (ii) take all necessary steps, including by making any necessary applications for injunctive and other relief to the appropriate tribunals (including the Labour Relations Board) or courts having jurisdiction, including, if applicable, on the basis that the Project Operations or portions thereof are “essential services” (as such term is used in the Labour Relations Code (British Columbia)) to ensure that such labour dispute shall not affect the performance of the Project Operations or the Clinical/Non-Clinical Services; and
  - (iii) where Project Co has knowledge of a potential labour dispute, Project Co shall take all necessary steps referred to in Section 27.5(d)(ii) as soon as reasonably possible, and in any event shall apply for an essential services designation, pursuant to Part 6 of the Labour Relations Code (British Columbia), for the facilities, productions and services which will be affected by the labour dispute in sufficient time to ensure that a designation by the responsible Minister is made prior to the commencement of a strike or lockout.
- (e) Health Co may, but is not obligated to, by written notice to Project Co require Project Co to terminate any Subcontract by Project Co giving 5 days written notice of termination to the Subcontractor (including any Service Provider), if:

- (i) the workers of the Subcontractor, or of anyone employed by or through the Subcontractor:
  - (A) declare or engage in a strike, a cessation of work, a refusal to supply material, a refusal to work or to continue to work on the Project Operations;
  - (B) engage in a slowdown or other concerted activity which restricts or limits or, in the opinion of Health Co, is likely to affect performance of the Project Operations or the Clinical/Non-Clinical Services; or
  - (C) picket or cause picketing to occur or support picketing by a refusal to work, or continue to work at or in the Site whether in support of a lawful strike or for any other reason; or
- (ii) the Subcontractor, or anyone employed by or through the Subcontractor, imposes a lockout, lawful or unlawful, against their workers engaged in performing the Project Operations, which lockout is likely to affect performance of the Project Operations or the Clinical/Non-Clinical Services,

provided, however, that Health Co shall not exercise its rights to require the termination of a Subcontract pursuant to this Section 27.5(e) unless Health Co has provided a reasonable period, not exceeding 10 Business Days, for Project Co and its Subcontractor to cure the events giving rise to Health Co's right to require the termination of the Subcontract and provided that Project Co shall continue to perform the affected Project Operations during the aforesaid cure period. Health Co shall not exercise its rights to require the termination of a Subcontract pursuant to this Section 27.5(e) due to an illegal strike or illegal labour disruption by the applicable Subcontractor's employees if Project Co and the applicable Subcontractor have complied with this Section 27.5, in which event the Subcontractor in question may be temporarily suspended (without such suspension relieving Project Co of its obligations hereunder to provide the Services), but not terminated, until the illegal strike or illegal labour disruption ceases. In the event of such a temporary suspension, Project Co may either perform the Services of the suspended Subcontractor or may engage a Subcontractor on a temporary basis, provided that such Subcontractor would be permitted by the terms of this Agreement to be a Subcontractor.

- (f) Project Co shall bear the sole cost and expense of the actions referred to in this Section 27.5 to be undertaken by Project Co in preventing, avoiding or removing any of the matters or events giving rise to the labour dispute, other than in respect of a labour dispute caused by Health Co, the Health Co Parties or the Health Authorities or any of their employees.
- (g) Nothing in this Section 27.5 shall limit Health Co's remedial, termination or other rights under this Agreement, including pursuant to Section 32 and Section 45.

**27.6. Application**

- (a) For greater certainty, the Parties acknowledge that this Section 27 applies only after Substantial Completion and with respect to the Constructor, applicability is limited to

Sections 27.1, 27.4 and 27.5(d), 27.5(e) and 27.5(f) for the period after patient care has commenced and where the events therein referred to affect or threaten to affect (i) the performance of the Work (as that term is defined in the Construction Contract) and/or the Project Operations other than such Work, or (ii) the Clinical/Non-Clinical Services.

## **28. STOCKS, CONSUMABLES, MATERIALS AND EQUIPMENT**

### **28.1. Standards**

- (a) All goods, equipment, consumables and materials which are to be supplied to Health Co in connection with the Service Categories relating to the FM Output Specifications shall be new.
- (b) Project Co shall cause the goods, equipment, consumables and materials used or supplied by it or any Subcontractor in connection with the Services to be:
  - (i) of good quality, fit for their intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice;
  - (ii) of the type specified in the Output Specifications and the Method Statements, where applicable; and
  - (iii) in compliance with all Applicable Law,and shall, as soon as practicable after receiving a request from Health Co's Representative, supply to Health Co's Representative evidence to demonstrate its compliance with this Section 28.1(b).
- (c) Project Co shall cause sufficient stocks of goods, consumables, equipment and materials to be held in compliance with its obligations under this Agreement.

### **28.2. Hazardous Substances and Materials**

- (a) Except to the extent required pursuant to the FM Output Specifications, Project Co shall not bring, install, keep, maintain or use in or on the Facility, or cause, authorize or permit any person to bring, install, keep, maintain or use, any substances, materials, equipment or apparatus, which is likely to cause or in fact causes:
  - (i) material damage to the Facility;
  - (ii) dust, noise or vibration or any other nuisance to the owners or occupiers of any property adjoining or near to the Facility;
  - (iii) the generation, accumulation or migration of any Hazardous Substance in an unlawful manner whether within or outside the Facility; or
  - (iv) an adverse effect on the health or well-being of Health Co's or the Health Authorities' staff, patients or visitors to the Facility,

and shall use all reasonable efforts to ensure, by directions to staff and otherwise, that all materials, equipment or apparatus in or on the Facility is operated and stored so as to minimize noise and vibration likely to cause annoyance or disturbance and the unlawful generation or migration of any Hazardous Substance.

- (b) Except for articles or things commonly used or generated in hospitals and cancer centres, Project Co shall not bring, install, keep, maintain or use, or cause, authorize or permit any person to bring, install, keep, maintain or use in or on the Facility any Hazardous Substance or hazardous equipment without the prior written consent of Health Co and unless Project Co has complied with all Applicable Law.
- (c) Where applicable, Project Co shall comply with all Applicable Law regarding WHMIS and the transportation of Hazardous Substances, including:
  - (i) maintaining a library of MSDS on the Site and making MSDS labels available to all workers and Health Co, and making and posting workplace labels where applicable, for all materials designated hazardous by Applicable Law relating to WHMIS; and
  - (ii) ensuring that Hazardous Substances are only shipped in accordance with Applicable Law governing the transportation of Hazardous Substances.

Health Co shall make available to Project Co, on request by Project Co, a list of Hazardous Substances prepared by Health Co as required by any Applicable Law regarding WHMIS and the transportation of Hazardous Substances.

- (d) Project Co shall:
  - (i) ensure that all hazardous materials and equipment used or stored on the Site shall be kept in accordance with all Applicable Law, Good Industry Practice, properly and securely labelled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and
  - (ii) prevent the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, whether at or from the Facility or into any conducting media or device serving the Facility, including to:
    - (A) prevent any claims relating to Contamination arising or any circumstances likely to result in any claims relating to Contamination arising; and
    - (B) prevent any adverse effect on the health or well-being of any person, including Health Co's or the Health Authorities' staff, patients and visitors to the Facility,

in so far as such Hazardous Substance is, or should be, under the control of Project Co pursuant to this Agreement.

- (e) This Section 28.2 applies from and after Substantial Completion, and shall not extend to Hazardous Substances or hazardous equipment, materials or apparatus that are produced, brought, installed, kept, maintained or used by Health Co, the Health

Authorities or the Health Co Parties in relation to the Clinical/Non-Clinical Services, except to the extent that such Hazardous Substances or hazardous equipment, materials or apparatus are, or should be, the responsibility of Project Co or under the control of Project Co under this Agreement.

**29. [\*RESERVED]**

**30. MARKET TESTING**

**30.1. Market Testing of Market Tested Services**

- (a) Project Co shall perform and comply with Schedule 24 - Market Testing Procedure, including all procedures set out therein, in relation to Market Testing of the Market Tested Services.
- (b) Project Co shall ensure that all of its Subcontracts shall be consistent with Project Co's obligations in relation to Market Testing, and without limiting the foregoing, Project Co shall not enter into any Subcontract that does not provide for termination on the applicable Market Testing Date and appropriate transition arrangements to any replacement Subcontractor, without any compensation whatsoever to the applicable Subcontractor.

**31. MONITORING**

**31.1. Monitoring of Performance**

- (a) Project Co shall monitor the performance of the Services in the manner and at the frequencies set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations as set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, Project Co shall, as reasonably requested by Health Co, provide Health Co's Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Agreement. Health Co may at any and all reasonable times observe, inspect, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.

**31.2. Service Failure Points**

- (a) In each Payment Period, Project Co shall measure the performance of the Services, and based on the performance of the Services in the applicable Payment Period, Service Failure Points, if any, may be awarded in respect of a Service in accordance with the Output Specifications, the Performance Monitoring Program, and the Payment Mechanism.

**31.3. Warning Notices**

- (a) Without prejudice to Health Co's rights under Section 45 and any other rights under this Agreement, if at any time Project Co has accrued:

- (i) more than 1000 Service Failure Points in any Payment Period; or
- (ii) more than 200 Service Failure Points in any Payment Period in respect of any one Service Category,

then Health Co may give written notice (a "Warning Notice") to Project Co setting out the matter or matters giving rise to such notice and stating that it is a "Warning Notice".

#### **31.4. Monitoring Notices**

- (a) Without prejudice to Health Co's rights under Section 45 and to any other rights under this Agreement, if at any time and from time to time Project Co receives 2 or more Warning Notices in any 90 day period, Health Co may at Health Co's option by notice (a "Monitoring Notice") to Project Co require Project Co to increase Project Co's monitoring of Project Co's performance of Project Co's obligations under this Agreement in respect of the relevant Service until such time as Project Co shall have demonstrated to the reasonable satisfaction of Health Co that it is performing, and shall be capable of continuing to perform (having regard to the nature of relevant Services and the matters giving rise to the Warning Notices), Project Co's obligations under this Agreement in respect of the relevant Service.
- (b) Health Co may give a Warning Notice pursuant to Section 31.3 despite the issuance of a previous Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If any Monitoring Notice is given, then:
  - (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring Project Co's performance;
  - (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or Health Co was not entitled hereunder to give the Monitoring Notice, Project Co shall within 3 Business Days of the receipt of such Monitoring Notice notify Health Co in writing of the matters objected to by Project Co in order to prevent prejudice to Project Co's performance of its obligations under this Agreement;
  - (iii) if Project Co gives such notice to Health Co of such matters objected to by Project Co, the measures shall be agreed between the Parties or, in the absence of agreement within 14 days of Health Co's receipt of such notice, the matters objected to, if any, shall be determined pursuant to Schedule 30 - Dispute Resolution Procedure;
  - (iv) if Project Co fails to increase Project Co's monitoring as provided herein, Health Co may perform such monitoring save where Project Co is, in good faith, pursuing a Dispute pursuant to Section 31.4(c)(iii);
  - (v) if Health Co was entitled hereunder to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse Health Co for reasonable costs

and expenses, if any, incurred by or on behalf of Health Co in relation to such increased level of monitoring, including a reasonable amount in respect of general staff costs and overheads; and

- (vi) if Health Co was not entitled hereunder to give the applicable Monitoring Notice, Health Co shall bear its own costs and reimburse Project Co for reasonable costs and expenses, if any, incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of Health Co that Project Co has performed its obligations under this Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar Service, Project Co may apply for the withdrawal of such Monitoring Notice. Upon receipt of such application, Health Co shall within 14 days, acting reasonably, consider such application and if satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, shall withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) Health Co may from time to time and at any time at Health Co's sole option or if it is determined pursuant to Schedule 30 - Dispute Resolution Procedure that Health Co was not entitled to give the applicable Monitoring Notice, withdraw such Monitoring Notice, or cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

## **32. HEALTH CO'S REMEDIAL RIGHTS**

### **32.1. Right to Exercise Remedial Rights**

- (a) Health Co may exercise all rights set out in this Section 32 at any time and from time to time if:
  - (i) Health Co acting reasonably considers that a breach by Project Co of any obligation under this Agreement, or any act or omission on the part of Project Co or any Project Co Party:
    - (A) does or can reasonably be expected to create a serious threat to the health or safety of any user of any part of or the whole of the Facility, including the Health Authorities, employees, patients and visitors to the Facility and members of the public;
    - (B) does or can reasonably be expected to result in a materially adverse interruption in the provision of one or more of the Services;
    - (C) is materially prejudicial to the ability of Health Co or the Health Authorities to provide Clinical/Non-Clinical Services;
    - (D) may potentially compromise the reputation or integrity of the AHCC, Health Co or any Health Authority or the nature of the Province's health

care system or so as to materially affect public confidence in that system;  
or

- (E) results in a failure to perform Market Testing as required pursuant to Schedule 24 - Market Testing Procedure,

provided, however, that in respect of Section 32.1(a)(i)(D) or 32.1(a)(i)(E), Health Co shall not exercise its rights under this Section 32 unless Project Co has failed to cure, or to commence to cure, the relevant breach of this Agreement or act or omission, within 7 days of notice from Health Co or if such breach, act or omission cannot reasonably be cured within such 7 day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;

- (ii) Project Co has accrued more than 300 Service Failure Points in a Payment Period in respect of any Service Category;
- (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co in good faith, Project Co receives a Warning Notice in respect of the same or similar Service;
- (iv) if pursuant to Section 26.6 a Survey that is not being disputed by Project Co in good faith shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or Maintenance Work as provided pursuant to Section 26.6(e)(i);
- (v) a labour dispute affects or can reasonably be expected to materially affect the Project Operations or the Clinical/Non-Clinical Services; or
- (vi) Health Co has received a notice under any of the Service Providers' Collateral Agreements that entitles Health Co to exercise step-in rights thereunder.

### 32.2. Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations pursuant to this Agreement, Health Co may exercise all rights set out in this Section 32 at any time and from time to time if Health Co acting reasonably considers the circumstances to constitute an emergency which for purposes of this Section 32 shall be circumstances that:
- (i) may create a serious threat to the health or safety of any user of any part of or the whole of the Facility, including the Health Authorities, employees, patients and visitors to the Facility and members of the public;
  - (ii) is prejudicial to the ability of Health Co or the Health Authorities to provide Clinical/Non-Clinical Services;
  - (iii) may potentially compromise the reputation or integrity of the AHCC, Health Co or any Health Authority or the nature of the Province's health care system or so as to materially affect public confidence in that system; or



- (iv) constitute any event or set of circumstances analogous to the foregoing circumstances set out in Section 32.2(a)(i).

### 32.3. Rectification

- (a) Without prejudice to Health Co's rights under Section 45 and to any other rights under this Agreement, in any of the circumstances set out in Sections 32.1 or 32.2, Health Co may by written notice require Project Co to take such steps as Health Co acting reasonably considers necessary or expedient to mitigate, rectify or protect against such circumstances, including if applicable the termination and replacement of Subcontractors (except to the extent that either Section 32.1(a) or 32.2(a) has become applicable due to an illegal strike or illegal labour disruption by the Subcontractors' employees despite reasonable efforts to avoid the same and despite complying with Section 27.5, in which event the Subcontractor in question may be temporarily suspended, but not terminated, until the illegal strike or illegal labour disruption ceases), and Project Co shall use all reasonable efforts to comply with Health Co's requirements as soon as reasonably practicable.
- (b) If Health Co gives notice to Project Co pursuant to Section 32.3(a) and either:
  - (i) Project Co does not confirm, within 7 days of such notice, or such shorter period as is appropriate in the case of an emergency or in the event Health Co is entitled to exercise step-in rights under any of the Service Providers' Collateral Agreements, that it is willing to take such steps as are referred to or required in such notice or present an alternative plan to Health Co to mitigate, rectify and protect against such circumstances that Health Co may accept or reject acting reasonably; or
  - (ii) Project Co fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as Health Co, acting reasonably, shall think fit,then Health Co may take such steps as it considers to be appropriate, acting reasonably, including if applicable exercise step-in rights under any of the Service Providers' Collateral Agreements, and further including if applicable requiring the termination and replacement of Subcontractors, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Services to the standards required by this Agreement and the provisions of Section 42, including Section 42.1(a)(iv) and Section 42.2, shall apply.
- (c) Notwithstanding the foregoing provisions of this Section 32.3, in the event of an emergency the notice under Section 32.3(a) shall be given as promptly as possible having regard to the nature of the emergency and Health Co may, prior to Project Co's confirmation under Section 32.3(b)(i), take such steps as are appropriate having regard to the nature of the emergency.
- (d) Where Health Co considers it to be necessary to do so, the steps which Health Co may take pursuant to this Section 32.3, subsequent to the provision of the notice under Section 32.2(a) unless the notice is given at a later time as provided in Section 32.3(c),

may at Health Co's option include the partial or total suspension of Project Co's right and obligation to deliver any part of the Services or Service Categories having regard to the circumstances in question (without any extension of the Project Term or suspension of any other Services), and the provisions of Section 42, including Section 42.1(a)(iv) and Section 42.2, shall apply, but such suspension shall be only for so long as, as applicable:

- (i) the circumstances referred to in Section 32.1 or 32.2 subsist; or
- (ii) in respect of any such circumstances relating to Project Co's performance of the Services, until such time as Project Co shall have demonstrated to the reasonable satisfaction of Health Co that notwithstanding such circumstances Project Co has taken such steps, including if applicable the termination and replacement of Subcontractors, as are required pursuant to this Section 32.3 and as are necessary to be capable of performing its obligations in respect of the relevant Services to the required standard in accordance with this Agreement, and thereafter Project Co shall perform its obligations as aforesaid.

#### **32.4. Costs and Expenses**

- (a) Subject to Health Co's obligations pursuant to Sections 32.5 and 32.6:
  - (i) Project Co shall bear all costs and expenses incurred in the exercise of Health Co's rights pursuant to this Section 32, including in respect of taking such steps as may be required by Health Co;
  - (ii) Project Co shall reimburse Health Co for all reasonable costs and expenses incurred by Health Co in relation to the exercise of Health Co's rights pursuant to this Section 32, including in relation to Health Co taking such steps, either itself or by engaging others (including a third party) to take any such steps, including to perform the Services, as Health Co considers appropriate and are in accordance with this Section 32; and
  - (iii) Health Co shall be entitled to deduct any such amount from any amount payable to Project Co under this Agreement, including any Periodic Service Payment, except to the extent that in the event of a termination, such costs and expenses have been taken into account in the calculation of the relevant termination sum payable hereunder.

#### **32.5. Reimbursement if Reimbursement Event**

- (a) In this Section 32.5, a "Reimbursement Event" means:
  - (i) an act or omission of Project Co or any Project Co Party that is not a wrongful act or omission of Project Co or any Project Co Party or a breach of any obligation under this Agreement, but only to the extent such act or omission or breach is caused or contributed to by Health Co or a Health Co Party; and
  - (ii) circumstances constituting an emergency as referred to in Section 32.2(a) that are not circumstances referred to in Section 32.1 (unless and to the extent such

circumstances referred to in Section 32.1 would be a Reimbursement Event pursuant to Section 32.5(a)(i)).

- (b) If Health Co either takes steps itself or requires Project Co to take steps in accordance with this Section 32 as a result of a Reimbursement Event:
  - (i) Health Co shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co that Project Co would not otherwise have incurred (but only to the extent such costs and expenses are caused or contributed to by Health Co or a Health Co Party), in relation to the exercise of Health Co's rights pursuant to this Section 32, including taking such steps as may be required by Health Co over and above those that would otherwise have been incurred in the proper performance of Project Co's obligations under this Agreement; and
  - (ii) any costs or expenses incurred by Health Co in the exercise of Health Co's rights pursuant to this Section 32, including taking such steps as may be required by Health Co, shall be borne by Health Co to the extent that such costs or expenses exceed the reasonable cost of performing the parts of the Services that Health Co has taken steps to perform either itself or by engaging others pursuant to this Section 32.
- (c) Health Co shall be entitled to deduct from Periodic Service Payments the reasonable cost of performing the parts of the Services referred to in Section 32.5(b)(ii) that Health Co has taken steps to perform either itself or by engaging others and, to the extent caused or contributed to by Project Co or the Project Co Parties, such other costs of performing the parts of the Services referred to in Section 32.5(b)(ii) that Health Co has taken steps to perform either itself or by engaging others, but not the costs and expenses to be borne by Health Co pursuant to Section 32.5(b)(ii).

### **32.6. Reimbursement if Improper Exercise of Rights**

- (a) If Health Co exercises its rights pursuant to this Section 32, but Health Co was not entitled to do so, Health Co shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of Health Co issued as a result of Health Co having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not Health Co is entitled to exercise its rights pursuant to this Section 32 before taking any such action that Health Co may require and Project Co shall comply with all of Health Co's requirements. Only concurrently with or after complying with Health Co's requirements shall Project Co be entitled to refer any Dispute for resolution pursuant to Schedule 30 - Dispute Resolution Procedure.

**33. PERSISTENT BREACH****33.1. Persistent Breach Notice**

- (a) If at any time and from time to time Project Co breaches any obligation under this Agreement (other than a breach for which Service Failure Points were awarded or a Failure Event Deduction made or where such breach has no impact on Health Co, the Health Authorities or Health Co Parties), and such breach occurs 3 or more times in a Contract Year or where the breach is of a continuing nature, the breach continues more than 60 days, Health Co may give a notice (the "Initial Persistent Breach Notice") to Project Co:
- (i) specifying that it is a formal warning notice;
  - (ii) giving reasonable details of the breach; and
  - (iii) stating that such breach is a breach which, if it recurs or continues, may constitute a Final Persistent Breach and result in termination of this Agreement.
- (b) If Health Co provides an Initial Persistent Breach Notice to Project Co, Project Co shall have a cure period of 30 days after such notice in which to rectify the applicable breach or to take such steps as are necessary to ensure that such breach will not recur or such longer period as is reasonably required to cure the same, provided Project Co demonstrates to Health Co's satisfaction, acting reasonably, that such 30 days is not a sufficient cure period and that Project Co diligently continues to proceed to cure such breach.

**33.2. Final Persistent Breach Notice**

- (a) If after the 30 day cure period provided for in Section 33.1(b) (or longer period referred to therein), the breach specified in the Initial Persistent Breach Notice either continues or recurs 5 or more times during the following 335 days, then Health Co may give another notice (the "Final Persistent Breach Notice") on Project Co:
- (i) specifying that it is a final warning notice; and
  - (ii) stating that if such breach continues or recurs, this Agreement may be terminated.
- (b) If Health Co provides a Final Persistent Breach Notice to Project Co, Project Co shall have a further cure period of 30 days after such notice in which to rectify the applicable breach or to take such steps as are necessary to ensure that such breach will not recur.

**33.3. Final Persistent Breach**

- (a) If after the 30 day cure period provided for in Section 33.2(b), the breach specified in the Final Persistent Breach Notice continues or recurs 2 or more times during the following 150 days, such breach shall constitute a "Final Persistent Beach" hereunder and a Project Co Event of Default pursuant to Section 45.1(a)(xi).

- (b) Notwithstanding that Health Co may be entitled to give, or has given, a Persistent Breach Notice or Final Persistent Breach Notice, this Section 33 shall not limit any other rights or remedies of Health Co under this Agreement in respect of a breach of Project Co's obligations hereunder.
- (c) If Project Co in good faith disputes, pursuant to the Dispute Resolution Procedure, any alleged breach that would constitute a Final Persistent Breach, this Section 33.3 shall not become effective and Health Co shall not be entitled to proceed with this Section 33.3 until determination pursuant to the Dispute Resolution Procedure.

**PART F. PAYMENT AND INFORMATION MATTERS****34. PAYMENT****34.1. Periodic Service Payments**

- (a) Subject to and in accordance with this Agreement, including this Section 34 and Schedule 23 - Payment Mechanism, for the performance of all of the Project Operations Health Co shall pay Project Co the all-inclusive Periodic Service Payments and, if applicable, the Bonus Payment.

**34.2. Payment Adjustments**

- (a) Project Co agrees that if Project Co fails to perform the Project Operations from time to time, then payment of the full Periodic Service Payments shall, to the extent an adjustment that reduces the amount of any payments (including a deduction) is to be made under the Payment Mechanism or Performance Monitoring Program, be an over-payment to Project Co, and all adjustments, including deductions, pursuant to the Payment Mechanism and the Performance Monitoring Program that reduce the amount of payments represent the amount of such over-payments, that the breakdown of the Services for which such adjustments may be made has been agreed as a reasonable basis for such adjustments, that all such deductions are not forfeitures. Project Co agrees that it is and shall be estopped from alleging that, and shall not allege that, such adjustments are unenforceable for any reason. Project Co agrees that it has taken into account such adjustments in its pricing of its compensation hereunder, that such adjustments are integral to the provisions of this Agreement, and that Health Co has relied on such adjustments in entering into this Agreement.
- (b) If for any reason any of the adjustments, including deductions, under the Payment Mechanism are invalid and unenforceable, and the Province enacts an Applicable Law that is a Change in Law to recover or to cause such adjustments to be enforceable, such Change in Law shall be deemed to not be a Relevant Change in Law and Project Co shall not be entitled to any compensation hereunder for such Change in Law.

**34.3. Payment Commencement**

- (a) Subject to and in accordance with this Agreement, Health Co shall pay Project Co the Periodic Service Payments calculated as being due to Project Co in respect of each Payment Period following the Payment Commencement Date in accordance with Schedule 23 - Payment Mechanism, subject to any payment adjustments made pursuant to that Schedule.
- (b) Project Co shall not be entitled to any Periodic Service Payments for any period prior to the Payment Commencement Date.

**34.4. Adjustments to Payment Periods**

- (a) If Health Co adjusts the length of either or both the first or last Payment Period of each Contract Year, then the Periodic Service Payments shall be subject to a pro-rata

adjustment, as applicable, to increase or reduce the Periodic Service Payment applicable to such adjusted Payment Period(s), provided however that in no event shall the Total Annual Service Payment determined for the relevant Contract Year be increased or reduced as a result.

- (b) The Total Annual Service Payment in respect of the Contract Year in which the Payment Commencement Date occurs and in respect of the last Contract Year shall be adjusted pursuant to Schedule 23 - Payment Mechanism.

#### **34.5. Invoicing and Payment Arrangements**

- (a) On the first day of each Payment Period, Project Co shall issue to Health Co an invoice for the amount of the Periodic Service Payment owing by Health Co to Project Co for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period.
- (b) Project Co shall comply with all requirements of Schedule 23 - Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as is referenced in Schedule 23 - Payment Mechanism or such additional documentation as Health Co may reasonably require in connection with payments hereunder.
- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum, as applicable:
  - (i) the Periodic Service Payment payable in respect of the applicable Payment Period;
  - (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Payment Period that have been approved by Health Co;
  - (iii) any other adjustments to reflect over-payments and under-payments, as agreed between the Parties or determined pursuant to Schedule 30 - Dispute Resolution Procedure;
  - (iv) any amount owing to Health Co under this Agreement;
  - (v) any amount owing to Project Co under this Agreement; and
  - (vi) the net amount owing by Health Co to Project Co, or by Project Co to Health Co, as applicable.
- (d) GST shall be shown separately on all invoices from Project Co, together with Project Co's GST registration number.
- (e) Any property or services provided to or sold to Health Co, payment for which is subject to PST, shall be shown as separate line items and Project Co shall indicate whether the PST has been paid or is payable.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.

- (g) Health Co's Representative shall review each invoice submitted in accordance with this Section 34.5, and within 5 Business Days of receiving such invoice, Health Co shall pay the amount stated in such invoice submitted under Section 34.5(a). Any such payment shall be subject to any adjustments pursuant to Section 34.5(k).
- (h) Health Co shall not be obligated to make any payment unless all conditions precedent applicable to such payment to be satisfied by Project Co under this Agreement have been satisfied. Further, Health Co shall not be obligated to make payment of an invoice delivered by Project Co after the second Payment Period following the Payment Commencement Date until Project Co has delivered the Payment Adjustment Report referred to in Section 34.5(i) in the previous Payment Period. In the event that Project Co delivers the applicable Payment Adjustment Report later than the stipulated time period under Section 34.5(i), Health Co's obligation to pay the invoice issued by Project Co for the immediately following Payment Period shall be extended by the number of days by which Project Co was late in delivering the Payment Adjustment Report to Health Co.
- (i) Within 5 Business Days following the end of each Payment Period, Project Co shall submit to Health Co:
- (i) a Performance Monitoring Report in respect of the Payment Period just ended; and
  - (ii) a report (a "Payment Adjustment Report") setting out any adjustments required between the actual Periodic Service Payment determined by Project Co to be owing by Health Co to Project Co in respect of the Payment Period just ended and the amount that was paid by Health Co during such Payment Period, including details of all:
    - (A) Total Volume Adjustments;
    - (B) Utility Payments;
    - (C) deductions in relation to Failure Events; and
    - (D) deductions in relation to Quality Failures.
- (j) Project Co shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- (k) The provisions of this Section 34.5(k) shall apply at all times during the final 12 months of the Operational Term, and throughout any earlier part of the Operational Term if Health Co disputes any part of a Payment Adjustment Report and it is agreed or determined that the Payment Adjustment Report is incorrect on four occasions in any rolling twelve month period. Health Co's Representative shall review the Payment Adjustment Report and within 10 Business Days of receipt by Health Co shall:
- (i) determine and advise Project Co that the Payment Adjustment Report is approved by Health Co for adjustment of such amounts, in which case the



adjustments will be reflected by Project Co in the invoice next issued by Project Co on the first day of the following Payment Period; or

- (ii) if Health Co disputes Project Co's entitlement to any part of the amounts set out by Project Co under the Payment Adjustment Report, notify Project Co in writing of that part of the amount (insofar as at the time of such notice Health Co is reasonably able to quantify it) which Health Co disputes and submit to Project Co such supporting evidence as Health Co may have. In such event,
  - (A) only undisputed adjustments will be reflected by Project Co in the invoice next issued by Project Co on the first day of the following Payment Period; and
  - (B) Health Co shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement in relation to the disputed amount in accordance with Section 34.8.

#### **34.6. Electronic Invoicing**

- (a) Project Co shall cooperate with the reasonable requirements of Health Co's finance department, or any of the Health Authorities' finance departments if so designated by Health Co, and shall submit its invoice and all other documentation relating to this Agreement in a form and with structure and content reasonably required to be compatible with Health Co's information systems, or any of the Health Authorities' information systems if so designated by Health Co, and Project Co shall submit an electronic invoice in such format as reasonably required by Health Co (to the extent Project Co can do so with Project Co's information systems without incurring substantial costs for integration with Health Co's information systems).

#### **34.7. Final Payment Periods**

- (a) At the beginning of each of the final three Payment Periods during the Project Term, Health Co shall estimate, acting reasonably, the adjustments to the Periodic Service Payment for each such Payment Period. Health Co may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final three Payment Periods.
- (b) Following subsequent receipt by Health Co of the applicable Payment Adjustment Report for each of the final three Payment Periods, Health Co's Representative shall review the Payment Adjustment Report and within 10 Business Days of receipt by Health Co shall:
  - (i) determine and advise Project Co that the Payment Adjustment Report is approved by Health Co, and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount Health Co previously paid in respect of the applicable Payment Period, and based on such reconciliation either Health Co or Project Co shall pay to the other Party the amount properly owing in accordance with the amounts set out under the Payment Adjustment Report and such reconciliation; or

- (ii) if Health Co disputes Project Co's entitlement to any part of the amounts set out by Project Co under the Payment Adjustment Report, notify Project Co in writing of that part of the amount (insofar as at the time of such notice Health Co is reasonably able to quantify it) which Health Co disputes and submit to Project Co such supporting evidence as Health Co may have. In such event, Health Co's Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount Health Co previously paid in respect of the applicable Payment Period, and based on such reconciliation either Health Co or Project Co shall pay to the other Party the amount properly owing in accordance with the amounts set out under the Payment Adjustment Report, provided that Health Co or Project Co may withhold payment of any disputed amount pending agreement or determination of Health Co's or Project Co's entitlement in relation to the disputed amount in accordance with Section 34.8.

### **34.8. Disputes**

- (a) If Health Co, acting in good faith, disputes all or any part of a Payment Adjustment Report and/or the Periodic Service Payments payable hereunder, it shall notify Project Co in writing of that part of the amount (insofar as at the time of such notice Health Co is reasonably able to quantify it) which Health Co disputes and submit to Project Co such supporting evidence as Health Co may have. The full amount set out in the relevant invoice shall be paid by Health Co pending resolution of the Dispute, save where Section 34.5(k) applies in which case the undisputed amount only of the Periodic Service Payment shall be paid by Health Co. The Parties shall use all reasonable efforts to resolve the Dispute in question within 14 days of the aforesaid notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute shall be resolved pursuant to Schedule 30 - Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by Health Co that is determined not to have been payable shall be paid forthwith by Project Co to Health Co, together with interest on such amount calculated in accordance with Section 34.12 on the basis that the due date was the date of the overpayment by Health Co. If Section 34.5(k) applies and Health Co has withheld disputed amounts in accordance with this Section 34.8, any additional amount agreed or determined to have been payable shall be paid forthwith by Health Co to Project Co, together with interest on such amount calculated in accordance with Section 34.12.

### **34.9. Manner of Payment to Project Co**

- (a) All payments to Project Co under this Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number against which payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by Project Co from time to time by notice in writing to Health Co.
- (b) If the due date is not a banking day in either British Columbia or the jurisdiction in which Project Co's bank is located, then the electronic transfer shall be made on the banking day immediately succeeding such day.

**34.10. Payments**

- (a) Unless specific timeframes are stipulated for any amounts owing or payable by one Party to the other Party under this Agreement, such amounts shall be due within 30 days after receipt of a notice of same has become effective or has been received or deemed hereunder to have been received.
- (b) Project Co shall pay, when due and payable, for all materials, construction equipment, labour and all other things and services required for the Project Operations, including all applicable Taxes, assessments and other costs and all Subcontractors with whom Project Co has contracted directly, and who perform portions of the Project Operations. Project Co shall require all of its Subcontractors to pay, when due and payable, all persons performing portions of the Project Operations.
- (c) Without limiting Project Co's obligations pursuant to Section 15.2 in respect of removal of an Encumbrance filed, issued or registered against the Site or any part thereof, Project Co shall not suffer or permit any Encumbrance resulting from failure to comply with the foregoing to be filed, issued or registered against the Site or otherwise and for which, if established, Health Co will be liable, and further shall fully indemnify and save Health Co harmless from any and all costs, expenses, damages and liabilities in relation thereto. Health Co will give notice to Project Co of any such Encumbrance of which Health Co becomes aware. If at any time during the progress of the Project Operations there exists an Encumbrance resulting from Project Co's performance of the Project Operations and for which, if established, Health Co may become liable, then (unless Section 15.2 applies to such Encumbrance and Project Co is fulfilling its obligations thereunder in respect of the removal of such Encumbrance) Health Co may retain out of any payment then or thereafter due to Project Co an amount equal to the aforesaid amount plus a reasonable contingency allowance until Project Co has performed the aforesaid obligations, provided that Health Co shall not retain such amount if Project Co, in good faith, diligently disputes any such Encumbrance and either provides Health Co with adequate security for such amount or satisfies Health Co, acting reasonably, that Health Co shall be adequately protected by Health Co's right to set-off against payments to be made hereunder.

**34.11. Manner of Payment to Health Co**

- (a) All payments to Health Co under this Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by Health Co from time to time by notice in writing to Project Co.
- (b) If the due date is not a banking day in either British Columbia or the jurisdiction in which Health Co's bank is located, then the electronic transfer shall be made on the banking day immediately succeeding such day.

**34.12. Interest on Overdue Payments**

- (a) Each Party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made by the other Party pursuant to the terms of this Agreement on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

**34.13. Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
- (i) Health Co to set-off against any amounts otherwise due to Project Co pursuant to the terms of this Agreement, any amounts which are due to Health Co by Project Co pursuant to the terms of this Agreement; and
  - (ii) Project Co to set-off against any amounts otherwise due to Health Co pursuant to the terms of this Agreement, any amounts which are due to Project Co by Health Co pursuant to the terms of this Agreement,

and are further limited with respect to the Senior Debt Amount as described in Section 49.2(a).

**34.14. Effect of Payment**

- (a) No payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper services, facilities or any other matter provided by Project Co which is not in conformance with all requirements of this Agreement, nor shall operate to relieve Project Co from any of its obligations hereunder which have not been performed.

**34.15. Audit of Performance Monitoring Program and Payment**

- (a) Without limiting Health Co's rights and Project Co's obligations pursuant to Section 37.2 and Sections 4.E1.4.2 and Sections 4.E1.4.3 of the FM Output Specifications, at any time and from time to time until 180 days after the Expiry Date, Health Co may give notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and payments by or to Health Co within the 7 year period prior to the date of such notice, including the Performance Monitoring Program, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.
- (b) Health Co shall appoint an auditor to carry out and complete such audit at Health Co's cost and expense and pursuant to terms of reference determined by Health Co.
- (c) Project Co shall within a reasonable time make available the Performance Monitoring Program, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments to Health Co's auditor.

- (d) Health Co shall notify Project Co of the results of the audit, and if Health Co's auditor discovers any inaccuracy, incorrectness or incompleteness, then subject to Project Co's right to dispute the same in accordance with the Dispute Resolution Procedure:
- (i) Project Co shall:
    - (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Performance Monitoring Program, Payment Adjustment Reports, and any other records, reports, information, documents or data; and
    - (B) promptly take steps to remedy the Performance Monitoring Program to ensure its ongoing accuracy, completeness and correctness; and
    - (C) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by Health Co, reimburse Health Co for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
      - (I) the actual costs relating to the auditor and audit; or
      - (II) an amount equivalent to the amount of any overpayment;
  - (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by Health Co, including of the Periodic Service Payment and the Bonus Payment, Project Co shall reimburse Health Co for the amount of such overpayment, together with interest thereon at the Default Interest Rate from the date of such overpayment; and
  - (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment, whether or not material, by Health Co, including of the Periodic Service Payments and the Bonus Payment, Health Co shall pay Project Co the amount of such underpayment, together with interest thereon at the Default Interest Rate from the date of such underpayment.

#### **34.16. Payments to Health Co Upon Execution and Delivery of Agreement**

- (a) Concurrently with the execution and delivery of this Agreement, Project Co shall pay Health Co the Financial Close Payment, plus GST.
- (b) On the date that is 12 months after the date of this Agreement, Project Co shall pay Health Co the Subsequent Payment, plus GST.

#### **34.17. RHD Funding**

- (a) Subject to and in accordance with this Agreement, including subject to the conditions to payment set forth in Section 34.17(b), Health Co will pay \$71,285,000 (the "RHD Funding"), plus applicable GST, to Project Co in respect of the Project Operations, with instalments of the RHD Funding to be paid quarterly to Project Co as set out in column "C" of the table in Appendix A of Schedule 9 – Financial Close Information (the "RHD

Funding Table”). Each such quarterly payment shall be payable on the last day of the month as specified in column “D” of the RHD Funding Table, with month 1 being the month or portion of month in which this Agreement is dated.

- (b) The following are the conditions to determine the extent of the payment of each instalment of RHD Funding up to the maximum amounts set out in column “C” of the RHD Funding Table:
- (i) as of the date of the invoice issued by Project Co, the Works completed and paid for, or to be paid for concurrently with the applicable instalment of RHD Funding, by Project Co to the Constructor (without excluding the amount of any applicable holdback under the Builders Lien Act (British Columbia)), together with amounts deposited into the Equipment Cash Allowance Account and amounts in Project Co’s Construction Delay Account, shall be equal to or greater than the relevant amount set out in column “A” of the RHD Funding Table (this condition is referred to for each such amount in this Section as “Test 1”); and
  - (ii) as of the date of the invoice for the instalment of RHD Funding issued by Project Co, all remaining costs of the Constructor to complete all Works (which for greater certainty shall exclude financing costs and fees, debt service payments, transition costs, changes in costs included in Variations and Compensation Events which have not resulted in a Variation to the amounts in column “B” of the RHD Funding Table) together with all remaining amounts to be deposited into the Equipment Cash Allowance Account, shall be equal to or less than the relevant amount set out in column “B” of the RHD Funding Table (this condition is referred to for each such amount in this Section as “Test 2”); and
  - (iii) the invoice issued by Project Co for the instalment of RHD Funding shall include the following supporting documentation:
    - (A) certifications by the Independent Certifier as to the extent to which Project Co is entitled to receive payment based on joint satisfaction of Test 1 and Test 2 in respect of such amount, together with a copy of all other certifications provided to the Funders to support the Funders’ release of all related funds;
    - (B) subject to 34.17(c), evidence of acceptance by the Funders of all such certifications;
    - (C) subject to 34.17(c), evidence of the payment or release or waiver by the Funders of conditions on all related funds to Project Co by the Funders, or evidence that payment of such funds would have occurred but for reasons wholly unrelated or connected to Test 1 and Test 2; and
    - (D) subject to 34.17(c), evidence of payment or arrangements for concurrent payment by Project Co of the relevant amount referred to in Section 34.17(b)(i) to the Constructor, or evidence that payment of such relevant amount would have occurred but for reasons wholly unrelated or connect to Test 1 and Test 2.

- (c) Project Co shall invoice Health Co for the payment of each instalment of RHD Funding not less than 14 days prior to the date for payment of the instalment. Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum, evidence of the extent to which Project Co is entitled to receive payment based on Section 34.17(b), provided however that the evidence of the extent of joint satisfaction of the conditions in Sections 34.17(b)(iii)(B) to 34.17(b)(iii)(D) may be provided on the date of payment of, and prior to or concurrently with payment of, the relevant instalment.
- (d) If Project Co has not jointly satisfied Test 1 and Test 2 in full by the relevant invoice date for each instalment, Project Co will be entitled to issue an invoice for an amount that represents the extent to which Test 1 and Test 2 have been jointly satisfied. Any amount by which the amount claimed is less than the instalment scheduled to be paid on that date pursuant to the RHD Funding Table, may be claimed as soon thereafter as Test 1 and Test 2 have been jointly satisfied in respect of that amount by the issue of an invoice by Project Co.
- (e) Health Co's Representative shall review each such invoice, and to the extent the conditions are jointly satisfied, Health Co shall within 14 days of the date of the invoice pay to Project Co the relevant instalment, up to the amount indicated in column "C" in the RHD Funding Table. If the conditions are jointly satisfied only in respect of a portion of the amount indicated in column "C", Health Co shall pay the portion of the instalment for which the conditions are jointly satisfied.
- (f) If Project Co achieves Substantial Completion earlier than the Scheduled Substantial Completion Date, then the final instalment of \$1,665,000 of RHD Funding may be applied for and paid pursuant to this Section 34.17 on Substantial Completion despite being in advance of the relevant date for payment of such funds set out in column "D" of the RHD Funding Table (and which may be in advance of the relevant date for payment of prior amounts in column "D" of the RHD Funding Table). Except for such final amount, Health Co shall not have any obligation to pay any instalment set out in column "C" in the RHD Funding Table earlier than the applicable corresponding date set out in column "D" of the RHD Funding Table, including those instalments scheduled in the RHD Funding Table to be paid prior to such final amount.
- (g) If any instalment or portion thereof is not paid on the scheduled date for payment of the relevant instalment due to non-satisfaction of Test 1 and Test 2, Health Co shall deposit such amount in an interest bearing account until such time as all the conditions are satisfied in respect of the amount withheld and such instalment or portion thereof is released. Health Co shall retain any interest earned on such deposits in the interest bearing account until the date of Substantial Completion. Notwithstanding that Project Co was delayed in satisfying the conditions to the release of an instalment or portion thereof, to encourage completion of the Works on time, Project Co shall be entitled to a bonus for achieving Substantial Completion on or before the Scheduled Substantial Completion Date in the amount of the interest in such account, and if Substantial Completion is achieved after the Scheduled Substantial Completion Date, the available bonus shall be reduced to the amount of interest then on deposit less \$10,000 for each day Substantial Completion occurs after the Scheduled Substantial Completion Date. For greater certainty, the Parties acknowledge that any such reduction availability of the bonus are independent of Health Co's entitlement for the liquidated damages provided

for in Section 24.7(d), and shall not limit Health Co's entitlement to such liquidated damages. In no event shall Project Co be obligated to pay Health Co if the amount of such reduction in the availability of the bonus exceeds the amount of the interest earned in such account. In no event shall Health Co be required to pay out as bonus any amount in excess of the amount of interest on deposit in the interest bearing account earned on such deposits.

- (h) Project Co acknowledges that all payments of the RHD Funding shall be subject to the 10% holdback under the Builders Lien Act (British Columbia) which shall be held in a separate account, with interest accruing to Project Co.

### **35. TAXES**

#### **35.1. Taxes**

- (a) The Periodic Service Payments and all other payments hereunder, including any compensation for termination hereunder, include all applicable Taxes, except only GST.
- (b) Project Co shall pay when due and payable all property taxes that are assessed in respect of the Business Opportunities granted to Project Co pursuant to Section 4.1. If Project Co wishes to appeal the amount of such property taxes, Project Co may request assistance from Health Co and Health Co shall at Project Co's cost provide such consent as Project Co may require in connection with an appeal by Project Co. If Health Co in its sole discretion agrees with the appeal, including on the basis that it will not have an adverse impact on Health Co, then in addition to such consent Health Co shall at Project Co's cost, provide reasonable assistance with such appeal.
- (c) Health Co shall pay when due and payable all property taxes that are assessed in respect of ownership or use of the Site or Facility, to the extent not payable by Project Co pursuant to Section 35.1(b).
- (d) Project Co shall assist Health Co at Health Co's cost in applying for and obtaining all remissions and credits of GST to which Health Co is entitled. In addition, where Project Co has acquired tangible personal property (as defined in the SST Act) for Health Co, Project Co shall, if requested by Health Co, provide invoices and such other documents as Health Co may require, in Health Co's discretion, to claim rebates in respect of PST relating to such tangible personal property.
- (e) Health Co may apply for a global or general exemption, waiver, remission, or refund of some or all Taxes which may otherwise be applicable in relation to this Agreement. Project Co shall at Health Co's cost assist Health Co in making any applications for such global or general exemption, waiver, remission or refund and shall provide Health Co with such documentation as Health Co may reasonably require to support such application and in any event shall provide such consent as Health Co may require. Any exemption, remission, refund or other recovery of Taxes obtained by Health Co through such global or general exemption, waiver, remission or refund of Taxes shall accrue to the sole benefit of Health Co. In respect of PST, where Health Co has provided valid certification for PST exemption, Project Co shall not collect such PST and if such PST is included in the payments hereunder (including the Periodic Service Payments), Project



Co shall reduce such payments accordingly. If subsequently it is determined that such PST is applicable, then Health Co shall pay such PST or reimburse Project Co therefor. Health Co acknowledges that Project Co has assumed that a PST exemption will be available in respect of maintenance of tangible personal property, and as a result of such exemption has reduced the Annual Service Payment by \$15,000 per year, with such amount calculated as of the Base Date. If Health Co does not provide Project Co with valid certification for such PST exemption, then the Annual Service Payment shall be increased by \$15,000 per year, with such applicable indexation from the Base Date as provided in the Payment Mechanism.

- (f) At the time of substantial completion of the Facility, Health Co shall be responsible for paying all GST in respect of the Facility directly to Project Co for remittance to the Canada Revenue Agency.

## **36. FINANCIAL MODEL**

### **36.1. Delivery and Use of Financial Model**

- (a) Project Co acknowledges that pursuant to Schedule 2 - Completion Documents, Project Co has on or before the date of this Agreement delivered the final Financial Model Extracts to Health Co.
- (b) Project Co shall ensure that the Financial Model Extracts attached as Schedule 7 - Financial Model Extracts have been certified as true and correct extracts from the final Financial Model by an officer of Project Co, and shall have provided a copy of the Financial Model audit report and a certificate from an officer of Project Co stating that the final Financial Model methodology and algorithms remain unchanged from the audited Financial Model.
- (c) Project Co hereby grants to Health Co an irrevocable, royalty free perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Financial Model Extracts or any revised Financial Model Extracts for any purpose in connection with this Agreement, whether during or after the Project Term.

## **37. RECORDS, INFORMATION AND AUDIT**

### **37.1. Records Provisions**

- (a) Project Co shall comply with Schedule 29 - Record Provisions.

### **37.2. Information and General Audit Rights**

- (a) Project Co shall provide to Health Co all information, reports, documents, records and the like, including as referred to in Schedule 29 - Record Provisions, in existence at that time in the possession of, or available to, Project Co as may be reasonably requested by Health Co for any purpose in connection with this Agreement, except for any Sensitive Information. Project Co shall use all reasonable efforts to ensure that for such purpose all such information, reports, documents, records and the like in the possession of, or available to, the Constructor or any Service Providers shall be available to Project Co

and Project Co shall include relevant terms in all Subcontracts with the Constructor and all Service Providers to this effect.

- (b) Project Co shall also provide and shall require all of its Subcontractors, including the Constructor and Service Providers, to provide to Health Co (at Health Co's reasonable cost) all information, reports, documents, records and the like required to be provided pursuant to Section 37.2(a), but which was not provided because it was not in existence at that time and in the possession of, or available to, Project Co or the Subcontractors, as Health Co may reasonably require from time to time to enable Health Co to provide reports, notices, returns and the like pursuant to any Applicable Law, including information and documentation pertaining to the physical condition of the Facility, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters and patient care, except for any Sensitive Information.
- (c) Project Co shall promptly after receipt provide Health Co with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Project Co Party from any Governmental Authority in relation to any of the Project Operations, the Clinical/Non-Clinical Services or the Facility, and Project Co shall include relevant terms in all Subcontracts with the Constructor and all Service Providers to this effect.
- (d) Project Co shall promptly notify Health Co of any actions, suits, proceedings, or investigations commenced or any threatened against Project Co or, to its knowledge, the Project Co Parties at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the Facility or the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Agreement.
- (e) All records, reports and documents owned, held or otherwise within the control of Project Co, including as referred to in Schedule 29 - Record Provisions, required to be provided to or available to Health Co hereunder, shall be subject and open to inspection and audit by Health Co at any time upon demand from Health Co, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless Health Co and Project Co otherwise agree. Health Co shall also have the right to monitor and audit the performance of any and all parts of the Works or Services wherever located, including to enable Health Co to meet any requirements imposed on or by the Health Authorities, and Project Co shall cooperate with, and shall require its Subcontractors to cooperate with, and provide access to the representatives of Health Co monitoring and auditing such parts of the Works or Services, including providing them with access and copies (at Health Co's reasonable cost) of all relevant records, reports and documents pertaining to the performance of any and all parts of the Works or Services. Except as otherwise provided herein, all of Health Co's costs for the inspections, audits and monitoring shall be borne by Health Co.
- (f) In conducting an audit of Project Co under Section 37.2(e) or as otherwise provided under this Agreement, Health Co shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at Health Co's reasonable cost) of all books and records of Project Co required to be

provided to or available to Health Co hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with Health Co and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with Health Co all matters arising from such audits, including the refunding of monies to Health Co where applicable. At the reasonable request of Health Co's auditors, Project Co shall provide such records, data and documentation as Health Co's auditors may reasonably require other than Sensitive Information.

- (g) Health Co's rights pursuant to this Section 37.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Agreement.
- (h) This Section 37 shall not limit or restrict any Governmental Authority's right of inspection, review or audit under Applicable Law.

**PART G. CHANGES IN LAW AND VARIATIONS****38. CHANGES IN LAW****38.1. Performance after Change in Law**

- (a) Following any and all Changes in Law, Project Co shall perform the Project Operations in accordance with the terms of this Agreement, including in compliance with Applicable Law.

**38.2. Adjustments for Relevant Change in Law**

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations. Any such compensation shall be calculated in accordance with this Section 38.2, but subject to Section 38.3.
- (b) On the occurrence of a Relevant Change in Law:
- (i) either Party may give notice to the other of the occurrence of the Relevant Change in Law;
  - (ii) the Parties shall meet within 30 days of such notice to consult and seek to agree to the effect of the Relevant Change in Law and if the Parties, within 14 days of this meeting, have not agreed to the occurrence or the effect of the Relevant Change in Law, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 30 - Dispute Resolution Procedure; and
  - (iii) within 14 days of such agreement or determination, Health Co's Representative shall issue a Variation Enquiry and Schedule 25 - Variation Procedure shall apply except that:
    - (A) Project Co may object to such a Variation Enquiry only on the grounds that the implementation of the Variation would not give effect to or comply with the Relevant Change in Law;
    - (B) Health Co shall, subject to Health Co's right in Schedule 25 - Variation Procedure to perform the HC Other Work, issue a Variation Confirmation in respect of the Variation in accordance with Schedule 25 - Variation Procedure;
    - (C) Project Co shall be obligated to obtain and comply with all Development Approvals and Permits, Licences and Approvals as provided pursuant to Sections 9.5 and 17;
    - (D) Health Co shall not be entitled to withdraw any such Variation Enquiry or Variation Confirmation;

- (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Agreement:
  - (I) use all reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take all reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
  - (II) use all reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change of Law and take all reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
- (F) any entitlement to compensation payable shall be in accordance with Section 38.3, and any calculation of compensation shall take into consideration, *inter alia*:
  - (I) any failure by a Party to comply with Section 38.2(b)(iii)(E);
  - (II) the extent to which a Party has been, or shall be, compensated in respect of such Change in Law as a result of any indexation or adjustment of the Periodic Service Payments under this Agreement;
  - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
  - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Agreement or the terms of any policy of insurance required under this Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any other payment or compensation or, except as provided in Section 40 or otherwise in this Agreement, relief in respect of any Change in Law other than such Relevant Changes in Law or associated Variations, or the consequences of either, in accordance with this Section 38, and Section 41 shall be construed accordingly.

### 38.3. Relevant Changes in Law

- (a) In relation to a Relevant Change in Law (other than a Works Change in Law) that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Operations, taking into consideration, *inter alia*, Sections 38.2(b)(iii)(E) and 38.2(b)(iii)(F), if the cost impact of such Relevant Change in Law in a given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) on the cost of performance of the Project Operations in that Contract Year is less than \$10,000 (index linked), neither Health Co nor Project Co shall

be entitled to any payment or compensation pursuant to Section 38.2 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 40 or otherwise in this Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

- (b) In relation to a Works Change in Law, that results in a net increase or decrease in costs incurred by Project Co in the delivery of the Project Operations, taking into consideration, inter alia, Sections 38.2(b)(iii)(E) and 38.2(b)(iii)(F), if the cost impact of such Works Change in Law in a given Contract Year (in aggregate with all other such Works Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$50,000 (index linked) in that Contract Year neither Health Co nor Project Co shall be entitled to receive any payment or compensation pursuant to Section 38.2 or otherwise in respect of the cost impact of that Relevant Works Change in Law in that Contract Year, or, except as provided in Section 40 or otherwise in this Agreement, any other relief in respect of such Works Change in Law.
- (c) If as a result of a Relevant Change in Law Health Co exercises its right to perform the HC Other Work in accordance with Schedule 25 - Variation Procedure, then Project Co shall not be liable for Health Co's cost of performing such HC Other Work by virtue of this Section 38.3.

### **39. VARIATIONS**

#### **39.1. Variation Procedure**

- (a) Schedule 25 - Variation Procedure shall have effect in respect of Variations except as otherwise provided in this Agreement.
- (b) Without limiting Project Co's obligations pursuant to Section 9.4 and Schedule 25 - Variation Procedure, Project Co shall include in each Subcontract, and shall cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations, including Variations as to scope and volume of Services.

#### **39.2. Innovation and Value Engineering**

- (a) Project Co acknowledges that Health Co at all times desires to reduce the Periodic Service Payments and to reduce the overall cost to Health Co and the Health Authorities of the AHCC and the Clinical/Non-Clinical Services as a whole and Project Co agrees to cooperate, explore and work with Health Co in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the "Innovation Proposal") by notice to Health Co.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
  - (i) any Variation Enquiry initiated by Health Co;

- (ii) any Variation resulting from a Change in Law;
- (iii) any change arising from a change in the Clinical/Non-Clinical Services; or
- (iv) any matter that is the subject of an allowance or to be paid directly by Health Co as provided hereunder, including for:
  - (A) Cash Allowance Equipment under Section 21;
  - (B) utilities for matters performed prior to Final Completion, and any other utilities unless the relevant Upper Utility Limit and Lower Utility Limit in Schedule 22 - Utilities are lowered by the relevant Variation to take into account the benefit to utilities; and
  - (C) BC Hydro Works, City of Abbotsford Fees and payment for Shaw Works, Telus Works and Terasen Works under Sections 22.1, 22.4 and 22.5, respectively.
- (d) The Innovation Proposal must:
  - (i) set out sufficient detail to enable Health Co to evaluate the Innovation Proposal in full;
  - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
  - (iii) request Health Co to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes Health Co requires as a result;
  - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Agreement, and the comparative advantages of each to Project Co, Health Co and the Health Authorities;
  - (v) indicate, in particular, whether a variation to the Periodic Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
  - (vi) indicate if there are any dates by which a decision by Health Co must be made; and
  - (vii) include such other information and documentation as may be reasonably requested by Health Co to fully evaluate and consider the Innovation Proposal.
- (e) Health Co shall evaluate the Innovation Proposal in good faith, taking into account all relevant issues, including whether:
  - (i) a change in the Periodic Service Payments will occur;

- (ii) the Innovation Proposal affects the quality of the Works, Facility or Services, or the likelihood of successful completion of the Works, Facility or delivery of the Services;
  - (iii) the Innovation Proposal will interfere with the efficient operation of the Clinical/Non-Clinical Services;
  - (iv) the Innovation Proposal will interfere with the relationship of Health Co or the Health Authorities with third parties;
  - (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Services, as applicable;
  - (vi) the residual value of the Facility is affected;
  - (vii) the Innovation Proposal materially affects the risks or costs to which Health Co is exposed; or
  - (viii) any other matter Health Co considers relevant.
- (f) Health Co may request clarification or additional information regarding the Innovation Proposal, and may request modifications of the Innovation Proposal.
- (g) Health Co may in its sole discretion accept or reject any Innovation Proposal.
- (h) If Health Co accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) Unless Health Co specifically agrees to an increase in the Periodic Service Payments pursuant to Health Co's acceptance, if any, as provided in Section 39.2(h), there shall be no increase in the Periodic Service Payments as a result of an Innovation Proposal.
- (j) If the Innovation Proposal causes or will cause the costs of Project Co or of a Subcontractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs (incurred by Project Co or a Subcontractor) of the Innovation Proposal (taking into account any other uses of the Innovation Proposal by Project Co), the net savings in the costs of Project Co and the Subcontractors will be shared equally by Project Co and Health Co, and Health Co's share of the net savings shall, if the Parties agree, be reflected in a lump sum payment, or otherwise be reflected in a reduction of the Periodic Service Payments.
- (k) This Section 39.2 shall not limit Project Co's ability hereunder to modify design during development of the design of the Facility.



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**PART H. DELAY EVENTS, COMPENSATION EVENTS, EXCUSING CAUSES, RELIEF EVENTS AND FORCE MAJEURE****40. DELAY EVENTS****40.1. Definition**

- (a) For the purposes of this Agreement, "Delay Events" means **[\*DELETION\*]**:
- (i) implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
  - (ii) any breach by Health Co of Health Co's obligations under this Agreement or any deliberate or negligent act or omission by Health Co or any Health Co Party or any Health Authority under or in connection with this Agreement (including any delay in Health Co giving access to the Site pursuant to Section 14.1, any obstruction of such rights afforded thereunder to Project Co or any other breach of Section 14.1) to the extent in each case that any such breach is not caused, or contributed to, by Project Co or any Project Co Party;
  - (iii) opening up of the Works pursuant to Section 19.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Agreement (including the Design/Construction Requirements, the Project Co Proposal Extracts, and the Design Data) or the cost of inspection (including the cost to open up the Works and repair the Works as a result of the inspection) is greater than either the costs to rectify the defects and non-compliances (including the costs that would have been incurred to open up the Works and repair the Works had the inspection not already opened up the Works) or the costs to Project Co, Health Co and the Health Authorities if such defects and non-compliances were not remedied, unless the opening up of the Works was reasonable in the light of other defects or non-compliance;
  - (iv) a requirement pursuant to Sections 16.2(b) or 16.2(c) for Project Co to perform any alteration, addition, demolition or extension or variation in the Works upon the discovery of Contamination, which alteration, addition, demolition or extension or variation in the Works would not otherwise be required under this Agreement;
  - (v) a requirement pursuant to Sections 16.3(b) or 16.3(c) for Project Co to perform any alteration, addition, demolition or extension or variation in the Works upon the discovery of fossils, remains, coins, articles of value or antiquity, and other items referred to in Section 16.3(a), which alteration, addition, demolition or extension or variation in the Works would not otherwise be required under this Agreement;
  - (vi) a Relief Event;

- (vii) Force Majeure;
- (viii) a Relevant Change in Law;
- (ix) any act, omission or event that delays Project Co in being able to take delivery of Essential Medical Equipment **[\*DELETION]**; or
- (x) any other event which is stated in this Agreement to constitute a Delay Event.

#### 40.2. Extension of Time

- (a) If a Delay Event occurs, then Project Co shall give notice to Health Co and the Independent Certifier of the Delay Event within a reasonable time, but in any event not later than 10 days after Project Co becomes aware of the occurrence of the Delay Event. If Project Co provides such notice within the time specified, then subject to Section 40.3, Project Co shall be relieved from performing its obligations within the time provided and shall be entitled to an extension of time for achieving Substantial Completion by the length of time that Project Co can demonstrate that Project Co has been delayed solely as a result of or attributable to, the Delay Event, and Health Co's Representative shall fix a new Scheduled Substantial Completion Date that is extended by a period not less than the time of the extension to which Project Co is entitled hereunder. Such new Scheduled Substantial Completion Date shall replace the existing Scheduled Substantial Completion Date. Project Co shall not be entitled to:
  - (i) any extension of time for achieving Substantial Completion to the extent that Project Co is (without incurring unreasonable additional expense) able to achieve Substantial Completion by the Scheduled Substantial Completion Date notwithstanding the Delay Event; or
  - (ii) any extension of the Expiry Date as a result of any Delay Event, unless otherwise agreed by Health Co in Health Co's sole discretion.

#### 40.3. Mitigation

- (a) If Project Co is, or claims to be, affected by a Delay Event:
  - (i) Project Co shall, and shall require that Project Co Parties shall, take and continue to take all reasonable steps (including enforcing any such obligations of Project Co Parties in Subcontracts):

- (A) to eliminate or mitigate the consequences of such an event upon the performance of its obligations under this Agreement;
  - (B) to continue to perform its obligations hereunder to the extent possible notwithstanding the Delay Event; and
  - (C) to resume performance of its obligations affected by the Delay Event as soon as practicable.
- (b) Project Co shall neither be relieved from liability under this Agreement nor entitled to any extension of time for the purpose of Section 40.2 to the extent that it is delayed or impeded due to its failure, if any, to perform its obligations under this Section 40.3.

#### **40.4. Determination of Extension**

- (a) In addition to the notice required pursuant to Section 40.2(a), Project Co shall give notice in writing to Health Co's Representative and the Independent Certifier as soon as Project Co can reasonably foresee a Delay Event occurring which is likely to cause a delay to, or prevent, the Substantial Completion Date from occurring by the Scheduled Substantial Completion Date or, if the same is not reasonably foreseeable, as soon as Project Co shall become aware of a Delay Event. Project Co shall within 7 days after such notification, give further written details to Health Co's Representative and the Independent Certifier which shall include:
- (i) a statement of which Delay Event the claim is based upon;
  - (ii) details of the circumstances from which the Delay Event arises;
  - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
  - (iv) details of the consequences, whether direct or indirect, financial or non-financial, which such Delay Event may have upon the Scheduled Substantial Completion Date; and
  - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within 14 days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim then Project Co shall submit further particulars based on such information to Health Co's Representative and the Independent Certifier.
- (c) Health Co's Representative shall, after receipt of written details under Section 40.4(a), or of further particulars under Section 40.4(b), be entitled by notice in writing to Project Co to require Project Co to provide such further supporting particulars as Health Co's Representative may reasonably consider necessary. Project Co shall afford Health Co's Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim including on-site inspection.

- (d) Subject to Section 40.3 and this Section 40.4, Health Co's Representative shall fix a revised Scheduled Substantial Completion Date, as applicable, in accordance with Section 40.2(a) as soon as reasonably practicable and in any event within 14 days of the later of:
- (i) the date of receipt by Health Co's Representative of Project Co's notice given in accordance with Section 40.4(a); and
  - (ii) the date of receipt by Health Co's Representative of any supplemental information supplied by Project Co in accordance with Section 40.4(b) and the date of receipt of any further particulars, if such are required under Section 40.4(c) and capable of production by Project Co, whichever is the later.
- (e) If Project Co has failed to comply with the requirements of this Section 40.4, then:
- (i) Health Co's Representative may require Project Co to submit details of the reasons for such failure. If Health Co's Representative has not stated that Health Co's Representative is satisfied with the reasons given within 14 days of their receipt, Project Co may refer the matter for resolution in accordance with Section 40.4(f);
  - (ii) if either Health Co's Representative is satisfied with the reasons given or it is determined pursuant to Section 40.4(f) that the failure is excusable, then Health Co's Representative shall proceed to the evaluation of the request for an extension of time in accordance with Section 40.4(d); or
  - (iii) if either (A) the decision of Health Co's Representative is that the failure is not excusable and that decision is not referred by Project Co to the Independent Certifier, or (B) it is determined pursuant to Section 40.4(f) that the failure is not excusable, then Project Co shall not be entitled to a revised Scheduled Substantial Completion Date in respect of the relevant Delay Event to the extent that Health Co's Representative has, as a result of such failures, been prevented from assessing the consequences of the Delay Event.
- (f) If:
- (i) Health Co's Representative declines to fix a revised Scheduled Substantial Completion Date;
  - (ii) Project Co considers that a different Scheduled Substantial Completion Date should be fixed;
  - (iii) there is a dispute as to whether a Delay Event has occurred; or
  - (iv) Health Co's Representative has failed to state it is satisfied with the reasons given by Project Co pursuant to Section 40.4(e) or there is a Dispute as to the decision of Health Co's Representative pursuant to that Section,

then Project Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either party and

referred for determination in accordance with Schedule 30 - Dispute Resolution Procedure.

#### 41. COMPENSATION EVENTS

##### 41.1. Definition

(a) For the purposes of this Agreement:

- (i) "Compensation Event" means **[\*DELETION]** as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay, and also means any Force Majeure/Relief Event; and
- (ii) "Force Majeure/Relief Event" means **[\*DELETION]** as a direct result of which, Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.

##### 41.2. Compensation

- (a) If a Compensation Event has occurred, Project Co's sole right to compensation, except in respect of events referred to in Section 40.1(a)(ii) to the extent of any express rights hereunder to compensation in respect thereof, shall be as provided for in this Section 41, provided however that in respect of a Force Majeure, Project Co may be entitled to such compensation as is payable pursuant to Section 49 upon a termination of the Agreement under Section 47.1. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation except as otherwise provided in, as applicable, either:
  - (i) Schedule 25 - Variation Procedure - in the case of a Delay Event referred to in Section 40.1(a)(i); or
  - (ii) Section 38 in the case of a Relevant Change in Law referred to in Section 40.1(a)(viii).
- (b) Subject to Section 41.3, if it is agreed, or determined, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better or no worse position (including having regard to the Constructor's Direct Costs and margins for overhead and profit thereon) than it would have been in had the relevant Compensation Event not occurred. Project Co shall promptly provide Health Co's Representative with any additional information Health Co's Representative may require in order to determine the amount of such compensation and shall at the same time supply copies of the same to the Independent Certifier.
- (c) If Health Co is required to compensate Project Co pursuant to this Section 41.2, then Health Co may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co (the parties acting reasonably), or alternatively Health Co may request Project Co to make an adjustment to the Periodic Service Payments. If Health Co requests Project Co to make an adjustment to the Periodic Service Payments and Project Co agrees to payment by way of an adjustment to the Periodic Service Payments, then the provisions of Schedule 25 - Variation

Procedure shall apply. Otherwise, compensation shall be by way of a lump sum payment or payments as aforesaid.

**41.3. Mitigation**

- (a) Project Co shall take all reasonable steps so as to minimize the amount of compensation due in accordance with this Section 41 in relation to any Compensation Event and any compensation payable shall be reduced to take into consideration:
  - (i) any amounts incurred or to be incurred as a result of any failure of Project Co, or any Project Co Party, to comply with this Section 41.3; and
  - (ii) any amount which Project Co or a Project Co Party shall recover under any insurance policy, or would have recovered if it or they had complied with the requirements of this Agreement in respect of such policy or the terms of any policy of insurance required under this Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured applicable to any such insurance policy.

**42. EXCUSING CAUSES****42.1. Definition**

- (a) For the purposes of this Agreement, an “Excusing Cause” means any of the following after the Substantial Completion Date:
  - (i) any breach of any provision of this Agreement by Health Co (including any delay in Health Co giving access to the Site pursuant to Section 14.1, any obstruction of such rights afforded thereunder to Project Co or any other breach of Section 14.1), except to the extent caused or contributed to by Project Co or any Project Co Party;
  - (ii) any deliberate or negligent act or omission of Health Co, of the Health Authorities (including their agents, contractors and subcontractors) or of any Health Co Party that results in undue interference with Project Co’s performance of the Services, except to the extent:
    - (A) any such act or omission is caused or contributed to by Project Co or any Project Co Party;
    - (B) Health Co, the Health Authorities (including their agents, contractors and subcontractors) or of any Health Co Party is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party;
    - (C) any such act or omission was contemplated by the Clinical Output Specifications or the Non-Clinical Output Specifications or otherwise provided for in this Agreement; or

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- (D) the undue interference resulting from any such deliberate or negligent act or omission would have been prevented by the proper performance of Project Co's obligations under this Agreement;
  - (iii) the outbreak of any Medical Contamination, unless and to the extent that such Medical Contamination, or the effects of such Medical Contamination, are caused or contributed to by Project Co or any Project Co Party, including any failure to comply with any procedures or instructions relating to control of infection or to take all reasonable steps to mitigate the effect of such Medical Contamination;
  - (iv) the implementation of any action taken by Health Co, or any suspension of Project Co's obligation to deliver any or any part of the Services, or the compliance by Project Co with instructions given by Health Co, in each case in the circumstances referred to in Section 32.3;
  - (v) any Small Works performed in accordance with the terms of this Agreement during the period of time agreed between Health Co and Project Co;
  - (vi) Scheduled Maintenance performed in accordance with the agreed Scheduled Maintenance Plan and any acceleration of Scheduled Maintenance pursuant to Section 26.3, provided however improperly performed Scheduled Maintenance and the effects thereof shall not constitute an "Excusing Cause", and further provided however that where the Scheduled Maintenance continues beyond the period or duration set out in the Scheduled Maintenance Plan (except where the continuation was due to an Excusing Cause other than set out in this Section 42.1(a)(vi)) or beyond the period or duration required for its accelerated performance pursuant to Section 26.3 then Service Failure Points may accrue from the time that the Scheduled Maintenance was due to have been completed;
  - (vii) a deliberate act or omission of a Clinical/Non-Clinical Service User that results in undue interference with Project Co's performance of the Services and Project Co has been unable to take the reasonable action necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of Health Co or an appropriate Health Co Party, except to the extent:
    - (A) any such deliberate act or omission is caused or contributed to by Project Co or any Project Co Party; or
    - (B) the Clinical/Non-Clinical Service User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party;
  - (viii) any strike, lockout, work to rule or other labour-related dispute of employees of Health Co, the Health Co Parties or the Health Authorities; or
  - (ix) implementation of a Variation to the extent Project Co has identified any impact on the Services in its Estimate and such impact has been documented in the Variation Confirmation.

**42.2. Effect of Excusing Cause**

- (a) If an Excusing Cause interferes adversely with, or causes a failure of, the performance of the Services and provided that the effect of such Excusing Cause is claimed by Project Co within 14 days of the date on which Project Co or any Project Co Party became aware of the occurrence of the Excusing Cause, then (subject to Sections 42.3 and 42.4) and to the extent such failure or interference arises as a result of such Excusing Cause:
- (i) such failure by Project Co to perform, and any poor performance of, any affected Services shall not constitute a breach of this Agreement by Project Co and Project Co shall accordingly be relieved of its obligations to perform such Services for the duration and to the extent prevented by such Excusing Cause;
  - (ii) such interference shall be taken into account in measuring the performance of any affected Services in accordance with the Performance Monitoring Program, which Performance Monitoring Program shall be operated as though the relevant Services had been performed free from such adverse interference;
  - (iii) such interference shall be taken into account in operating the Payment Mechanism which shall be operated as though any Service Failures resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Agreement as if there had been no such interference with the Services, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Agreement if this Agreement is terminated as provided herein or except as may be provided under Section 42.2(a)(iv);
  - (iv) in the case of an outbreak of Medical Contamination referred to in Section 42.1(a)(iii) as a result of which Health Co requires the closure, or the restriction to the public, of the cafeteria in the Facility, Health Co shall reimburse Project Co for the operating costs for such non-patient food services incurred by Project Co and the Project Co Parties during such closure, unless and to the extent that such Medical Contamination, or the effects of such Medical Contamination, are caused or contributed to by Project Co or any Project Co Party, including any failure to comply with any procedures or instructions relating to control of infection or to take all reasonable steps to mitigate the effect of such Medical Contamination;
  - (v) this Section 42.2 shall not limit Health Co's entitlement to reimbursement pursuant to Section 32.4;
  - (vi) Health Co shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a solicitor-client basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 42.1(a)(i), 42.1(a)(ii), 42.1(a)(vii) or 42.1(a)(viii), including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 25 - Variation Procedure; and



- (vii) the Total Annual Service Payment payable by Health Co shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Services as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 25 - Variation Procedure.

#### **42.3. Insured Exposure**

- (a) Project Co shall not be entitled to any payment which would not have been due under this Agreement but for Section 42.2 to the extent that Project Co recovers any amount under any insurance policy (or would recover if it complied with its obligations to insure under this Agreement or the terms of any insurance policies required under this Agreement) which amount, for greater certainty shall not include the amount of any excess or deductibles.

#### **42.4. Mitigation**

- (a) If Project Co is, or claims to be, affected by an Excusing Cause, Project Co shall, and shall ensure that the Project Co Parties shall, take and continue to take all reasonable steps to eliminate or mitigate the consequences of an Excusing Cause upon the performance and the costs for which Health Co may be required to reimburse Project Co under Section 42.2(a)(iv) and where relevant, resume performance of its obligations affected by the Excusing Cause as soon as practicable. To the extent that Project Co does not take such steps, such failure shall be taken into account in determining Project Co's entitlement to receive the relief specified in Section 42.2.
- (b) For greater certainty, Section 42.1(a)(ii) shall not impose a general obligation on Health Co to take (or to cause any Health Co Party to take) such steps and shall apply (and be construed) solely for the purpose of establishing whether an Excusing Cause has occurred.

### **43. RELIEF EVENTS**

#### **43.1. Definition**

- (a) For the purposes of this Agreement, "Relief Events" means any of the following events:
  - (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, ionizing radiation (to the extent it does not constitute Force Majeure and is not ordinarily provided as part of the Project Operations or Clinical/Non-Clinical Services), earthquake, riot, civil commotion, war, civil war, armed conflict, terrorism or acts of foreign enemies and hostilities;
  - (ii) subject to any obligation of Project Co to provide stand-by power facilities in accordance with the Design/Construction Requirements or the Output Specifications and any obligations of Project Co in Sections 22.1 and 22.5, failure by any utility company, local authority or other like body to perform works or provide services required to be provided by them;

- (iii) accidental loss or damage to the Works or Facility or any roads servicing the Site;
- (iv) blockade or embargo falling short of Force Majeure;
- (v) strikes, lockouts, work to rule or other labour-related disputes **[\*DELETION\*]**;
- (vi) industry-wide strikes, lockouts, work to rule or other labour-related disputes **[\*DELETION\*]**;
- (vii) strikes, lockouts, work to rule or other labour-related disputes **[\*DELETION\*]**;
- (viii) strikes, lockouts, work to rule or other labour-related disputes **[\*DELETION\*]**;
- (ix) any act of a Governmental Authority (excluding any Project Co Party, Health Co Party or Health Authority) acting or purporting to act within its authority as a Governmental Authority, save to the extent such act was caused or contributed to by or resulted from Project Co or any Project Co Party or would have been prevented by the proper performance of Project Co's obligations under this Agreement; or
- (x) **[\*DELETION\*]**,

**[\*DELETION\*]** and such event does not arise, directly or indirectly, as a result of lack of funds or financing, any breach of this Agreement or wilful or negligent act or default of the Party claiming relief or (i) in the case of Project Co claiming relief, as a result of any breach of this Agreement or wilful or negligent act or default of any Project Co Party and (ii) in the case of Health Co claiming relief, as a result of any breach of this Agreement or wilful or negligent act or default of any Health Co Party.

#### 43.2. Relief

- (a) Subject to Sections 43.3 and 43.4 or to a right to terminate this Agreement in respect of a Relief Event that has become Force Majeure, no right of termination shall arise under this Agreement by reason of any failure by a Party to perform any of its obligations under this Agreement to the extent that such failure to perform occurs because of the occurrence of a Relief Event and such Party shall accordingly be relieved of such obligations for the duration and to the extent prevented by the Relief Event.

- (b) For greater certainty, subject to Section 43.2(c):
- (i) all applicable deductions under the Payment Mechanism shall be made as though the Parties were not relieved of obligations pursuant to Section 43.2(a), except deductions during the Relief Event for Quality Failures which are attributable to the occurrence of the Relief Event;
  - (ii) Service Failure Points shall not be awarded for any Failure Events or Quality Failures which are attributable to the occurrence of the Relief Event; and
  - (iii) unless stated to the contrary in this Agreement, it is acknowledged that all other rights and obligations of the Parties under this Agreement remain unaffected by the occurrence of a Relief Event.
- (c) If the Relief Event occurs on or after the Substantial Completion Date, then notwithstanding Schedule 23 - Payment Mechanism, if Project Co is the Party claiming relief from liability by reason of the Relief Event, the Periodic Service Payments shall be reduced during the existence of any Relief Event to the greater of:
- (i) the Periodic Service Payment that would be payable assuming that Project Co were not relieved of its liability hereunder and that all deductions pursuant to the Payment Mechanism would be applied, except deductions during the Relief Event for Quality Failures which are attributable to the occurrence of the Relief Event; or
  - (ii) the sum of the following:
    - (A) Project Co's repayment obligations to the Senior Funders under the Senior Funders Agreements for the period of the Relief Event, in the amount of the Daily Repayment Amount that would otherwise have been payable for such period, together with the costs and expenses due in the normal course under the Senior Funders Agreements, including for trustee fees, bond manager fees, and rating agency fees;
    - (B) the direct costs and expenses that Project Co and the Subcontractors can demonstrate were incurred during the period of the Relief Event (which for certainty shall exclude the repayment obligations provided for under Section 43.2(c)(ii)(A) and shall exclude any profit or overhead mark-up by Project Co and its Service Providers on such direct costs and expenses), provided that:
      - (I) Project Co and the Subcontractors continue to provide the Services to appropriate levels as provided in Section 43.4 given the nature of the Relief Event;
      - (II) such costs and expenses would have been incurred in the performance of the Services in the event that the Relief Event did not occur;

- (III) such costs and expenses were incurred despite Project Co or the Subcontractors using best commercial efforts to eliminate or mitigate such costs and expenses as provided in Section 43.4; and
- (IV) in respect of such costs and expenses, Health Co and Project Co shall share the risk of the occurrence of Relief Events as follows:
  - a. for the first 5 days of the period of the Relief Event, Project Co shall bear all such costs and expenses incurred during that period;
  - b. from and after the 6<sup>th</sup> day of the period of the Relief Event, Project Co shall bear 25% of such costs and expenses incurred during that period and accordingly shall only be entitled to 75% of such costs and expenses; and
  - c. notwithstanding the foregoing provisions of this Section 43.2(c)(ii)(B)(IV), the maximum amount of such costs and expenses to be borne by Project Co during any Contract Year pursuant to this Section 43.2(c)(ii)(B)(IV) shall be limited to \$10,000 (index linked) for each of JCLP and Sodexo and \$2,000 (index linked) for Intercon, as applicable, for any Service Providers replacing them,

and such Periodic Service Payments, as reduced by this Section 43.2(c), shall be payable only to the extent Project Co does not receive insurance proceeds in respect of such Relief Event or would have received such proceeds if it had complied with the requirements of this Agreement in respect of any such policy or the terms of any policy of insurance required under this Agreement. For greater certainty, the payments to Project Co under this Section 43.2 shall not exceed the Periodic Service Payment that would be payable assuming that Project Co were relieved of its liability hereunder and that deductions pursuant to the Payment Mechanism would not be applied, provided however that Health Co does not require Project Co to perform additional Services that are greater than those that would have been required assuming the Relief Event had not occurred.

### **43.3. Relief Events treated as Delay Events**

- (a) If a Relief Event is also a Delay Event pursuant to Section 40.1(a)(vi), Project Co shall only be relieved of its obligations under this Agreement to the extent, if any, provided for in Section 40.

### **43.4. Mitigation and Process**

- (a) Where a Party is, or claims to be, affected by a Relief Event then that Party shall take all reasonable steps to mitigate the consequences of the Relief Event upon the performance and costs of its obligations under this Agreement, shall resume

performance of its obligations affected by the Relief Event as soon as practicable and shall use all reasonable efforts to remedy its failure to perform.

- (b) The Party claiming relief shall give written notice to the other Party within 7 days of the Party claiming relief becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (c) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 7 days of such initial notice, which notice shall contain such relevant information relating to the failure to perform or delay in performing as is available, including the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 43.4(a), the date of the occurrence of the Relief Event, an estimate of the period of time required to overcome the Relief Event and its effects and if applicable an estimate of the direct costs and expenses to which Project Co may be entitled under Section 43.2(c)(ii)(B).
- (d) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (e) If, following the issue of such subsequent notice, the Party claiming relief receives or becomes aware of any further information relating to the Relief Event or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.
- (f) The extent the Party claiming relief is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to perform its obligations under this Section 43.4, shall be taken into consideration in determining the extent to which the Party that is or claims to be affected by a Relief Event shall be entitled to rely upon Section 43.2(a).

#### **44. FORCE MAJEURE**

##### **44.1. Definition**

- (a) For the purposes of this Agreement, "Force Majeure" means any of the following events or circumstances:
  - (i) war, civil war, armed conflict, terrorism or acts of foreign enemies and hostilities;
  - (ii) chemical, nuclear, radioactive or biological contamination of the Works or the Facility or the Site from any of the events referred to in Section 44.1(a)(i);
  - (iii) the discovery of fossils, remains, coins, articles of value or antiquity, and other items referred to in Sections 16.3 prior to Substantial Completion, which as a result of Applicable Law require that the Works be abandoned;
  - (iv) pressure waves caused by devices travelling at supersonic speed;
  - (v) any Change in Law which renders Project Co incapable of performing the whole of its obligations under this Agreement; or

- (vi) a Relief Event that continues for 90 days, except where such Relief Event is or results from damage or destruction of a material part of the Facility that is the subject of a claim under an insurance policy and the Facility is being repaired,

**[\*DELETION]**.

#### **44.2. Relief**

- (a) Subject to Sections 44.3 and 44.4, the Party claiming relief shall be relieved from liability under this Agreement to the extent that by reason of the Force Majeure it is not able to perform its obligations under this Agreement; provided however that notwithstanding such relief, Project Co's only entitlement to the Periodic Service Payments shall be pursuant to Section 44.5.

#### **44.3. Force Majeure Treated only as Delay Events**

- (a) If Force Majeure is also a Delay Event pursuant to Section 40.1(a)(vii), Project Co shall only be relieved of its obligations under this Agreement to the extent, if any, provided for in Section 40, provided however that if prior to Substantial Completion the Works must be abandoned as a result of the event of Force Majeure, this Section 44 and not Section 40, shall apply.

#### **44.4. Mitigation and Process**

- (a) Where a Party is or claims to be affected by an event of Force Majeure, such Party shall take all reasonable steps to mitigate the consequences of such an event upon the performance and costs of its obligations under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable efforts to remedy its failure to perform.
- (b) The Party claiming relief shall give written notice to the other Party within 7 days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (c) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 7 days which shall contain such relevant information relating to the failure to perform or delay in performing as is available, including the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 44.4(a), the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it and its effects.
- (d) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (e) If, following the issue of such subsequent notice, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure or any

failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

- (f) The extent the Party that is or claims to be affected by an event of Force Majeure is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure, if any, to perform its obligations under this Section 44.4 shall be taken into consideration in determining the extent to which the Party that is or claims to be affected by an event of Force Majeure shall be relieved from liability under this Agreement.

#### **44.5. Compensation**

- (a) If the event of Force Majeure occurs on or after the Substantial Completion Date, then notwithstanding Schedule 23 - Payment Mechanism and save and except in respect of Force Majeure pursuant to Section 44.1(a)(vi) which shall continue to be governed by Section 43.2(c), if Project Co is the Party claiming relief from liability by reason of the event of Force Majeure, the Periodic Service Payments shall be reduced during the existence of any event of Force Majeure to the greater of:
- (i) the Periodic Service Payment that would be payable assuming that Project Co were not relieved of its liability hereunder and that all deductions pursuant to the Payment Mechanism would be applied, except deductions during the event of Force Majeure for Quality Failures which are attributable to the occurrence of the event of Force Majeure; or
  - (ii) the sum of the following:
    - (A) Project Co's repayment obligations to the Senior Funders under the Senior Funders Agreements for the period of the event of Force Majeure, in the amount of the Daily Repayment Amount that would otherwise have been payable for such period, together with the costs and expenses due in the normal course under the Senior Funders Agreements, including for trustee fees, bond manager fees, and rating agency fees; and
    - (B) the direct costs and expenses that Project Co and the Subcontractors can demonstrate were incurred during the period of the event of Force Majeure (which for certainty shall exclude the repayment obligations provided for under Section 44.5(a)(ii)(A) and shall exclude any profit or overhead mark-up by Project Co and its Service Providers on such direct costs and expenses), provided that:
      - (I) Project Co and the Subcontractors continue to provide the Services to appropriate levels as provided in Section 44.4 given the nature of the event of Force Majeure;
      - (II) such costs and expenses would have been incurred in the performance of the Services in the event that the event of Force Majeure did not occur;

- (III) such costs and expenses were incurred despite Project Co or the Subcontractors using best commercial efforts to mitigate such costs and expenses as provided in Section 44.4; and
- (IV) in respect of such costs and expenses, Health Co and Project Co shall share the risk of the occurrence of Relief Events as follows:
  - a. for all events of Force Majeure other than a Relief Event as set out in 44.1(a)(vi), for the first 5 days of the period of the event of Force Majeure, Project Co shall bear all such costs and expenses incurred during that period; and
  - b. from and after the 6<sup>th</sup> day of the period of the event of Force Majeure, and at all times for a Relief Event as set out in 44.1(a)(vi), Project Co shall bear 25% of such costs and expenses incurred during that period and accordingly shall only be entitled to 75% of such costs and expenses; and
  - c. notwithstanding the foregoing provisions of this Section 44.5(a)(ii)(B)(IV), the maximum amount of such costs and expenses to be borne by Project Co pursuant to this Section 44.5(a)(ii)(B)(IV) during any Contract Year, together with any amount of costs and expenses pursuant to Section 43.2(c)(ii)(B)(IV) during the same Contract Year, shall be limited to limited to \$10,000 (index linked) for each of JCLP and Sodexo and \$2,000 (index linked) for Intercon, as applicable, for any Service Providers replacing them,

and such Periodic Service Payments, as reduced by this Section 44.5, shall be payable only to the extent Project Co does not receive insurance proceeds in respect of such event of Force Majeure or would have received such proceeds if it had complied with the requirements of this Agreement in respect of any such policy or the terms of any policy of insurance required under this Agreement. For greater certainty, the payments to Project Co under this Section 44.5 shall not exceed the Periodic Service Payment that would be payable assuming that Project Co were relieved of its liability hereunder and that deductions pursuant to the Payment Mechanism would not be applied, provided however that Health Co does not require Project Co to perform additional Services that are greater than those that would have been required assuming the Relief Event had not occurred.

- (b) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as provided for a Force Majeure/Relief Event pursuant to Section 41 or upon a termination for such event in Sections 47.1 and 49.



- (c) Subject to Sections 41, 47.1 and 49, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 44.5.

**44.6. Modifications**

- (a) The Parties shall use all reasonable efforts to agree to any modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 30 - Dispute Resolution Procedure shall not apply to a failure of Health Co and Project Co to reach agreement pursuant to this Section 44.6.

**PART I. TERMINATION****45. PROJECT CO DEFAULT****45.1. Project Co Events of Default**

- (a) For the purposes of this Agreement, "Project Co Events of Default" means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by Health Co of its payment obligations hereunder:
    - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co's assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, Health Co, a Health Co Party, a Health Authority or a person related to any of them seeking such result and such proceedings have or will have a material and adverse effect on the delivery of Clinical/Non-Clinical Services (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 45.1(a)(i)(A);
    - (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Agreement;

- (C) if any execution, sequestration, extent or other process of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially and adversely affects Project Co's ability to perform its obligations hereunder; or
  - (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 45.1(a)(i) in any jurisdiction in which it is incorporated or resident and if such event or set of circumstances would if set out in Section 45.1(a)(i)(A), (B) or (C) constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve the Substantial Completion Date within a period of 545 days after the Scheduled Substantial Completion Date, as such Scheduled Substantial Completion Date may be extended pursuant to Section 40.2 (the "Longstop Date");
  - (iii) the Independent Certifier determining that Project Co will in all reasonable likelihood fail to achieve the Substantial Completion Date by the Longstop Date;
  - (iv) Project Co making any representation or warranty herein that is false or misleading that has or will have at any time a material adverse effect on the performance of Project Operations or the delivery of Clinical/Non-Clinical Services, or that potentially compromises the reputation or integrity of the AHCC, Health Co or any Health Authority, or the nature of the Province's health care system so as to potentially affect public confidence in that system, and in the case of a false or misleading representation or warranty made pursuant to Section 5.1(a)(ii) or, in respect of a Project Co Party, Section 5.1(a)(x), such breach is not remedied within 30 days of receipt of notice of the same from Health Co;
  - (v) Project Co committing a breach of Sections 52 or 53 or a breach of its obligations under this Agreement (other than a breach that is otherwise referred to in Sections 45.1(a)(i) to (iv) inclusive or 45.1(a)(vi) to (xvii) inclusive) which has or will have a material and adverse effect on the delivery of Clinical/Non-Clinical Services, other than where such breach is a consequence of a breach by Health Co of its obligations under this Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
    - (A) Project Co shall:
      - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Health Co and delivery of Clinical/Non-Clinical Services;
      - (II) put forward within 7 days of receipt of notice of such breach from Health Co a reasonable plan and schedule for diligently

- remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
- (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (B) upon Project Co failing to comply with any of the provisions of Section 45.1(a)(v)(A):
- (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on Health Co and delivery of Clinical/Non-Clinical Services; and
- (II) Project Co shall, within two days after notice from Health Co, submit a plan and schedule, which Health Co shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to Health Co in its sole and absolute discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (III) for greater certainty, Project Co failing to comply with any of the provisions of Sections 45.1(a)(v)(B), or Health Co in its sole and absolute discretion not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;
- (vi) Project Co wholly or substantially abandoning the Works for a period or periods that cumulatively exceed 30 days, other than as a consequence of a breach by Health Co of its obligations under this Agreement;
- (vii) Project Co ceasing to provide Services in accordance with this Agreement which are necessary for the delivery of Clinical/Non-Clinical Services, other than as a consequence of a breach by Health Co of its obligations under this Agreement;
- (viii) Project Co failing to comply with Sections 59.1 or 59.3;
- (ix) the occurrence of any Change in Control which is prohibited by Section 59.4;
- (x) Project Co being awarded a total of 10,000 or more Service Failure Points in any rolling 365 day period;
- (xi) a Final Persistent Breach occurs;

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- (xii) Project Co failing to pay any sum or sums due to Health Co under this Agreement (which sums are not being disputed by Project Co under Schedule 30 - Dispute Resolution Procedure) which, either singly or in aggregate, exceed(s) \$250,000 (index linked) and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from Health Co;
  - (xiii) Project Co failing to comply with Section 60;
  - (xiv) Project Co failing to comply with Section 7.3 or Schedule 31 - Refinancing or the Funder assigns, transfers or otherwise disposes of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents in breach of the Funders' Direct Agreement;
  - (xv) Project Co failing to obtain or provide any bond, security or insurance required to be obtained or provided by or on behalf of Project Co pursuant to this Agreement or any such bond, security or insurance is vitiated or otherwise ceases to be in full force and effect, other than as a consequence of a breach by Health Co of its obligations under this Agreement, and any such breach by Project Co in respect of insurance is not remedied within a 14 day period by Project Co, and any such breach by Project Co in respect of a bond or security is not remedied within 5 Business Days of Project Co becoming aware of its failure to obtain or provide such bond or security or of such bond or security ceasing to be in full force and effect;
  - (xvi) Project Co failing to comply with any determination, order or award made against Project Co pursuant to Schedule 30 - Dispute Resolution Procedure; or
  - (xvii) at any time after the Substantial Completion Date Project Co committing a breach of its obligations under this Agreement (other than as a consequence of a breach by Health Co of its obligations under this Agreement) which results in the criminal conviction or a conviction under the *Workers Compensation Act* (British Columbia) against Project Co or any Project Co Party or Health Co (an "H&S Conviction") provided however that:
    - (A) an H&S Conviction of Project Co, a Project Co Party or Health Co shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 59.3; and
    - (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 45.1(a)(xvii), Health Co shall:
      - (I) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and

- (II) give all due consideration, where appropriate, to action other than termination of this Agreement.

#### 45.2. Notification of Occurrence

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify Health Co of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time, giving of notice, determination of any condition, or otherwise, to constitute or give rise to a Project Co Event of Default.

#### 45.3. Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after Health Co becomes aware of a Project Co Event of Default, and if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith then following confirmation pursuant to the Dispute Resolution Procedure that a Project Co Event of Default has occurred, Health Co may, subject to Section 45.4 terminate this Agreement in its entirety by notice in writing having immediate effect, such notice to be given to Project Co, and to any person specified in the Funders' Direct Agreement to receive such notice.

#### 45.4. Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 45.1(a)(i)(B), 45.1(a)(i)(C), 45.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 45.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 45.1(a)(i)(B) or 45.1(a)(i)(C)), 45.1(a)(iii), 45.1(a)(iv), 45.1(a)(vi), 45.1(a)(vii), 45.1(a)(viii), 45.1(a)(ix) (where the Project Co Event of Default referred to in Section 45.1(a)(ix) is only of a minor non-substantive administrative nature that would have been consented to by Health Co in the context of the consent Health Co provided pursuant to Section 59.4(a)), 45.1(a)(xii), 45.1(a)(xiv), 45.1(a)(xv) (where the Project Co Event of Default referred to in Section 45.1(a)(xv) is not in respect of insurance), 45.1(a)(xvi), or 45.1(a)(xvii) Health Co shall, prior to being entitled to terminate this Agreement, give notice of default to Project Co, and to any person specified in the Funders' Direct Agreement to receive such notice, and Project Co shall:
  - (i) put forward within 7 days of such notice of default a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall in any event be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to Health Co, acting reasonably; and
  - (ii) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.

- (b) Where Project Co puts forward a plan and schedule in accordance with Section 45.4(a)(i) that has a date for the Event of Default to be remedied that is beyond 30 days from the notice of default, Health Co shall have 7 days from receipt of the same within which to notify Project Co that Health Co does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which Health Co shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 45.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on Health Co and delivery of Clinical/Non-Clinical Services; or
  - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 45.4(a)(i); or
  - (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 45.4(a) and (b); or
  - (iv) where Project Co puts forward a plan and schedule pursuant to Section 45.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then Health Co may terminate this Agreement in its entirety by written notice with immediate effect, such notice to be given to Project Co, and to any person specified in the Funders' Direct Agreement to receive such notice.

- (d) Notwithstanding that Health Co may give the notice referred to in Section 45.4(a), and without prejudice to the other rights of Health Co in this Section 45.4, at any time during which a Project Co Event of Default is continuing, Health Co may at any time at Project Co's risk and expense take such steps as Health Co considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of the obligations of Project Co or to take such other steps as Health Co in its sole discretion considers appropriate to remedy such default.
- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 45.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and Health Co shall not be entitled to terminate the Agreement for that occurrence of a Project Co Event of Default.

#### **45.5. Replacement of a Non-Performing Subcontractor**

- (a) Health Co may, in its discretion, require Project Co by written notice to terminate any relevant Service Contract or ensure the termination of any relevant Subcontract, as the case may be, and ensure that a replacement Subcontractor is appointed in accordance with Section 59.3 to provide all those parts of the Services which were performed by the previous Subcontractor within 60 days:

- (i) as an alternative to termination of this Agreement pursuant to Sections 45.3 or 45.4, in any circumstance in which Health Co could exercise such right of termination;
- (ii) if Project Co receives either:
  - (A) 500 Service Failure Points or 3 Warning Notices in respect of the Market Tested Service provided by the relevant Subcontractor, in any 60 day period; or
  - (B) 1000 Service Failure Points or 6 Warning Notices in respect of the Market Tested Service provided by the relevant Subcontractor, in any 180 day period,

provided however that this Section 45.5 shall not give rise to partial termination of either the obligation to provide the Services or this Agreement.

- (b) If Health Co exercises its rights under this Section 45.5, Project Co shall within 7 days put forward proposals for the interim management or provision of the relevant Service until such time as an alternative Service Provider or Subcontractor can be engaged by Project Co. If Project Co fails to do so, or if its proposals are not reasonably likely to give adequate provision of the relevant Services and the Parties cannot agree within a further 3 days to a plan for the interim management or provision of the relevant Service, then without prejudice to the other rights of Health Co in this Section 45.5, Health Co itself may perform, or engage others (including a third party) to perform, such Services and Section 32.4 shall apply, changed according to context, to such Service in those circumstances and any Dispute in respect of the interim management or provision of the relevant Service shall be determined pursuant to the Dispute Resolution Procedure.
- (c) If Project Co fails to terminate the relevant Service Contract, or secure the termination of the relevant Subcontract and to secure a replacement Subcontractor appointed in accordance with this Section 45.5, Health Co shall be entitled at its option to exercise its termination rights in accordance with Sections 45.3 and 45.4, as applicable.

#### **45.6. Health Co's Costs**

- (a) Project Co shall reimburse Health Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a solicitor-client basis) incurred in the proper exercise of Health Co's rights under this Section 45, including any relevant increased administrative expenses. Health Co shall take reasonable steps to mitigate such costs.

#### **45.7. No other Rights to Terminate**

- (a) Health Co shall have no right or entitlement to terminate this Agreement, or to accept any repudiation of this Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Section 45 or 47.



**46. HEALTH CO DEFAULT****46.1. Health Co Events of Default**

- (a) For the purposes of this Agreement, "Health Co Events of Default" means any of the following events or circumstances:
- (i) the failure of Health Co to pay any sum or sums due to Project Co under this Agreement (which sums are not being disputed by Health Co pursuant to Schedule 30 - Dispute Resolution Procedure) which sum or sums, either singly or in aggregate, exceed(s) \$250,000 (index linked) and such failure continues for 30 days from receipt by Health Co and the other parties pursuant to Section 46.3 of a notice of non-payment from Project Co;
  - (ii) Health Co makes any representation or warranty herein that is false or misleading and such false or misleading representation or warranty materially adversely affects the ability of Project Co to perform its material obligations under this Agreement and is not cured within a period of 30 days after Project Co has given notice of such breach to Health Co and the other parties pursuant to Section 46.3;
  - (iii) Health Co fails to comply with any other material obligation under this Agreement (other than as a consequence of a breach by Project Co of its obligations under this Agreement) and such failure materially adversely affects the ability of Project Co to perform its material obligations under this Agreement, and upon receiving notice from Project Co of such failure Health Co does not immediately commence and thereafter diligently continue to remedy the failure and to mitigate any adverse effects on Project Co and the provision of the Services and thereafter correct the failure within 60 days after Project Co has given notice of such failure to Health Co and the other parties pursuant to Section 46.3;
  - (iv) an Adverse Law, unless Health Co assigns this Agreement, or such Adverse Law would have the effect of assigning this Agreement, in compliance with Section 59.2;
  - (v) the Guarantor (as defined in the Payment Guarantee) fails to make payment of any sum or sums under the Payment Guarantee when required to do so (which sums are not being disputed by Health Co pursuant to Schedule 30 - Dispute Resolution Procedure) which sum or sums, either singly or in aggregate, exceed(s) \$250,000 (index linked) and such failure continues for 30 days from receipt by Health Co and the other parties pursuant to Section 46.3 of a notice of non-payment from Project Co; or
  - (vi) if a Governmental Authority requires a sum of money to be set aside or otherwise paid pursuant to Section 48 of the *Hospitals Act* (British Columbia) which would otherwise have been available under the insurance policies to be obtained hereunder and Health Co does not contribute at least such amount to Project Co within 30 days from receipt by Health Co and the other parties pursuant to Section 46.3 of a notice thereof from Project Co.

**46.2. Project Co's Options**

- (a) On the occurrence of a Health Co Event of Default, or within a reasonable time after Project Co becomes aware of the same, and while the same is still subsisting, Project Co may give notice to Health Co and the other parties pursuant to Section 46.3 of the occurrence specifying details of such Health Co Event of Default and at Project Co's option:
- (i) in respect of execution and delivery of the Works prior to the Substantial Completion Date, on a further 30 days' prior written notice to Health Co and the other parties pursuant to Section 46.3, suspend performance by it of its obligations under this Agreement until such time as Health Co shall have demonstrated to the reasonable satisfaction of Project Co that Health Co shall perform and is capable of performing its obligations under this Agreement (with no prejudice to Project Co hereunder in respect of such suspension); or
  - (ii) if the Health Co Event of Default in Section 46.1(a)(i) or 46.1(a)(v) or 46.1(a)(vi) has not been remedied within 30 days of receipt of such notice of the occurrence of such Health Co Event of Default, Project Co may give a final notice to Health Co and the other parties pursuant to Section 46.3 terminating this Agreement with immediate effect; or
  - (iii) if the Health Co Event of Default in Section 46.1(a)(ii) or 46.1(a)(iii) has not been remedied within 30 days of receipt of such notice of the occurrence of such Health Co Event of Default or if such Health Co Event of Default is not capable of being remedied within such 30 day period then within such longer period as is acceptable to Project Co, acting reasonably, provided that Health Co had commenced and is continuing diligently to remedy such default, Project Co may give a further notice to Health Co and the other parties pursuant to Section 46.3, and if the Health Co Event of Default in Section 46.1(a)(ii) or 46.1(a)(iii) has not been remedied by Health Co within 30 days of receipt of such further notice, or if the occurrence of a Health Co Event of Default is disputed by Health Co in good faith then following confirmation pursuant to the Dispute Resolution Procedure that a Health Co Event of Default has occurred, Project Co may give a final notice to Health Co and the other parties pursuant to Section 46.3 terminating this Agreement with immediate effect; or
  - (iv) if the Health Co Event of Default is an Adverse Law pursuant to Section 46.1(a)(iv) then:
    - (A) if such Health Co Event of Default is capable of being remedied, and such Health Co Event of Default has not been remedied by Health Co within 90 days of receipt of such notice of the occurrence of such Health Co Event of Default; or
    - (B) if such Health Co Event of Default is not capable of being remedied within 90 days of receipt of such notice of the occurrence of such Health Co Event of Default,

Project Co may give a further notice to Health Co and the other parties pursuant to Section 46.3, and if the Health Co Event of Default in Section 46.1(a)(iv) has not been remedied by Health Co within 30 days of receipt of such further notice, or if the occurrence of a Health Co Event of Default under Section 46.1(a)(iv) is disputed by Health Co in good faith then following confirmation pursuant to the Dispute Resolution Procedure that a Health Co Event of Default has occurred, Project Co may give a final notice to Health Co and the other parties pursuant to Section 46.3 terminating this Agreement with immediate effect.

- (b) Notwithstanding that Project Co may give the notice referred to in Section 46.2(a), and without prejudice to the other rights of Project Co in this Section 46.2, at any time during which a Health Co Event of Default is continuing, Project Co may at Health Co's risk and expense take such steps as Project Co considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain performance of the obligations of Health Co or to take such other steps as Project Co in its sole discretion considers appropriate to remedy such default.

#### **46.3. Notice Requirements**

- (a) Any and all notices given by Project Co pursuant to Section 46.1 and 46.2 shall be effective only if given in writing and delivered by double registered mail to all of the following persons:

- |  |   |
|--|---|
| (i) To Health Co:                        | To the address provided in Section 61.1.  |
| (ii) To FHA:                             | Fraser Health Authority<br>Suite 300<br>10334 - 152A Street<br>Surrey, BC V3R 7P8<br>Attention: Chief Executive Officer                         |
| (iii) To PHSA:                           | Provincial Health Services Authority<br>#700 - 1380 Burrard Street<br>Vancouver, BC V6Z 2H3<br>Attention: Chief Executive Officer               |
| (iv) To the Ministry of Health Services: | Ministry of Health Services<br>1515 Blanshard Street<br>Victoria, BC V8W 3C8<br>Attention: Senior Financial Officer                             |
| (iv) To the Ministry of Finance:         | c/o Ministry of Health Services<br>1515 Blanshard Street<br>Victoria, BC V8W 3C8<br>Attention: Executive Director, Finance and Decision Support |

- (b) The notices referred to in Section 46.3(a) shall be effective at the latest time of receipt by all of the persons referred to in Section 46.3(a).
- (c) Health Co may at any time and from time to time by notice to Project Co change the nominated address of the persons referred to in Section 46.3(a), and such change shall be effective on the day that next follows Project Co's receipt of such notice.

**46.4. Project Co's Costs**

- (a) Health Co shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a solicitor-client basis) incurred in the proper exercise of Project Co's rights under this Section 46, including any relevant increased administrative expenses. Project Co shall take reasonable steps to mitigate such costs.

**46.5. No other Rights to Terminate**

- (a) Project Co shall have no right or entitlement to terminate this Agreement, or to accept any repudiation of this Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Section 46 or Section 47.

**47. NON-DEFAULT TERMINATION****47.1. Termination for Force Majeure**

- (a) If an event of Force Majeure occurs and the Parties, having used all reasonable efforts, have failed to reach agreement on any modification to this Agreement pursuant to Section 44.6 within 180 days of the date on which the Party affected gives notice to the other Party as set out therein, either Party may at any time afterwards terminate this Agreement by written notice to the other Party having immediate effect provided always that the effects of the relevant event of Force Majeure continues during such period to prevent either Party from performing a material part of its obligations under this Agreement.
- (b) This Agreement shall also be terminated pursuant to this Section 47.1 in the event that Health Co serves a Viability Statement in accordance with Schedule 28-2 arising from an event occurring after the date that is five years prior to the Expiry Date.

**47.2. Termination for Convenience**

- (a) Health Co shall in its sole discretion and for any reason whatsoever be entitled to terminate this Agreement at any time on 180 days' written notice to Project Co.
- (b) This Agreement shall also be terminated pursuant to this Section 47.2 in the event that Health Co serves a Viability Statement in accordance with Schedule 28-2 arising from an event occurring prior to the date that is five years prior to the Expiry Date or termination of the Agreement in accordance with Section 6.4(d)(ii)(2) of Schedule 28-1.
- (c) In the event of notice being given by Health Co in accordance with this Section 47.2, Health Co shall, at any time before the expiration of such notice, be entitled to direct

Project Co, where the Works, or any part or parts of the Works, or any Services, or any elements of any Services, have not been commenced, to refrain from commencing any such Works or Services, or from allowing third parties to commence the same.

#### **47.3. Automatic Expiry on Expiry Date**

- (a) This Agreement shall terminate automatically on the Expiry Date.
- (b) Project Co shall not be entitled to any compensation due to termination of this Agreement on expiry of the Project Term on the Expiry Date.

### **48. EFFECT OF TERMINATION**

#### **48.1. Termination**

- (a) Notwithstanding any provision of this Agreement, upon the service of a notice of termination or termination on the Expiry Date pursuant to Section 47.3, this Section 48 shall apply in respect of such termination.

#### **48.2. Continued Effect – No Waiver**

- (a) Notwithstanding any breach of this Agreement by a Party, the other Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

#### **48.3. Continuing Performance**

- (a) Subject to any exercise by Health Co of its rights to perform, or to seek, pursuant to this Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Agreement (including if applicable pursuant to Schedule 26 - Compensation on Termination), notwithstanding the giving of any notice of default or notice of termination, until the termination of this Agreement becomes effective in accordance with this Section 48.

#### **48.4. Title/Transfer to Health Co of Assets**

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 47.3:
  - (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to Health Co as shall not already have been transferred to Health Co pursuant to Section 55.1, Project Co shall transfer to, and there shall vest in, Health Co, free from all Encumbrances (other than the Title Encumbrances, Other Encumbrances and any Encumbrances derived through Health Co), such part of the Works and Facility as shall have been constructed and such items of the Plant and

Equipment as shall have been procured by Project Co, and if Health Co so elects:

- (A) all plant, equipment and materials on or near to the Site shall remain available to Health Co for the purposes of completing the Works; and
  - (B) all construction plant and equipment shall remain available to Health Co for the purposes of completing the Works, subject to payment of the Constructor's reasonable charges;
- (ii) in so far as title shall not have already passed to Health Co pursuant to Section 55.1 or Section 48.4(a)(i), Project Co shall hand over to, and there shall vest in, Health Co, free from all Encumbrances (other than the Title Encumbrances, Other Encumbrances and any Encumbrances derived through Health Co), the Facility together with all other assets and rights capable of being transferred (and for certainty shall include the assets and rights relating to the Business Opportunities set out in Section 4.1(d)), necessary for the performance of the Project and the Project Operations and all facilities and equipment, including the Equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to Health Co, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Health Co in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Agreement had not been terminated;
  - (iii) in the case of the termination of this Agreement on the Expiry Date in accordance with Section 47.3, the Facility and elements of the Facility shall be in the condition required in accordance with Section 50 and Schedule 27 - Expiry Transition Procedure;
  - (iv) if Health Co so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Construction Contract and the Service Contracts), any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be and is hereby novated or assigned to Health Co or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with the Constructor or the Service Providers shall be made by Health Co pursuant to, and subject to, the terms of the applicable Collateral Agreement;
  - (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if Health Co so elects, execute such sale) to Health Co at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being determined pursuant to Schedule 30 - Dispute Resolution Procedure), free from any Encumbrance (other than the Title Encumbrances, Other Encumbrances and any Encumbrances derived through

Health Co), all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Facility, and reasonably required by Health Co in connection with the operation of the Facility or the provision of the Services;

- (vi) Project Co shall deliver to Health Co (as far as not already delivered to Health Co) one complete set of:
  - (A) the most recent “as built drawings” in the format that Health Co, acting reasonably, considers most appropriate at the time showing all alterations made to the Facility since the Substantial Completion Date;
  - (B) the most recent maintenance, operation and training manuals for the Facility; and
  - (C) the Plant Services Information Management System, fully updated;
- (vii) Project Co shall use all reasonable efforts to assign, or otherwise transfer, to Health Co, free of Encumbrances (other than the Title Encumbrances, Other Encumbrances and any Encumbrances derived through Health Co), the benefit of all manufacturer’s warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Agreement and included in the Facility;
- (viii) Project Co shall deliver to Health Co all information, reports, documents, records and the like referred to in Section 37, including as referred to in Schedule 29 - Records Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to Health Co); and
- (ix) if termination is prior to the Substantial Completion Date, to the extent not already required by the foregoing provisions of this Section 48.4, Project Co shall deliver to Health Co (as far as not already delivered to Health Co) one complete set of all Project Data and Intellectual Property relating to the detailed design, construction and completion of the Works and Facility.

#### **48.5. Ownership of Information**

- (a) Subject to Section 51, all information obtained by Project Co, including technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease and licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information pertinent to the Project Operations accumulated over the course of the Project Term shall be the property of Health Co and upon termination of this Agreement shall be returned to Health Co in electronic format acceptable to Health Co acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

**48.6. Provision in Subcontracts**

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Subcontractors to make such provision and to require other Subcontractors to make such provision) to ensure that Health Co shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 48.

**48.7. Transitional Arrangements**

- (a) On the termination of this Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued provision of Services pursuant to Sections 3.2 and 3.3 of Schedule 26 - Compensation on Termination if applicable:
- (i) cooperate fully with Health Co and any successors providing to Health Co services in the nature of any of the Services or any part of the Services in order to achieve a smooth transfer of the manner in which Health Co obtains services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the users of the Facility, including the Health Authorities, employees, patients and visitors to the Facility and members of the public;
  - (ii) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by Health Co pursuant to Section 48.4 or otherwise, and if Project Co has not done so within 60 days after any notice from Health Co requiring it to do so Health Co may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
  - (iii) forthwith deliver to Health Co's Representative:
    - (A) all keys to, and any passcards and other devices used to gain access to any part of the Facility; and
    - (B) without prejudice to Health Co's rights pursuant to Section 51, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Facility, but excluding computer programs which have been developed or acquired by a Service Provider for its own use and not solely for the purposes of provision of any of the Services at the Facility; and
  - (iv) as soon as practicable vacate the Site and, without limiting Project Co's obligations under Schedule 27 - Expiry Transition Procedure, shall leave the Site and the Facility in a safe, clean and orderly condition.
- (b) If Health Co wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the Services or any of them, following the expiry of this



Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with Health Co fully in such competition process, including by:

- (i) providing any information which Health Co may reasonably require to conduct such competition, including all information contained in the Plant Services Information Management System, except information which is commercially sensitive information; and
  - (ii) assisting Health Co by allowing any or all participants in such competition process unrestricted access to the Site and the Facility.
- (c) For the purpose of Section 48.7(b)(i), "commercially sensitive information" shall mean information which would if disclosed to a competitor of Project Co give that competitor a competitive advantage over Project Co and thereby prejudice the business of Project Co.

#### **48.8. Termination upon Aforesaid Transfer**

- (a) On completion of Project Co's obligations pursuant to this Section 48, this Agreement shall terminate and, except as provided in Section 48.9, all rights and obligations of Health Co and Project Co under this Agreement shall cease and be of no further force and effect.

#### **48.9. Survival**

- (a) Except as otherwise provided in this Agreement, termination of this Agreement shall be without prejudice to, and shall not affect:
- (i) all representations, warranties and indemnities under this Agreement; and
  - (ii) Sections 1.2, 5, 6, 7, 9.8, 15.2, 16.1, 16.3(a), 23.6, 24.13, 26.6, 31.4, 32, 34.13, 34.14, 34.15, 35, 36, 37, 46.4, 45.6, 47.3, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 60.2, 60.3, 61.1, 61.5, 61.7, 61.10, 61.11, 61.12, 61.13, 61.14 of this Agreement, Schedule 26 – Compensation on Termination, Sections 2, 4 and 5 of Schedule 27 – Expiry Transition Procedure, Sections 4 and 6.4 of Schedule 28-1 – General Insurance Requirements, Section 11 of Schedule 28-2 – Insurance By Health Co, Section 5 of Schedule 28-3 – Insurance By Project Co, Sections 1.2 to 1.8 of Schedule 29 – Record Provisions, Schedule 30 – Dispute Resolution Procedure and any other provisions of this Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Agreement, including for termination on the Expiry Date pursuant to Section 47.3.

**49. COMPENSATION ON TERMINATION****49.1. Compensation on Termination**

- (a) If this Agreement is terminated in accordance with the terms hereof, then Schedule 26 - Compensation on Termination shall apply and Health Co shall pay Project Co any applicable compensation on termination.

**49.2. Rights of Set-Off**

- (a) Health Co's obligations to make any payment of compensation to Project Co pursuant to this Section 49, including pursuant to Schedule 26 - Compensation on Termination, are subject to Health Co's right of set-off under Section 34.13 and to deduction of Direct Losses suffered, sustained or incurred by Health Co as a result of, in respect of, or arising out of the event or events which have resulted in the termination and out of the termination, to the extent such Direct Losses are specifically provided for in Schedule 26 (and not other Direct Losses that may be deducted under provisions other than those referring specifically to the term "Direct Losses"), except that where termination is a result of a Health Co Event of Default pursuant to Section 46.2, Force Majeure or other termination pursuant to Section 47.1, a termination pursuant to Section 60, or a termination for convenience or other termination pursuant to Section 47.2 Health Co shall only set-off any amount agreed or determined as due and payable by Project Co to Health Co, and any such Direct Losses, in each case, against any payment of compensation if and to the extent such compensation exceeds the Senior Debt Amount.

**49.3. Full and Final Settlement**

- (a) Except as otherwise provided in Section 49.3(b), any compensation paid pursuant to this Section 49 (as therein adjusted), including pursuant to Schedule 26 - Compensation on Termination in the total amount owing thereunder (if any), shall be in full and final settlement of any claims, demands and proceedings of Project Co and Health Co, or if either the Adjusted Highest Qualifying Tender Price or (as the case may be) the Adjusted Estimated Fair Value calculated under Schedule 26 - Compensation on Termination is zero or a negative number, each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Agreement and any Project Document, and the circumstances leading to such breach or termination, and Project Co and Health Co shall be excluded from all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 49.3(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 34.13 or Section 49.2 or taken into account pursuant to Schedule 26 - Compensation on Termination in determining or agreeing upon the Health Co Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Force Majeure

Termination Sum, Prohibited Acts Termination Sum or any other termination sum, as the case may be; and

- (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 48.9 of this Agreement, or the Sections therein referred to, which did not lead to such termination and which arises or continues after the Termination Date.

**50. EXPIRY TRANSITION PROCEDURE**

**50.1. Expiry Transition**

- (a) Project Co and Health Co shall each comply with the requirements of Schedule 27 - Expiry Transition Procedure.

**PART J. INTELLECTUAL PROPERTY AND CONFIDENTIALITY****51. INTELLECTUAL PROPERTY****51.1. Representation and Warranty**

- (a) Project Co represents and warrants to Health Co and agrees that:
- (i) Project Co is and shall be the sole and exclusive owner of the Project Data and the Intellectual Property Rights or has and shall have the right to provide the licences granted to Health Co herein; and
  - (ii) the Project Data and the Intellectual Property Rights do not and shall not infringe, and are not and shall not be a misappropriation of, any third party Intellectual Property rights, and as of the date of this Agreement Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the Project Data or the Intellectual Property Rights.

**51.2. Delivery of Project Data and Intellectual Property Rights**

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, Health Co free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to Health Co on the aforesaid terms of this Section 51.2, for any and all of the Approved Purposes.

**51.3. Licence of Project Data and Intellectual Property Rights**

- (a) Project Co:
- (i) hereby grants to Health Co, an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
  - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Constructor or a Service Provider, obtain the grant of an equivalent licence to that referred to in Section 51.3(a)(i) to Health Co; provided that such licence may, in respect of Service Providers' Intellectual Property Rights that are proprietary and subject to trademarks, copyright or other intellectual property rights (other than Intellectual Property Rights that are not proprietary, including Intellectual Property Rights developed for Project Co or Health Co or obtained from or through Project Co or Health Co), be limited to the term (including any step-in periods in favour of Health Co) of the relevant Subcontract; and
  - (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Constructor or a Service Provider) obtain the grant of an equivalent licence to that referred to in Section 51.3(a)(i) to Health

Co; provided that Project Co is able to obtain the grant of such a licence from such third party on reasonable commercial terms and conditions.

- (b) In this Section 51.3 and Section 51.5(a), “use” includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

#### **51.4. Jointly Developed Materials**

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and Health Co pursuant to this Agreement or in relation to the Facility, the Site or Project Operations (the “Jointly Developed Materials”), then the Parties hereby acknowledge and agree that Health Co shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of Health Co, execute such further agreements and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfil the intent of this provision.
- (b) Health Co hereby grants Project Co a non-exclusive, and non-transferable licence to use the Jointly Developed Materials during the Project Term for the sole purposes of Project Co performing its obligations under this Agreement.
- (c) Upon termination of this Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to Health Co.

#### **51.5. Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 51 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of Health Co, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable Health Co or its nominee to access and otherwise use (as such term is defined in Section 51.3(b)), subject to the payment by Health Co of any relevant fee, such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 51.5(a), Project Co shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in this Section 51 in accordance with Good Industry Practice. Project Co shall submit to Health Co’s Representative Project Co’s proposals for the back-up and storage in safe custody of such data, materials and documents and Health Co shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which Health Co’s Representative has not objected. Project Co may vary its procedures for such back-up and storage subject to submitting its proposals for change to Health Co’s Representative, who shall be entitled to object on the basis set out above. Any

Disputes in connection with the provisions of this Section 51.5(b) shall be determined pursuant to the Dispute Resolution Procedure with reference to Good Industry Practice.

**51.6. Claims**

- (a) Where a demand, claim, action or proceeding is made or brought against Health Co, the Health Authorities or a Health Co Party which arises out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or because the use of any materials, Plant, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by Health Co otherwise than in accordance with the terms of this Agreement, Project Co shall indemnify, defend and hold harmless Health Co from and against all such demands, claims, actions and proceedings and Section 56.3 shall apply.

**51.7. Health Co/Health Authority Trade-Marks**

- (a) Project Co shall not use any Health Co/Health Authority Trade-Marks without obtaining a trade-mark licence on terms and conditions satisfactory to Health Co and the Health Authorities.

**52. CONFIDENTIALITY****52.1. Confidential Information**

- (a) In this Agreement, "Confidential Information" means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of this Agreement, which is clearly marked as confidential or proprietary when first disclosed, including information disclosed orally if it is identified as confidential at the time of disclosure and further confirmed in writing as confidential within 14 days of disclosure, but excluding Patient Information which shall be dealt with in accordance with Section 53.

**52.2. Use and Disclosure of Confidential Information**

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 52 shall not restrict either Party from disclosing such Confidential Information to its professional advisers, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Agreement.
- (b) Project Co may:
- (i) disclose in confidence to the Funders and prospective Funders and their professional advisers such Confidential Information as is reasonably required by the Funders in connection with the raising of finance for the Project Operations or which Project Co is obliged to supply by the terms of the Funding Agreements; and

- (ii) disclose in confidence to any Project Co Party and their professional advisers, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Agreement.
- (c) Project Co acknowledges that Health Co may disclose in confidence to the Health Authorities, the Province, the Health Co Parties and its and their professional advisers, such Confidential Information, except that in the case of Health Co Parties and professional advisors such disclosure shall only be as is reasonably necessary or desirable for the performance of Health Co's obligations or exercise of its rights pursuant to this Agreement.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Agreement, as permitted by this Agreement or as authorized by the disclosing Party in writing.

### 52.3. Exceptions

- (a) Information of a party (the "Proprietor") will not be considered to be Confidential Information in the following circumstances:
  - (i) the Proprietor advises the other party to whom the information has been disclosed (the "Confidant") that the information is not required to be treated as Confidential Information;
  - (ii) the information is as of the date of this Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
  - (iii) the information is a matter of public record or in the public domain;
  - (iv) the information was in the possession of the Confidant prior to its disclosure;
  - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
  - (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
  - (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure; or
  - (viii) the information is disclosed to Health Co upon a termination of this Agreement, pursuant to Section 48 or is otherwise required by Health Co for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Facility, the operation, maintenance or improvement of the

Facility, or any other operations or services the same as, or similar to, the Project Operations.

#### **52.4. Survival of Confidentiality**

- (a) The obligations in Section 52.1 to Section 52.3 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of the Agreement.

#### **52.5. Disclosure**

- (a) Notwithstanding anything in this Agreement to the contrary, Health Co shall be free to disclose (including on websites) this Agreement and any and all terms thereof, except for those portions of the Agreement that would not be required to be disclosed under the *Freedom of Information and Protection of Privacy Act* (British Columbia). Prior to such disclosure, Health Co shall consult with Project Co.

#### **52.6. Freedom of Information and Protection of Privacy Act**

- (a) Project Co and Health Co acknowledge that the *Freedom of Information and Protection of Privacy Act* (British Columbia) applies to Health Co, this Agreement and to all contractual submissions and other records and that Health Co is required by such Act to fully comply with such Act. Health Co shall, within the time periods provided in such Act for a party to exercise rights to prevent disclosure of information, advise Project Co of any request for Confidential Information that relates to Project Co.

### **53. PERSONAL INFORMATION**

#### **53.1. General**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require Subcontractors to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of Health Co and only to the extent necessary to perform Project Co's obligations under this Agreement.
- (c) Project Co shall, and shall require Subcontractors to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and Health Authority Policies, as amended from time to time, and the requirements of Applicable Law, including the *Freedom of Information and Protection of Privacy Act* (British Columbia) and the *Personal Information Protection Act* (British Columbia). Without limiting the foregoing, Project Co shall, and shall require Subcontractors to, take all necessary steps to meet the requirements of section 30.1 of the *Freedom of Information and Protection of Privacy Act* (British Columbia) to the extent such section is applicable.
- (d) Project Co shall take all necessary and appropriate action, and shall require Subcontractors to take all necessary and appropriate action, against any person who fails to comply with this Section 53.



- (e) Project Co shall allow Health Co on reasonable notice to inspect the measures of Project Co and the Subcontractors to protect Personal Information.

### **53.2. Protection of Patient Information**

- (a) Project Co shall take all necessary steps, including the appropriate technical and organizational and physical security measures, and shall require its Subcontractors to take all necessary steps and to include provisions in Subcontracts to require their Subcontractors and other Project Co Parties to take all necessary steps, such that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Patient Information.
- (b) Project Co shall keep confidential, and shall require its Subcontractors to keep confidential and to include provisions in all Subcontracts to require all Subcontractors and other Project Co Parties to keep confidential, all Patient Information that any of them may encounter or obtain during the course of their duties.
- (c) Health Co may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within 2 Business Days of such request an agreement satisfactory to Health Co, acting reasonably, requiring such person to keep Patient Information confidential.
- (d) This Section 53.2 shall not limit Section 53.1.

### **53.3. Survival**

- (a) The obligations in this Section 53 shall survive the termination of this Agreement.

**PART K. INSURANCE AND LIABILITIES****54. INSURANCE****54.1. General Requirements**

- (a) Project Co and Health Co shall comply with the provisions of Schedule 28 - Insurance Requirements.

**54.2. No Relief from Liabilities and Obligations**

- (a) Neither compliance nor failure to comply with the insurance provisions of this Agreement shall relieve Project Co or Health Co of their respective liabilities and obligations under this Agreement.

**55. TITLE****55.1. Title**

- (a) Subject to Sections 21.11 and 55.1(b), title to each item and part of the Works and the Project Operations, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items (save and except only Category E Equipment), but not the risk of loss or damage or destruction thereto or thereof, shall pass to Health Co upon the receipt of such item on the Site, provided however that title to items of tangible personal property (as defined in the SST Act) that comprise the Facility or are to be affixed or attached to the Facility prior to Substantial Completion shall pass to Health Co at the time that such items are included in the Facility or affixed or attached to the Facility.
- (b) Project Co shall purchase all items of tangible personal property (as defined in the SST Act) for Health Co. Project Co agrees that any reimbursement of PST applicable to such tangible personal property is included in the Periodic Service Payments.

**55.2. [\*Reserved]****56. INDEMNITIES****56.1. Project Co Indemnities to Health Co**

- (a) Project Co shall indemnify and save harmless Health Co and the Health Authorities and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:
- (i) any physical loss of or damage to all or any part of the Site and the Facility, or to any equipment, assets or other property used by or on behalf of Health Co, the Health Authorities or any Health Co Party;
  - (ii) the death or personal injury of any person;

- (iii) any physical loss of or damage to property or assets of any third party; or
- (iv) any other loss or damage of any third party,

arising, directly or indirectly, out of, or in consequence of, any breach of this Agreement by Project Co or any act or omission of Project Co or any Project Co Party, except to the extent caused, or contributed to, by:

- (A) the breach of this Agreement by Health Co; or
  - (B) in respect of Section 56.1(a)(i) any deliberate or negligent act or omission of Health Co, of the Health Authorities (including their agents, contractors and subcontractors) or of any Health Co Party; or
  - (C) in respect of Sections 56.1(a)(ii), 56.1(a)(iii) or 56.1(a)(iv) any act or omission of Health Co, of the Health Authorities (including their agents, contractors and subcontractors) or of any Health Co Party; or
  - (D) a deliberate act or omission of a Clinical/Non-Clinical Service User that results in undue interference with Project Co's performance of the Services and Project Co has been unable to take the reasonable action necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of Health Co or an appropriate Health Co Party, except to the extent:
    - (I) any such deliberate act or omission is caused or contributed to by Project Co or any Project Co Party; or
    - (II) the Clinical/Non-Clinical Service User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (b) Project Co shall indemnify and save harmless Health Co and the Health Authorities and each of their respective directors, officers, employees, agents and representatives, from and against any and all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless Health Co and the Health Authorities and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:
- (i) the performance by Project Co of this Agreement not in accordance with or in breach of the requirements of any Permits, Licences and Approvals, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Permits, Licences and Approvals in accordance with this Agreement;

- (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which Health Co is responsible pursuant to Section 16.2(a); or
- (iii) any claim from a third party arising from a failure of Project Co to comply with its obligations under Section 18.6(c),

except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Agreement by Health Co or by any act or omission of Health Co or any Health Co Party or Health Authority.

#### **56.2. Health Co Indemnities to Project Co**

- (a) Health Co shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:
  - (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, breach of this Agreement by Health Co or any Health Co Party or any act or omission of Health Co, the Health Authorities (including their agents, contractors and subcontractors) or any Health Co Party, except to the extent caused, or contributed to, by the breach of this Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
  - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, breach of this Agreement by Health Co or any Health Co Party, or any deliberate or negligent act or omission of Health Co, the Health Authorities (including their agents, contractors and subcontractors) or any Health Co Party, except to the extent caused, or contributed to, by the breach of this Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and
  - (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, breach of this Agreement by Health Co or any Health Co Party or any act or omission of Health Co, the Health Authorities (including their agents, contractors and subcontractors) or any Health Co Party, except to the extent caused, or contributed to, by the breach of this Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

provided that there shall be excluded from the indemnity given by Health Co any liability for the occurrence of risks against which Project Co is bound to insure under this Agreement to the extent of the proceeds available or that should have been available but for a failure by Project Co to properly insure in accordance with the terms hereof.

- (b) Health Co shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses

which may be suffered, sustained or incurred as a result of, in respect of, or arising out of any breach of a representation or warranty by Health Co herein.

### 56.3. Conduct of Claims

- (a) This Section 56.3 shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the "Beneficiary" and the Party giving the indemnity is referred to as the "Indemnifier".
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 56, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 30 days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 56.3(d), 56.3(e) and 56.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary's reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of the Indemnifier and Beneficiary would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) With respect to any claim conducted by the Indemnifier:
  - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

- (v) the Indemnifier shall use all reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 56.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
  - (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 56.3(c);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 30 days of the notice from the Beneficiary under Section 56.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or
  - (iii) the Indemnifier fails to comply in any material respect with Section 56.3(d).
- (f) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 56.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where Health Co is the Beneficiary, Health Co may retain or take over such conduct in any matter involving patient, clinical or research confidentiality or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 56.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the "Recovery Amount") which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
  - (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
  - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery

Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (h) Any person taking any of the steps contemplated by this Section 56.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

#### **56.4. Mitigation – Indemnity Claims**

- (a) For greater certainty, Section 9.8 applies to any indemnity given under this Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

#### **56.5. [\*Reserved]**

### **57. LIMITS ON LIABILITY**

#### **57.1. Indirect Losses**

- (a) Without prejudice to Health Co's rights under the Payment Mechanism or any liquidated damages provided for herein, or the Parties' rights in respect of payments provided for herein, the indemnities under this Agreement shall not apply and there shall be no right to claim damages for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party ("Indirect Losses").

#### **57.2. No Liability in Tort**

- (a) Subject to the indemnities provided herein, Health Co, the Health Authorities and the Health Co Parties shall not be liable in tort to Project Co or any Project Co Party, and Project Co or any Project Co Party shall not be liable in tort to Health Co, the Health Authorities and any Health Co Party in respect of any negligent act or omission of any such person relating to or in connection with this Agreement and no such person shall bring such a claim.

#### **57.3. Sole Remedy**

- (a) Subject to:
  - (i) any other rights of Health Co pursuant to this Agreement; and
  - (ii) Health Co's right to claim, on or after termination of this Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Agreement by Project Co except to the extent that the same has already been recovered by Health Co pursuant to this Agreement or has been taken into account to reduce any compensation payable by Health Co pursuant to Section 49,

the sole remedy of Health Co in respect of a failure to provide the Services in accordance with this Agreement shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 57.3(a) shall prevent or restrict the right of Health Co to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (c) Notwithstanding any other provision of this Agreement, neither Party shall be entitled to recover compensation or make a claim under this Agreement, or any other agreement in relation to the Project in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Agreement, or otherwise.



**PART L. MISCELLANEOUS****58. DISPUTE RESOLUTION PROCEDURE**

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 30 - Dispute Resolution Procedure.

**59. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL****59.1. Project Co Assignment**

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Agreement, the Construction Contract or any of the Service Contracts without the prior written consent of Health Co, not to be unreasonably withheld, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliates is a Restricted Person or a person whose standing or activities are inconsistent with the AHCC's role as a hospital and cancer centre and the mandate of the Health Authorities so as to potentially compromise the reputation or integrity of the AHCC, Health Co or any Health Authority or are inconsistent with the nature of the Province's health care system so as to potentially affect public confidence in that system.
- (b) Section 59.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Funding Agreements provided that any grantee of such security shall enter into the Funders' Direct Agreement in relation to the exercise of its rights, if Health Co so requires.

**59.2. Health Co Assignment**

- (a) Health Co may assign, transfer, charge, dispose of or otherwise alienate its interest in this Agreement to any person, including any of the Health Authorities, who is capable of performing Health Co's obligations hereunder and who assumes Health Co's obligations hereunder, provided the Province expressly confirms that the Province remains liable to Project Co pursuant to the Payment Guarantee, and upon any such assignment, transfer, charge, disposition or other alienation and confirmation by the Province pursuant to this Section 59.2(a), Health Co shall be released of all of its obligations hereunder. Except in accordance with the foregoing, Health Co shall not assign, transfer, charge, dispose of or otherwise alienate its interest in this Agreement, to any person without the prior written consent of Project Co, not to be unreasonably withheld.

**59.3. Subcontractors**

- (a) Project Co shall not subcontract any interest in this Agreement, the Construction Contract or any of the Service Contracts without the prior written consent of Health Co, not to be unreasonably withheld, provided however that no subcontracting shall be permitted to a person where that person or its Affiliates is a Restricted Person or a person whose standing or activities are inconsistent with the AHCC's role as a hospital and cancer centre and the mandate of the Health Authorities so as to potentially compromise the reputation or integrity of the AHCC, Health Co or any Health Authority

or are inconsistent with the nature of the Province's health care system so as to potentially affect public confidence in that system.

- (b) Project Co shall:
- (i) not terminate or agree to the termination of the engagement or employment of, or the replacement of, the Constructor or any Service Provider under the Ancillary Documents without having complied with Sections 59.3(c), 59.3(d) and 59.3(e) and Section 7.2(a); and
  - (ii) require that none of the Constructor or the Service Providers shall subcontract all or substantially all of their obligations under or in their respective Subcontracts (except as set out in Section 59.3(f)),
- without the prior written consent of Health Co, not to be unreasonably withheld.
- (c) Project Co shall require that none of the Subcontractors, including the Constructor and Service Providers, shall subcontract any obligations under or in their respective Subcontracts where the proposed Subcontractor or its Affiliates is a Restricted Person or a person whose standing or activities are inconsistent with the AHCC's role as a hospital and cancer centre and the mandate of the Health Authorities so as to potentially compromise the reputation or integrity of the AHCC, Health Co or any Health Authority or are inconsistent with the nature of the Province's health care system so as to potentially affect public confidence in that system.
- (d) If the Subcontract for any person referred to in Section 59.3(b) shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that such person shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement subject to Health Co's prior written approval, acting reasonably, as to the suitability of the replacement. Any such appointment shall be subject to compliance with Section 59.3(e) and Schedule 24 - Market Testing Procedure, provided however that no such Subcontract shall be permitted where the proposed Subcontractor or its Affiliates is a Restricted Person or a person whose standing or activities are inconsistent with the AHCC's role as a hospital and cancer centre and the mandate of the Health Authorities so as to potentially compromise the reputation or integrity of the AHCC, Health Co or any Health Authority or are inconsistent with the nature of the Province's health care system so as to potentially affect public confidence in that system.
- (e) It is a condition of replacement for any person referred to in Section 59.3(b)(i) that, and Project Co shall require that, such person shall enter into a contract upon the same or substantially similar terms as the person so replaced and shall also enter into a collateral agreement on the same terms as the Collateral Agreement entered into by the person so replaced, unless any material variations are approved by Health Co acting reasonably. It is a further condition of any Subcontract of all or substantially all of the Services to be performed by Project Co as described in Section 4.E1 of the FM Output Specifications that the Subcontractor enter into a collateral agreement that is substantially in the form of the Service Providers' Collateral Agreements.

- (f) Health Co acknowledges that as of the date of this Agreement, the Constructor or the Service Providers shall subcontract as follows:

Name of Subcontractor	Scope of Subcontract
<b>Constructor's Subcontractors:</b>	
Houle Electrics	Electrical
Lockerbie & Hole	Mechanical

#### 59.4. Changes in Control

- (a) Prior to the date upon which the Deferred Equity Contribution is made fully and unconditionally and without prejudice to Section 59.4(b) below, no Change in Control of Project Co, or any company of which Project Co is a subsidiary, shall be permitted without the prior written consent of Health Co in its sole discretion where the person acquiring control has an external credit rating of less than A1 by Moody's Investors Services Inc. (or the equivalent from another rating agency) or such person provides a letter of credit or other form of security which achieves an equivalent credit rating.
- (b) No Change in Control of Project Co, or any company of which Project Co is a subsidiary, shall be permitted without the prior written consent of Health Co, acting reasonably; provided however that (i) no Change in Control of Project Co, or any company of which Project Co is a subsidiary, shall be permitted without the prior written consent of Health Co in its sole discretion where the person acquiring control is a Restricted Person or a person whose standing or activities are inconsistent with the AHCC's role as a hospital and cancer centre and the mandate of the Health Authorities so as to potentially compromise the reputation or integrity of the AHCC, Health Co or any Health Authority or are inconsistent with the nature of the Province's health care system so as to potentially affect public confidence in that system and (ii) Health Co may withhold its consent, acting reasonably, if any such Change in Control would likely have a material adverse effect on the Project Operations or Health Co or the Health Authorities performing the Clinical/Non-Clinical Services.
- (c) Without limiting Sections 59.4(a) and 59.4(b), no Change in Control of Project Co, or any company of which Project Co is a subsidiary, shall be permitted without the prior written consent of Health Co (which, prior to the third anniversary of the Substantial Completion Date, may be withheld in its sole discretion, but thereafter shall not be unreasonably withheld), if the Management Agreement or ABN AMRO Bank N.V., Canada Branch's role under the Trust Indenture has been, or will as a result of such Change in Control, be terminated other than at the instance of arm's length Bond Holders (as that term may be defined in the Trust Indenture).

- (d) This Section 59.4 shall not apply to a Change in Control of companies whose equity securities are listed on a recognized stock exchange nor to a Tax Loss Consolidation Transaction.

## 60. PROHIBITED ACTS

### 60.1. Definition

- (a) The term "Prohibited Act" means:
- (i) offering, giving or agreeing to give to Health Co or any public body or to any person employed by or on behalf of Health Co or any public body, or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
    - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Agreement or any other agreement with Health Co or any public body in relation to the AHCC; or
    - (B) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with Health Co or any public body in relation to the AHCC;
  - (ii) entering into this Agreement or any other agreement with Health Co or any public body in connection with the AHCC for which a commission or a fee has been paid or has been agreed to be paid by Project Co or on its behalf to Health Co or any public body or to any person employed by or on behalf of Health Co or any public body, or to any family member of such person, unless before the relevant agreement is entered into particulars of any such commission or fee have been disclosed in writing to Health Co;
  - (iii) breaching or committing any offence under any Applicable Law in respect of corrupt or fraudulent acts in relation to this Agreement or any public body in connection with the AHCC; or
  - (iv) defrauding or attempting to defraud or conspiring to defraud Health Co or any other public body in relation to this Agreement or any other agreement with Health Co or any public body in connection with the AHCC.

### 60.2. Warranty

- (a) Project Co represents and warrants that neither Project Co nor (to the knowledge actually held by Project Co's directors and officers but without personal liability) any Project Co Party has directly or indirectly committed any Prohibited Act in relation to the award of or entry into this Agreement.

**60.3. Remedies**

- (a) If Project Co or any Project Co Party has committed, or after the date of this Agreement commits, any Prohibited Act, then Health Co shall be entitled to act in accordance with the following:
- (i) if a Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then Health Co may give written notice to Project Co and Section 45 shall apply;
  - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then Health Co may give written notice to Project Co and Section 45 shall apply, unless within 30 days of receipt of such notice Project Co terminates the employee's employment and the relevant part of the Project Operations shall be performed by another person;
  - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then Health Co may give written notice to Project Co and Section 45 shall apply, unless within 30 days of receipt of such notice Project Co causes the termination of the relevant Subcontract and the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 59.3; and
  - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then Health Co may give notice to Project Co and Section 45 shall apply, unless within 30 days of receipt of such notice Project Co causes the termination of the employee's employment and the relevant part of the Project Operations shall be performed by another person.
- (b) Any notice of termination under this Section 60.3 shall specify:
- (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom Health Co believes has committed the Prohibited Act; and
  - (iii) the date of termination in accordance with the applicable provisions of this Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 60.3, Health Co shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 60.

**60.4. Permitted payments**

- (a) Nothing contained in this Section 60 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed



- (c) Either Party to this Agreement may at any time and from time to time change its nominated address or facsimile number or contact person by prior notice to the other Party, and such change shall be effective on the day that next follows the recipient Party's receipt of such notice.
- (d) Notices given by mail shall be effective upon the earlier of (i) actual receipt, and (ii) 7 days after mailing if mailed within Canada, and 21 days after mailing if mailed outside of Canada. Notices delivered personally shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- (i) within 2 hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
  - (ii) by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.
- (e) If the Party giving the notice or communication knows or ought reasonably to know of difficulties or disruption with the postal system which might affect the delivery of mail:
- (i) any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission; and
  - (ii) where such difficulties or disruption arise after mailing but before the date of receipt as provided in Section 61.1(d), the party giving such notice shall make or give such notice by personal delivery or by facsimile transmission.
- (f) To be effective, notices and all formal communications under this Agreement shall be in writing and delivered as provided in this Section 61.1, and shall be signed by an authorized representative of the Party giving the notice. E-mails shall not be used for and shall not constitute notices under this Agreement.
- (g) Oral communications shall not constitute formal communication under this Agreement and neither Party has any obligation to act on any oral communication, instruction or assurance unless and until it is confirmed in writing. Any action taken by a Party based on oral communications, instructions or assurances shall be at that Party's sole risk and shall be without liability to or recourse against the other Party.

#### **61.2. Exclusion of United Nations Convention and Inco Terms**

- (a) The Parties agree that:
- (i) the United Nations Convention on Contracts for the International Sale of Goods (1980); and
  - (ii) Incoterms 2000 published by the International Chamber of Commerce, or any amendment or successor thereto,

do not and shall not apply to this Agreement.

**61.3. Amendments**

- (a) No oral or written amendment or modification of this Agreement (including a Variation Confirmation signed by the Parties) by any representative of Project Co or Health Co, either before or after execution and delivery of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized officer of the Party to be bound thereby.

**61.4. Waiver**

- (a) No waiver of any rights under this Agreement shall be binding or effective unless the waiver is in writing and signed by an authorized representative of the Party giving such waiver.
- (b) Either Party's waiver of any of its rights under this Agreement or of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of this Agreement at any time, and any consent or permission hereunder, shall not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade notwithstanding.

**61.5. Time is of the Essence**

- (a) Time is of the essence of this Agreement and each provision herein, provided, however, the remedy of rescission in connection with, relating to, or as a result of, a breach of any provision herein relating to time shall not be available to either Party, unless as otherwise specifically provided for under the terms of this Agreement.

**61.6. Independent Contractor**

- (a) The Parties are independent contractors. This Agreement is not intended to and does not create or establish between the Parties, or between Health Co and the Project Co Parties, any relationship as partners, joint venturers, employer and employee, master and servant, or except as provided in this Agreement, of principal and agent, and does not create or establish any relationship whatsoever between Health Co and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
  - (i) except as provided otherwise in this Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent it is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation on behalf of or binding upon, or purportedly binding upon, the other Party;
  - (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation



Board or other similar levies with respect to any persons employed or engaged by the other Party;

- (iii) except as otherwise provided in this Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Agreement; and
- (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

#### **61.7. Actual Knowledge**

- (a) Without limitation to its actual knowledge, Project Co and Health Co shall for all purposes of this Agreement, be deemed to have such knowledge in respect of the Project as is actually held by their respective directors and officers.

#### **61.8. Entire Agreement**

- (a) Except where provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

#### **61.9. No Reliance**

- (a) Each of the Parties acknowledge that:
  - (i) except as provided in Section 6.4, it has not entered into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Agreement or not, except those made, given or repeated in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and
  - (ii) this Section 61.9 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

#### **61.10. Severability**

- (a) Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law. If any provision of this Agreement shall be invalid,

unenforceable or illegal, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.

**61.11. Enurement**

- (a) This Agreement and any other agreement in connection with the Project to which both Health Co and Project Co are parties shall enure to the benefit of and be binding on each of the Parties and their respective successors and permitted transferees and assigns.

**61.12. Governing Law and Jurisdiction**

- (a) This Agreement, and each of the documents contemplated by or delivered under or in connection with this Agreement, shall be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein and shall be treated in all respects as a contract in the Province of British Columbia, without regard to conflict of laws principles.
- (b) Subject to the Dispute Resolution Procedure, both Parties agree that the courts of British Columbia shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and hereby irrevocably attorn to the jurisdiction of those courts.

**61.13. Cumulative Remedies**

- (a) Except as otherwise set forth in this Agreement, the rights, powers and remedies of each Party set forth in this Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Agreement.

**61.14. Further Assurance**

- (a) Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

**61.15. Costs**

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Agreement.

**61.16. Language of Agreement**

- (a) Each of the parties acknowledges having requested and being satisfied that this document and its accessories be drawn in English. Chacune des parties reconnaît avoir

demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

- (b) All correspondence, notices, drawings, Design Data, test reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall be in English.

**61.17. Proof of Authority**

- (a) Health Co reserves the right to require everyone executing this Agreement on behalf of Project Co to provide proof, in a form acceptable to Health Co, that they have the requisite authority to execute this Agreement on behalf of and to bind Project Co.

**61.18. Counterparts**

- (a) This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall, upon the other Party's request, promptly forward to the other Party an original signed copy of this Agreement which was so faxed.

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date of this Agreement:

EXECUTED AND DELIVERED by )  
 ABBOTSFORD HOSPITAL AND )  
 CANCER CENTRE INC. acting by )  
 )

\_\_\_\_\_  
Authorized Signatory )

\_\_\_\_\_  
Full Name )

\_\_\_\_\_  
Authorized Signatory )

\_\_\_\_\_  
Full Name )

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Witness (Full Name)

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Witness (Full Name)

EXECUTED AND DELIVERED by **AHA** )  
**ACCESS HEALTH ABBOTSFORD LTD.** )  
acting by )  
)

\_\_\_\_\_  
Authorized Signatory )

\_\_\_\_\_  
Full Name )

\_\_\_\_\_  
Authorized Signatory )

\_\_\_\_\_  
Full Name )

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Witness (Full Name)

\_\_\_\_\_  
Witness (Signature)

\_\_\_\_\_  
Witness (Full Name)

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**SCHEDULE 1****DEFINITIONS AND INTERPRETATION**

- 1. Definitions.** In this Agreement unless the context otherwise requires:
- 1.1 “5 Year Maintenance Plan” means the rolling plan to be prepared by or on behalf of Project Co as described in Section 4.E8 of Schedule 18 - Output Specifications.
- 1.2 “Access Times” has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.
- 1.3 “Actual Utility Usage” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.4 “Adjusted Estimated Fair Value” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.5 “Adjusted Highest Qualifying Tender Price” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.6 “Adjusted Lower Utility Limit” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.7 “Adjusted Lower Utility Price” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.8 “Adjusted Upper Utility Limit” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.9 “Adjusted Upper Utility Price” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.10 “Adjusted Utility Threshold” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.11 “Adverse Law” means any coming into effect or repeal (without re-enactment or consolidation), or any amendment or variation, of any Applicable Law, which renders Health Co incapable of performing the whole of its obligations under this Agreement.
- 1.12 “Affected Sessions” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.13 “Affiliate” means an “affiliate” as that term is used in the *Business Corporations Act* (British Columbia) and any successor legislation thereto, and in the case of Project Co shall include each of the Shareholders.
- 1.14 “Affiliated Person” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.15 “Agreement” has the meaning given in Section 1.1(b).

- 1.16 “AHCC” has the meaning given in recital A.
- 1.17 “Ancillary Documents” means the Construction Contract, the Service Contracts, the Facilities Coordination Agreement and the Services Coordination Agreement, all as the same may be amended or replaced from time to time.
- 1.18 “Annual Service Payment” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.19 “Annual Utility Price” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.20 “Anticipated Substantial Completion Date” has the meaning given in Section 24.7(a).
- 1.21 “Applicable Law” means all Permits, Licences and Approvals (other than consents and agreements from any third parties that are not Governmental Authorities) and all statutes, laws, regulations, by-laws, rules, codes (including design and building codes), ordinances, judgments, decrees, writs, administrative interpretations, injunctions or orders, of any Governmental Authority, with which a Party is legally obligated to comply, including the common law and the law of equity.
- 1.22 “Applicable Standard” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.23 “Approved Certified Supplier” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.24 “Approved Purposes” means:
- (a) Health Co, the Health Authorities and Health Co Parties performing the Clinical/Non-Clinical Services, and their operations relating to the performance of the Clinical/Non-Clinical Services, any other activities of Health Co, the Health Authorities or Health Co Parties in connection with the Facility and the Site and Health Co’s rights and obligations under this Agreement or in respect of the Facility and Site (except with respect to future development of the Site that is not in connection with providing Clinical /Non-Clinical Services or other healthcare services); and
  - (b) following termination of this Agreement or as otherwise provided herein, Health Co’s rights and obligations under this Agreement, performing (or having performed) the Project Operations, including the design or construction of the Facility and the operation, maintenance or improvement of the Facility, and any other operations or services the same as, or similar to, the Project Operations in connection with the Facility and Site.
- 1.25 “Architect of Record” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.26 “as built drawings” has the meaning given in Schedule 17 – Outline Commissioning Program.

- 1.27 “Authority Having Jurisdiction”, “Authorities Having Jurisdiction” and similar terms, whether capitalized or not, mean Governmental Authorities.
- 1.28 “Availability Condition” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.29 “Availability Factor” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.30 “Background Information” means any and all drawings, reports (including the Environmental Reports), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by Health Co, Partnerships British Columbia Inc., the Health Authorities or any Health Co Party, or which was obtained from or through any other sources to the date of this Agreement.
- 1.31 “Base Case Equity IRR” has the meaning given in Schedule 26 - Compensation on Termination.
- 1.32 “Base Case Project IRR” has the meaning given in Schedule 9 - Financial Close Information.
- 1.33 “Base Date” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.34 “Basic Maintenance” has the meaning given in Section E8.1 of Schedule 18 - Output Specifications.
- 1.35 “BC Building Code” has the meaning given in Schedule 17 – Outline Commissioning Program.
- 1.36 “BCCA” means the British Columbia Cancer Agency Branch.
- 1.37 “BC Hydro Works” has the meaning given in Section 22.1(a)(i).
- 1.38 “BCICAC” has the meaning given in Schedule 30 - Dispute Resolution Procedure.
- 1.39 “Bedding-in Period” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.40 “Benchmarking Exercise” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.41 “Benchmark Price” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.42 “Benchmarking Proposal” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.43 “Beneficiary” has the meaning given in Section 56.3(a).
- 1.44 “Best Practices or Best Design Practices” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.45 “Bonus Payment” has the meaning given in Schedule 23 - Payment Mechanism.

- 1.46 “Builders Risk Policy” has the meaning given in Schedule 28 - Insurance Requirements.
- 1.47 “Building Envelope” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.48 “Building Envelope Professional” or “BEP” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.49 “Building Permit” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.50 “Business Day” means a day other than a Saturday, Sunday or a statutory holiday in British Columbia.
- 1.51 “Business Opportunities” has the meaning given in Section 4.1.
- 1.52 “CaGBC” has the meaning given in Section 22.3(a)(i).
- 1.53 “Canadian and Industry Standard” has the meaning given in Schedule 17 – Outline Commissioning Program.
- 1.54 “Capital Expenditure” means capital expenditure as interpreted in accordance with Canadian accepted accounting principles.
- 1.55 “Car Parking Areas” has the meaning given in Section 4.E12.1 of Schedule 18 – Output Specifications.
- 1.56 “Car Parking Users” has the meaning given in Section 4.E12.1 of Schedule 18 – Output Specifications.
- 1.57 “Cash Allowance Equipment” means Category A Equipment and Category B1 Equipment.
- 1.58 “Cash Allowance Equipment Commissioning” has the meaning given in Schedule 17 – Outline Commissioning Program.
- 1.59 “Cash Allowance Equipment Costs” means, with respect to Cash Allowance Equipment, the amounts, as applicable, approved by Health Co and paid to Suppliers for procurement, Supplier Installation, provision of service agreements, warranties, supplies, spare parts, start-up consumables, training, and any other costs approved in writing by Health Co to be Cash Allowance Equipment Costs.
- 1.60 “Category A Equipment” means Category A: Medical Equipment.
- 1.61 “Category A Failure Event” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.62 “Category A: Medical Equipment” has the meaning given in the Equipment List.
- 1.63 “Category B1 Equipment” means Category B1: Other Equipment.



- 1.64 “Category B Failure Event” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.65 “Category B1: Other Equipment” has the meaning given in the Equipment List.
- 1.66 “Category B2 Equipment” means Category B2: Furniture.
- 1.67 “Category B2 Furniture” has the meaning given in the Equipment List.
- 1.68 “Category C Equipment” means Category C: IMT/End Use Devices.
- 1.69 “Category C Failure Event” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.70 “Category C: IMT/End Use Devices” has the meaning given in the Equipment List.
- 1.71 “Category D Equipment” means Category D: Start Up Equipment.
- 1.72 “Category D Failure Event” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.73 “Category D: Start Up Equipment” has the meaning given in the Equipment List.
- 1.74 “Category E Equipment” means Category E: Project Co Supplied Equipment for Services under Section 4 of the Output Specifications.
- 1.75 “Category E Failure Event” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.76 “Category E: Project Co Supplied Equipment for F.M. Services” has the meaning given in the Equipment List.
- 1.77 “Category F Equipment” means Category F: Equipment in Construction Specifications.
- 1.78 “Category F: Equipment in Construction Specifications” has the meaning given in the Equipment List.
- 1.79 “Change in Control” means, with respect to a person:
- (a) any change in ownership, whether beneficial or otherwise, of, or direct or indirect power to vote or transfer, any of the shares or units of ownership of that person where the effect of such change is to effectively result in control of the decisions made by or on behalf of such person being with a different entity or entities than prior to such change;
  - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
  - (c) any other change of direct or indirect power to direct or cause the direction of the management, actions or policies of that person.

- 1.80 “Change in Law” means the coming into effect or repeal (without re-enactment or consolidation) in British Columbia of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in British Columbia in each case after the date of this Agreement.
- 1.81 “Class I” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.82 “Class II” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.83 “Class III” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.84 “Class C roof covering” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.85 “Cleaning Services” has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.
- 1.86 “Cleaning Staff” has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.
- 1.87 “Clinical Functionality” means the following matters:
- (a) the points of access to and within the Site and the buildings comprising the Facility;
  - (b) the relationship between one or more buildings that comprise the Facility;
  - (c) the adjacencies between the AHCC departments as set out in Section 1.1.3 (Key Functional Groupings) of Schedule 18 - Output Specifications.
  - (d) the adjacencies between rooms within such AHCC departments; and
  - (e) the quantity and function of those rooms and spaces shown on the Schedule of Accommodation,
- but only insofar as each of the matters listed in (a) to (e) of this definition relate to or affect Clinical Use.
- 1.88 “Clinical Functionality Report” has the meaning given in Section 18.8(a).
- 1.89 “Clinical/Non-Clinical Service User” means a person present at the Facility in order to make use of or be benefited by the Clinical/Non-Clinical Services (and such term shall exclude any Health Co Party or Project Co Party save where such person is present at the Facility solely for such purpose).
- 1.90 “Clinical/Non-Clinical Services” means management, responsibility, administration and performance of the clinical, medical, and other services and activities provided or

performed at the Facility by the Health Authorities or Health Co, as applicable, from time to time, including all clinical, medical, out-patient, in-patient, clinical support, non-clinical and other services and activities specified in the Clinical Output Specifications and the Non-Clinical Output Specifications, which are not services or activities to be provided or performed by Project Co to Health Co under this Agreement.

- 1.91 “Clinical Services” means Section 2 of Schedule 18 - Output Specifications.
- 1.92 “Clinical Use” means the use of a room or space to the extent that it is used by Health Co, the Health Authorities and the Health Co Parties, but not Project Co or the Project Co Parties, for carrying out the Clinical/Non-Clinical Services.
- 1.93 “Collateral Agreements” means the Constructor’s Collateral Agreement and the Service Providers’ Collateral Agreements.
- 1.94 “Commissioning Tests” has the meaning given in Schedule 17 – Outline Commissioning Program.
- 1.95 “Compensation Date” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.96 “Compensation Event” has the meaning given in Section 41.1.
- 1.97 “Confidant” has the meaning given in Section 52.3(a).
- 1.98 “Confidential Information” has the meaning given in Section 52.1(a).
- 1.99 “Construction Contract” means the design and build contract dated on or about the date of this Agreement between Project Co and the Constructor as amended from time to time in accordance with this Agreement.
- 1.100 “Construction Quality Plan” means such document included in Schedule 12 - Design Quality Plan and Construction Quality Plan.
- 1.101 “Constructor” means PCL Constructors Westcoast Inc. engaged by Project Co to perform the Works and any substitute design or building contractor engaged by Project Co as may be permitted by this Agreement.
- 1.102 “Constructor’s Collateral Agreement” means the collateral agreement between Health Co, Project Co, the Constructor and the applicable guarantor in the form set out in Schedule 5-1 – Constructor’s Collateral Agreement.
- 1.103 “Contamination” means, where that term is specifically defined for all or any part of Schedule 18 – Output Specifications, the meaning it is given therein, but only in respect of that part of Schedule 18 – Output Specifications to which such definition applies, and in all other instances means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or

groundwater, as applicable, containing the Contamination shall also be deemed for the purposes of this Agreement to be Contamination.

- 1.104 “Contract Day” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.105 “Contract Year” means the period of 12 calendar months that commences on April 1st of each calendar year and ends on the next ensuing March 31st, provided that:
- (a) the first Contract Year shall be such period that commences on the date of this Agreement and ends on the next ensuing March 31st; and
  - (b) the final Contract Year shall be such period that commences on the April 1st that precedes the date on which this Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of this Agreement.
- 1.106 “Convenient by General Circulation” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.107 “Countdown Notice” has the meaning given in Section 24.7(a).
- 1.108 “Course” has the meaning given in Section 2.A1(h).1.1.4 of Schedule 18 – Output Specifications.
- 1.109 “CPI” means the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 30 - Dispute Resolution Procedure, most closely resembles such index.
- 1.110 “CPI<sub>n</sub>” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.111 “CPI<sub>o</sub>” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.112 “CSA Standard” has the meaning given in Schedule 17 – Outline Commissioning Program.
- 1.113 “Cultural” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.114 “Daily Repayment Amount” has the meaning given in Schedule 9 - Financial Close Information.
- 1.115 “Data” has the meaning given in Section 4.E10.1 of Schedule 18 – Output Specifications.
- 1.116 “Deemed New Agreement” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.117 “Default Interest Rate” means simple interest at an annual rate equal to 2% over the Prime Rate.

- 1.118 “Deferred Equity Contribution” means the equity contribution to Project Co committed to be made by the Shareholder(s) under the Equity Purchase Agreement, but not advanced or contributed as of the date of this Agreement.
- 1.119 “Delay Event” has the meaning given in Section 40.1(a).
- 1.120 “Demand Maintenance” has the meaning given in Section 4.E8.1 of Schedule 18 – Output Specifications.
- 1.121 “Design and Technical Output Specifications” means Section 5 of Schedule 18 - Output Specifications.
- 1.122 “Design/Construction Requirements” means all requirements set out or identified in the Output Specifications, other than the requirements set out in FM Output Specifications, as amended from time to time in accordance with the terms of this Agreement.
- 1.123 “Design Control Covenant” means the covenant registered against title to the Site in favour of the City of Abbotsford registered under number BW350735, as extended by the covenant registered under number BW350743.
- 1.124 “Design Data” means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Facility, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.125 “Design Quality Plan” means such document included in Schedule 12 - Design Quality Plan and Construction Quality Plan.
- 1.126 “Detailed Works Schedule” has the meaning given in Section 20.2(a).
- 1.127 “Development Agreement” means the covenant registered against title to the Site in favour of the City of Abbotsford registered under number BV225961, as extended by the covenant registered under number BW350744.
- 1.128 “Development Approval” means development permits, building permits and any other planning or development permit, consent or applicable Permits, Licences or Approvals required from time to time for construction or operation of the Facility.
- 1.129 “Dietician” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.130 “Direct Access by General Circulation - Important” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.131 “Direct Access by Internal Circulation - Essential” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.132 “Direct by Virtual or Dedicated Mechanical Circulation” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.

- 1.133 "Direct Cost" has the meaning given in Schedule 25 - Variation Procedure.
- 1.134 "Direct Losses" means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a solicitor-client basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.135 "Discount Rate" has the meaning given in Schedule 26 – Compensation on Termination.
- 1.136 "Discriminatory Change in Law" means any Change in Law the effect of which is to discriminate directly against:
- (a) hospitals whose design, construction, financing and operation are procured by a contract similar to this Agreement in relation to other similar hospitals and/or cancer centres;
  - (b) the AHCC in relation to other hospitals and cancer centres; or
  - (c) Project Co in relation to other companies that have contracts for design, construction, financing and operation that are procured by a contract similar to this Agreement in relation to other similar hospitals and cancer centres,
- except that such Change in Law shall not be a Discriminatory Change in Law:
- (d) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
  - (e) where it is permitted hereunder;
  - (f) **[\*DELETION]**; or
  - (g) **[\*DELETION]**.
- 1.137 "Dispute" has the meaning given in Schedule 30 - Dispute Resolution Procedure.
- 1.138 "Dispute Resolution Procedure" means the procedure set out in Schedule 30 - Dispute Resolution Procedure.
- 1.139 "Distribution" has the meaning given in Schedule 31 - Refinancing.
- 1.140 "Domestic Water" has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.141 "Donor Wall" has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.142 "Draft Proposal" has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.143 "DSU Coverage" has the meaning given in Schedule 28 - Insurance Requirements.

- 1.144 “Electrical Service Requirements” has the meaning given in Section 22.1(a)(ii).
- 1.145 “Elements” has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.
- 1.146 “Employee Termination Payments” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.147 “Encumbrance” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including claims of the Workers’ Compensation Board, Canada Customs and Revenue Agency, Employment Standards Branch and other Governmental Authorities.
- 1.148 “Engineer of Record” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.149 “Environmental Reports” means the following reports prepared by Golder Associates Ltd:
- (a) Nonscheduled Toxic Substances Update to “Supplementary Stage 1 and Stage 2 Preliminary Site Investigation, Proposed New Hospital Site,” reports prepared by: Golder Associates, dated Feb. 10, 2004 and Supplementary Stage 1 and Stage 2 Preliminary Site Investigation Proposed New Hospital Site, by Golder Associates, dated March 20, 2002, including Appendices;
  - (b) Supplementary Stage 1 Preliminary Site Investigation Proposed New Hospital Site (for additional lands) prepared by Golder Associates July 22, 2003 including Appendices; and
  - (c) Pre-demolition Hazardous Materials Assessment, 1895, 1905 and 1923 Gladwin Road, report prepared by Golder Associates dated July 16, 2003, and Appendix.
- 1.150 “Environmental Separation” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.151 “Equipment” means, where that term is specifically defined for all or any part of Schedule 18 – Output Specifications, the meaning it is given therein, but only in respect of that part of Schedule 18 – Output Specifications to which such definition applies, and in all other instances means Category A Equipment, Category B1: Equipment, Category B2 Equipment, Category C Equipment and Category E Equipment.
- 1.152 “Equipment Cash Allowance” means the amounts set out in Schedule 34 – Equipment Cash Allowance Drawdown Schedule to be deposited by Project Co into the Equipment Cash Allowance Account according to the Equipment Cash Allowance Drawdown Schedule and paid from the Equipment Cash Allowance Account as contemplated hereunder, including Section 21.1(x)(v), either to Suppliers of Cash Allowance Equipment for Cash Allowance Equipment Costs approved by Health Co, or to Health Co as directed by Health Co.

- 1.153 “Equipment Cash Allowance Account” means a separate bank account for all Cash Allowance Equipment related cash flows that is maintained by Project Co at Health Co’s direction as contemplated hereunder.
- 1.154 “Equipment Cash Allowance Drawdown Schedule” means the schedule for deposits by Project Co into the Equipment Cash Allowance Account of the Equipment Cash Allowance, as shown in Schedule 34 – Equipment Cash Allowance Drawdown Schedule.
- 1.155 “Equipment Data Sheets” means the equipment data sheets contained in Section 7 of Schedule 18 – Output Specifications containing specifications for items of equipment and furniture on the Equipment List, as those data sheets may be updated, including modified, in accordance with this Agreement. All references to “Equipment Data Sheets” shall be deemed to be references to the updated Equipment Data Sheets.
- 1.156 “Equipment List” means the list contained in Section 7 of Schedule 18 - Output Specifications.
- 1.157 “Equipotential Grounding” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.158 “Equity IRR” has the meaning given in Schedule 31 – Refinancing.
- 1.159 “Equity Purchase Agreement” means the agreement entered into between Project Co and ABN AMRO Bank N.V., Canada Branch made on or about the date hereof relating to the subscription of equity by the Shareholder(s) in Project Co.
- 1.160 “Ergonomics” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.161 “Escalation Date” or “ED” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.162 “Essential Medical Equipment” means those items identified in Schedule 33 - Procurement Schedule by the letter “Y” in the column headed “Essential Medical Equipment”.
- 1.163 “Escrow Account” has the meaning given in Schedule 27 – Expiry Transition Procedure”.
- 1.164 “Estimate” has the meaning given in Schedule 25 - Variation Procedure.
- 1.165 “Estimated Fair Value” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.166 “Estimated Increased Maintenance Costs” has the meaning given in Section 26.3(b).
- 1.167 “Ethernet” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.168 “Ethnic Diet” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.



- 1.169 “Event” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.170 “Excluded Person” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.171 “Excusing Cause” has the meaning given in Section 42.1.
- 1.172 “Exempt Refinancing” has the meaning given in Schedule 31 – Refinancing.
- 1.173 “Existing Hospital” means the Matsqui-Sumas-Abbotsford Hospital.
- 1.174 “Expert” has the meaning given in Schedule 30 - Dispute Resolution Procedure.
- 1.175 “Expiry Date” has the meaning given in Schedule 9 - Financial Close Information.
- 1.176 “Expiry Lifecycle Costs” has the meaning given in Schedule 27 – Expiry Transition Procedure.
- 1.177 “Expiry Transition” means the obligations of Project Co under this Agreement in relation to the Facility prior to and at the expiry of the Project Term on the Expiry Date.
- 1.178 “Expiry Transition Procedure” means the procedure for Expiry Transition described in Schedule 27 - Expiry Transition Procedure.
- 1.179 “Expiry Transition Requirements” has the meaning given in Schedule 27 - Expiry Transition Procedure.
- 1.180 “Expiry Transition Security” has the meaning given in Schedule 27 - Expiry Transition Procedure.
- 1.181 “Expiry Transition Works” has the meaning given in Schedule 27 - Expiry Transition Procedure.
- 1.182 “Expiry Transition Works Costs” has the meaning given in Schedule 27 – Expiry Transition Procedure.
- 1.183 “Facility” means the AHCC buildings and other facilities, together with all supporting infrastructure (including the Plant and the Equipment), parking facilities and amenities located on the Site as required to enable Project Co to perform its obligations under this Agreement, all as the same may be varied, amended or supplemented from time to time in accordance with this Agreement.
- 1.184 “Facility Condition Report” has the meaning given in Schedule 27 – Expiry Transition Procedure.
- 1.185 “Facility Coordination Agreement” means the agreement made on or about the date hereof among Project Co, the Constructor and JCLP, as the same may be amended, supplemented or replaced from time to time.
- 1.186 “Failure Event” has the meaning given in Schedule 23 - Payment Mechanism.

- 1.187 “Failure Event Category” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.188 “Failure Event Deduction” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.189 “Fair Value” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.190 “FH”, “FHA” or “Fraser Health” means the Fraser Health Authority.
- 1.191 “Field” has the meaning given in Section 2.A1(h).1.1.4 of Schedule 18 – Output Specifications.
- 1.192 “Final BC Hydro Design Requirements” has the meaning given in Section 22.1(a)(iii).
- 1.193 “Final Commissioning Program” means the schedule to be jointly developed and agreed by Health Co and Project Co in accordance with Section 24.2.
- 1.194 “Final Completion” means the completion of the Works in accordance with this Agreement and completion of the Minor Deficiencies.
- 1.195 “Final Completion Certificate” means the certificate to be issued by the Independent Certifier in accordance with Section 24.12(d).
- 1.196 “Final Completion Date” means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, as such date shall be stated therein.
- 1.197 “Final Completion Notice” has the meaning given in Section 24.12(b).
- 1.198 “Final Facility Condition Report” has the meaning given in Schedule 27 – Expiry Transition Procedure.
- 1.199 “Final Persistent Breach” has the meaning given in Section 33.3(a).
- 1.200 “Final Persistent Breach Notice” has the meaning given in Section 33.2(a).
- 1.201 “Financial Close Payment” has the meaning given in Schedule 9 - Financial Close Information.
- 1.202 “Financial Model” means the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.203 “Financial Model Extracts” means extracts from the Financial Model as attached as Schedule 7 - Financial Model Extracts and certified by an officer of Project Co as true and correct extracts from the final Financial Model.
- 1.204 “First Response Maintenance” has the meaning given in Section 4E8.1 of Schedule 18 - Output Specifications.

- 1.205 “FM Output Specifications” means Section 4 of Schedule 18 - Output Specifications.
- 1.206 “Food Services” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.207 “Food Supplement” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.208 “Force Majeure” has the meaning given in Section 44.1(a).
- 1.209 “Force Majeure/Relief Event” has the meaning given in Section 41.1(a)(ii).
- 1.210 “Force Majeure Termination Sum” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.211 “Full Time Equivalent” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.212 “Functional Area” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.213 “Functional Unit” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.214 “Funders” means all or any of the persons who provide financing or funding in respect of the Project Operations under the Funding Agreements and, where the context so permits, prospective financiers or funders.
- 1.215 “Funders’ Direct Agreement” means the agreement to be entered into between Health Co, the Senior Funders and Project Co in the form set out in Schedule 4 - Funders’ Direct Agreement.
- 1.216 “Funding Agreements” means all or any of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project Operations, including the Initial Funding Agreements and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the funding of Project Operations or the refinancing of the Project Operations.
- 1.217 “GBC” has the meaning given in Section 22.3(a)(ii).
- 1.218 “General and Ad Hoc Services” has the meaning given in Section 4.E7.1 of Schedule 18 – Output Specifications.
- 1.219 “General Management Services” has the meaning given in Section 4.E1.1 of Schedule 18 – Output Specifications.
- 1.220 “Good Industry Practice” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

- 1.221 “Governmental Authority” means any and all federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over any aspect of the performance of this Agreement, the operation of the Facility or the Clinical/Non-Clinical Services in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.222 “Ground Physical And Geophysical Investigation” means the investigation of all the conditions of and surrounding the Site and of any extraneous materials in, on or under the Site (including its surface and subsoil) to enable the Facility to be designed and constructed and the Works to be performed with due regard for those conditions and the seismic activity in the region of the Site.
- 1.223 “Grounds & Gardens” has the meaning given in Section 4.E8.1 of Schedule 18 – Output Specifications.
- 1.224 “Grounds & Gardens Maintenance Service” has the meaning given in Section 4.E8.1 of Schedule 18 – Output Specifications.
- 1.225 “GST” and “G.S.T.” mean the tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), as amended, and any successor legislation thereto, but excludes the harmonized sales tax by deeming, for the purposes of this Agreement, that there are no participating provinces listed in Schedule VIII of that Act.
- 1.226 “Guiding Principles” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.227 “H&S Conviction” has the meaning given in Section 45.1(a)(xvii).
- 1.228 “Hazardous Substances” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.229 “HC/HA Listed Management” means Mike Marasco, Walter Hiller, Bob J. Smith (Shared Services), Fran Caruth, Vivian Giglio and Brian Woods.
- 1.230 “HC Other Work” has the meaning given in Schedule 25 - Variation Procedure.
- 1.231 “HCOCP” means the Health Co Operational Commissioning Period.
- 1.232 “HCPP” has the meaning given in Schedule 28 - Insurance Requirements.
- 1.233 “Health Authority” means, for purposes of this Agreement, any of FHA, PHSA, BCCA and any other health care or service authority or agency designated from time to time in writing by Health Co to Project Co, and their respective successors and assigns, and “Health Authorities”, for purposes of this Agreement, means any two or more of them.

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- 1.234 “Health Authority Facilities” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.235 “Health Authority Policies” means, subject to Section 27.1(b), the general policies of the Health Authorities indicated in Schedule 20 - Health Authority Policies, as amended by the Health Authorities from time to time, which policies shall not include the clinical and non-clinical policies that do not relate to the Project Operations.
- 1.236 “Health Co” has the meaning given on the first page of this Agreement.
- 1.237 “Health Co Default Termination Sum” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.238 “Health Co Events of Default” has the meaning given in Section 46.1(a).
- 1.239 “Health Co Operational Commissioning” means Health Co’s operational commissioning activities to be carried out by Health Co in accordance with Section 24.
- 1.240 “Health Co Operational Commissioning Period” has the meaning given in Section 24.6(c).
- 1.241 “Health Co Party” means any of Health Co’s agents (including the Health Authorities only when acting as agent for Health Co), contractors and subcontractors of any tier and its or their directors, officers and employees, and physicians, nurses, nurses’ assistants, orderlies and other persons engaged in respect of Clinical/Non-Clinical Services, but excluding Project Co and any Project Co Party, and “Health Co Parties” shall be construed accordingly.
- 1.242 “Health Co Taxes” means taxes imposed on Health Co based on or measured by income or profit of Health Co or capital taxes based on or measured by the capital of Health Co and GST and property taxes for which Health Co is responsible pursuant to Section 35.1 hereunder.
- 1.243 “Health Co/Health Authority Trade-Marks” means any and all Trade-marks used by Health Co or the Health Authorities in any manner whatsoever.
- 1.244 “Health Co’s Representative” means the person designated as such by Health Co on or prior to the date of this Agreement and any permitted replacement.
- 1.245 “Health Specific Change in Law” means any Change in Law which principally affects or principally relates only to the provision or operation of healthcare premises.
- 1.246 “Helpdesk” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.247 “Helpdesk Service” has the meaning given in Section 4.E2.1 of Schedule 18 – Output Specifications.
- 1.248 “Helpdesk Users” has the meaning given in Section 4.E2.1 of Schedule 18 – Output Specifications.

- 1.249 “High Priority Quality Failure” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.250 “Housekeeping Services” has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.
- 1.251 “HVAC” has the meaning given in Schedule 17 – Outline Commissioning Program.
- 1.252 “Indemnifier” has the meaning given in Section 56.3(a).
- 1.253 “Independent Certifier” means the person appointed the Independent Certifier pursuant to the Independent Certifier Contract and as may be permitted pursuant to this Agreement.
- 1.254 “Independent Certifier Contract” means the contract entered into between Project Co, Health Co and the Independent Certifier in substantially the form attached hereto as Schedule 6 - Independent Certifier Contract.
- 1.255 “Independent Inspector” has the meaning given in Schedule 27 - Expiry Transition Procedure.
- 1.256 “Indirect Losses” has the meaning given in Section 57.1(a).
- 1.257 “Initial BC Hydro Design Requirements” has the meaning given in Section 22.1(a)(iv).
- 1.258 “Initial Funding Agreements” means:
- (a) the Trust Indenture;
  - (b) the fully amortizing fixed indexing annuity bonds, Series A Supplemental indenture made on or about the date hereof between BNY Trust Company of Canada, as trustee, Project Co and ABN AMRO Bank N.V., Canada Branch, as bond manager;
  - (c) the fully amortizing fixed indexing annuity bonds, Series B Supplemental indenture made on or about the date hereof between BNY Trust Company of Canada, as trustee, Project Co and ABN AMRO Bank N.V., Canada Branch, as bond manager; and
  - (d) the letter of credit agreement made on or about the date hereof between Project Co and ABN AMRO Bank N.V., Canada Branch.
- 1.259 “Initial Persistent Breach Notice” has the meaning given in Section 33.1(a).
- 1.260 “Innovation Proposal” has the meaning given in Section 39.2(b).
- 1.261 “Intellectual Property” means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and

registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.

- 1.262 “Intellectual Property Rights” means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the date of this Agreement created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the Facility (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
  - (b) the Services, including the operation, maintenance, improvement and testing of the Facility;
  - (c) any other Project Operations; or
  - (d) this Agreement.
- 1.263 “Intercon” means Intercon Security Limited.
- 1.264 “Invoice Date” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.265 “JCLP” means Johnson Controls L.P.
- 1.266 “Jointly Developed Materials” has the meaning given in Section 51.4(a)
- 1.267 “Junior Debt” has the meaning given in Schedule 26 - Compensation on Termination.
- 1.268 “Labour Rate Adjustment” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.269 “Laundry/Linen Services” has the meaning given in Section 4.E6.1 of Schedule 18 - Output Specifications.
- 1.270 “LEED Canada - NC Version 1.0” has the meaning given in Section 22.3(a)(iii).
- 1.271 “LEED Rating System” has the meaning given in Section 22.3(a)(iv).
- 1.272 “LEED Silver Certification” has the meaning given in Section 22.3(a)(v).
- 1.273 “LEED US - NC Version 2.1” has the meaning given in Section 22.3(a)(vi).

- 1.274 “Liquid Market” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.275 “Longstop Date” has the meaning given in Section 45.1(a)(ii).
- 1.276 “Low Priority Quality Failure” has the meaning given in Section 4.1.2.2.2 of Schedule 18 – Output Specifications.
- 1.277 “Lower Mainland Area” means the Fraser Valley and the greater Vancouver area of British Columbia.
- 1.278 “Lower Utility Limit” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.279 “LRA Date” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.280 “Maintenance” has the meaning given in Section 4.E8.1 of Schedule 18 – Output Specifications.
- 1.281 “Maintenance Users” has the meaning given in Section 4.E8.1 of Schedule 18 – Output Specifications.
- 1.282 “Maintenance Work” means any work after Substantial Completion for maintenance or repair of the Facility in accordance with the requirements of this Agreement.
- 1.283 “Management Agreement” means the agreement dated on or about the date hereof between Project Co and ABN AMRO Bank N.V., Canada Branch, in respect of management services of ABN AMRO Bank N.V., Canada Branch.
- 1.284 “Manuals” has the meaning given in Schedule 17 – Outline Commissioning Program.
- 1.285 “Market Tested Services” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.286 “Market Testing” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.287 “Market Testing Date” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.288 “Market Testing Meeting” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.289 “Market Testing Proposal” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.290 “Market Value” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.291 “Market Value Availability Deduction Amount” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.292 “Materiel Services” has the meaning given in Section 4.E7.1 of Schedule 18 – Output Specifications.



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- 1.293 “Maximum Service Payment” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.294 “Meal Times” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.295 “Mechanical and Electrical Services” has the meaning given in Section 4.E8.1 of Schedule 18 – Output Specifications.
- 1.296 “Medical Contamination” means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and this Agreement cannot substantially prevent or cannot substantially remove with the result that:
- (a) it is unsafe to admit patients or staff to the relevant area or to use the area for the purpose for which it is intended; and
  - (b) the area cannot be made safe for the admission of patients or staff.
- 1.297 “Medium Priority Quality Failure” has the meaning given in Section 4.1.2.2.2 of Schedule 18 – Output Specifications.
- 1.298 “Method Statements” means the operational policies, procedures and practices developed by Project Co in accordance with and pursuant to the Output Specifications, as amended from time to time in accordance with Sections 39 and 25.
- 1.299 “Minor Deficiencies” means the Minor Equipment Deficiency and any defects, deficiencies and items of outstanding work (including in relation to seasonal work), which would not materially impair Health Co’s use and enjoyment of the Facility (including for the Health Co Operational Commissioning) or the performance of the Clinical/Non-Clinical Services or the performance of the Services by Project Co.
- 1.300 “Minor Deficiency List” means the list of known Minor Deficiencies prepared pursuant to Section 24.9.
- 1.301 “Minor Equipment Deficiency” means a failure or failures to meet a requirement or requirements in respect of any Category A Equipment, Category B1 Equipment or Category B2 Equipment, if the aggregate cost of all such affected equipment is not more than **[\*DELETION]**.
- 1.302 “Monitoring Method” has the meaning given in Section 4.1.2.2.2 of Schedule 18 – Output Specifications.
- 1.303 “Monitoring Notice” has the meaning given in Section 31.4(a).
- 1.304 “MSDS” means the material safety data sheets prescribed by the applicable WHMIS legislation.
- 1.305 “Municipal Off-Site Services” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
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- 1.306 “Municipal On-Site Services” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.307 “n” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.308 “New Agreement” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.309 “New Project Co” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.310 “New Service Provider Start Date” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.311 “No Default Interest Rate” has the meaning given in Schedule 9 - Financial Close Information.
- 1.312 “Noise Impact Assessment Report” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.313 “Non-Clinical Services” has the meaning given in Section 3 of Schedule 18 - Output Specifications.
- 1.314 “Non-Patient Food Services” means the Non-Patient Services component of Food Services, as described in Section 4E4.4.3 of the FM Output Specifications.
- 1.315 “Notice of Dispute” has the meaning given in Schedule 30 - Dispute Resolution Procedure.
- 1.316 “Occupancy Permit” has the meaning given in Schedule 17 – Outline Commissioning Program.
- 1.317 “Operational Term” means the period from the Substantial Completion Date until the end of the Project Term.
- 1.318 “Operations Property Policy” has the meaning given in Schedule 28 - Insurance Requirements.
- 1.319 “Other Encumbrances” means the following registered against title to the Site:
- (a) Legal Notation: For Restrictions on Dealings, See Hospital Act DF BF437966;
  - (b) Charge: Undersurface and Other Exc & Res in favour of the Crown in right of British Columbia under number BW423247, as amended by partial charge release number BW462373; and
  - (c) Charge: Option to Purchase in favour of FHA under number BW506243.
- 1.320 “Outbreak Cleaning” has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.

- 1.321 “Outline Commissioning Program” means the schedule setting out the standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities of the Parties outlined in Schedule 17 - Outline Commissioning Program.
- 1.322 “Output Specifications” means Schedule 18 - Output Specifications.
- 1.323 “p” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.324 “Parking Services” has the meaning given in Section 4.E12.1 of Schedule 18 – Output Specifications.
- 1.325 “Party” means either Health Co or Project Co, and “Parties” means both Health Co and Project Co, but such definitions do not include Her Majesty the Queen in Right of the Province of British Columbia, represented by the Minister of Finance.
- 1.326 “Party Representative” and “Party Representatives” have the meanings given in Schedule 30 - Dispute Resolution Procedure.
- 1.327 “Patient Information” means Personal Information of patients, clients, and other users and recipients of Clinical/Non-Clinical Services.
- 1.328 “Patient Meal Services” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.329 “Patient Porter Services” has the meaning given in Section 4.E10.1 of Schedule 18 – Output Specifications.
- 1.330 “Payment Adjustment Report” has the meaning given in Section 34.5(i)(ii).
- 1.331 “Payment Commencement Date” means the later of the first Business Day immediately after the Scheduled Substantial Completion Date and the first Business Day immediately after the Substantial Completion Date, or such earlier date as may be agreed by the Parties.
- 1.332 “Payment Guarantee” means the payment guarantee of Her Majesty the Queen in Right of the Province of British Columbia, represented by the Minister of Finance, in the form set forth in Schedule 14 - Payment Guarantee.
- 1.333 “Payment Mechanism” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.334 “Payment Periods” means the payment periods of 28 days (as adjusted in this definition) established by Health Co for each Contract Year based on the schedule provided by the Province to FHA, provided that:
- (a) either or both the first and the last Payment Period in each Contract Year may be adjusted by Health Co to be a shorter or longer period, not to be less than 14 days or more than 42 days; and

- (b) the first Payment Period in the first Contract Year, and the last Payment Period in the last Contract Year may be a shorter period as a result of the timing of the Payment Commencement Date and the Expiry Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.335 “Performance Guarantees” means the guarantees to Project Co in respect of the Construction Contract and the Service Contracts.
- 1.336 “Performance Monitoring Period” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.337 “Performance Monitoring Program” has the meaning given in Section 4E1.1 of Schedule 18 - Output Specifications.
- 1.338 “Performance Monitoring Report” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.339 “Periodic” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.340 “Periodic ETW Excess” has the meaning given in Schedule 27 – Expiry Transition Procedure”.
- 1.341 “Periodic Planned Cleaning” has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.
- 1.342 “Periodic Service Payment” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.343 “Periodic Utility Payment” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.344 “Periodic Utility Target” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.345 “Permits, Licences and Approvals” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations required by Applicable Law, and all necessary consents and agreements from any third parties (including any Development Approval), needed to perform the Project Operations in accordance with this Agreement, and includes all conditions thereof.
- 1.346 “Permitted Borrowing” means any:
- (a) advance to Project Co under the Senior Funders Agreements; and
  - (b) amendment, waiver or exercise of a right under the Senior Funders Agreements made during the Step-In Period that does not increase Health Co’s liabilities under this Agreement whether actual or contingent, present or future, known or unknown.
- 1.347 “Personal Information” means all personal information (as the term “personal information” is defined in the *Freedom of Information and Protection of Privacy Act* (British Columbia)) in the custody or control of Project Co or its Subcontractors other

than personal information of the employees of Project Co or its Subcontractors and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from Health Co or the Health Authorities in respect of this Project.

- 1.348 "PHSA" means the Provincial Health Services Authority.
- 1.349 "Plant" means, where that term is specifically defined for all or any part of Schedule 18 – Output Specifications, the meaning it is given therein, but only in respect of that part of Schedule 18 – Output Specifications to which such definition applies, and in all other instances means the plant and equipment, including the Category F: Equipment in Construction Specifications, but excluding Equipment, to be either or both provided and maintained by Project Co pursuant to this Agreement.
- 1.350 "Plant Services" has the meaning given in Section 4.E8.1 for the purposes of Schedule 18 - Output Specifications.
- 1.351 "Plant Services Information Management" means the Plant Services Information Management System referred to in the FM Output Specifications to be provided and maintained by Project Co pursuant to the Output Specifications.
- 1.352 "PMOC" has the meaning given in Section 11.1(a).
- 1.353 "POC" has the meaning given in Section 12.1(a).
- 1.354 "Post-disaster Operation" has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.355 "Post Termination Service Amount" has the meaning given in Schedule 26 – Compensation on Termination.
- 1.356 "Power Factor" has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.357 "Practical Completion", if used herein, means Substantial Completion.
- 1.358 "Practical Completion Certificate", if used herein, means the Substantial Completion Certificate.
- 1.359 "Practical Completion Date", if used herein, means the Substantial Completion Date.
- 1.360 "Pre-Financing Equity IRR" has the meaning given in Schedule 31 – Refinancing.
- 1.361 "Preferred Service Tenderer" has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.362 "Prevailing Rates" has the meaning given in Schedule 23 – Payment Mechanism.
- 1.363 "Prime Rate" means the rate of interest per annum quoted by the Royal Bank of Canada from time to time as its reference rate for Canadian Dollar demand loans made to its

commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.

- 1.364 “Procurement Schedule” means the Equipment procurement, installation and commissioning schedule which will identify each individual item of Equipment (excluding Category C Equipment and Category E Equipment), a preliminary form of which is attached as Schedule 33 - Procurement Schedule, and which schedule the Parties will complete, update and revise after the date of this Agreement as provided by Section 21.
- 1.365 “Prohibited Act” has the meaning given in Section 60.1(a).
- 1.366 “Prohibited Acts Termination Sum” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.367 “Project” has the meaning given in Recital C of this Agreement.
- 1.368 “Project Agreement Arbitration” has the meaning given in Schedule 30 - Dispute Resolution Procedure.
- 1.369 “Project CGL Policy” has the meaning given in Schedule 28 - Insurance Requirements.
- 1.370 “Project Co” has the meaning given on the first page of this Agreement.
- 1.371 “Project Co Change in Law” means:
  - (i) any Change in Law which affects the costs reasonably attributable to **[\*DELETION]**, which Change in Law shall, for the avoidance of doubt, exclude any Discriminatory Change in Law, Health Specific Change in Law or Works Change in Law which in each case has an impact on the cost of performance of the Project Operations; and
  - (b) any Change in Law which gives rise to a change in Taxes:
    - (i) imposed on Project Co or a Project Co Party based on or measured by income or profit of Project Co, or a Project Co Party or otherwise imposed under the Income Tax Act (Canada), the Income Tax Act (British Columbia) or any similar statute in any other jurisdiction;
    - (ii) capital taxes based on or measured by the capital of Project Co or a Project Co Party;
    - (iii) relating to withholdings on any payments by Project Co or a Project Co Party;
    - (iv) **[\*DELETION]**;

- (v) any property taxes for which Project Co is responsible pursuant to Section 35.1(b) hereunder; or
  - (vi) relating to any business or activity other than the business or activities related to, and conducted for, the purpose of the Project Operations, but which, for greater certainty does not apply to a change in PST or other similar Taxes imposed on the sale of goods or products; and
  - (c) any Change in Law relating to **[\*DELETION]** (which shall, for the avoidance of doubt, exclude any Works Change in Law).
- 1.372 “Project Co Commissioning” means Project Co’s commissioning activities to be carried out prior to the issuance of the Substantial Completion Certificate.
- 1.373 “Project Co Commissioning Tests” means all commissioning tests required by the Final Commissioning Program.
- 1.374 “Project Co Event of Default” has the meaning given in Section 45.1(a).
- 1.375 “Project Co Operational Commissioning” means Project Co’s commissioning activities following Project Co Commissioning and related to the Services to be conducted after Substantial Completion.
- 1.376 “Project Co Party” means Project Co’s agents and Subcontractors (including the Constructor and the Service Providers) and its or their Subcontractors of any tier and its or their directors, officers, employees and workmen in relation to the Project, and “Project Co Parties” shall be construed accordingly.
- 1.377 “Project Co Proposal Extracts” means the documents attached as Schedule 16 - Project Co Proposal Extracts.
- 1.378 “Project Co Variation Notice” has the meaning given in Schedule 25 - Variation Procedure.
- 1.379 “Project Co’s Representative” means the person designated as such by Project Co on or prior to the date of this Agreement and any permitted replacement.
- 1.380 “Project Data” means:
- (a) all Design Data;
  - (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Services; and
  - (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or this Agreement,

other than the Jointly Developed Materials and Background Information and other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.

- 1.381 “Project Documents” means the Ancillary Documents and the Funding Agreements.
- 1.382 “Project Management Oversight Committee” has the meaning given in Section 11.1(a).
- 1.383 “Project Operations” means:
- (a) financing, designing (including preparing all Design Data), developing, constructing, equipping (including the Equipment), testing, commissioning and providing (including any temporary works), on a turnkey basis, a complete, commissioned and fully operational Facility, including all associated equipment, parking, other facilities and infrastructure;
  - (b) operating and maintaining the Facility and providing all other services to be provided by or through Project Co under this Agreement; and
  - (c) all other obligations of Project Co under this Agreement.
- 1.384 “Project Operations Committee” has the meaning given in Section 12.1(a).
- 1.385 “Project Term” means the period commencing on the date of this Agreement and expiring at midnight on the Termination Date.
- 1.386 “Proprietor” has the meaning given in Section 52.3(a).
- 1.387 “Prospective Service Tenderers” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.388 “Protection Service Users” has the meaning given in Section 4.E9.1 of Schedule 18 – Output Specifications.
- 1.389 “Protection Services” has the meaning given in Section 4.E9.1 of Schedule 18 – Output Specifications.
- 1.390 “Province” means the Province of British Columbia.
- 1.391 “PST” means the tax that is imposed pursuant to the SST Act.
- 1.392 “Qualification Criteria” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.393 “Qualifying Bank” has the meaning in Schedule 31 – Refinancing.
- 1.394 “Qualifying Bank Transaction” has the meaning in Schedule 31 – Refinancing.
- 1.395 “Qualifying Refinancing” has the meaning given in Schedule 31 - Refinancing.



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- 1.396 “Qualifying Service Tender” has the meaning given in Schedule 24 – Market Testing Procedure.
- 1.397 “Qualifying Staff” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.398 “Qualifying Tender” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.399 “Qualifying Tenderer” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.400 “Quality Failure” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.401 “Quality Failure Category” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.402 “Quality Failure Deduction” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.403 “Quality Plans” has the meaning given in Section 13.1(a).
- 1.404 “Quality Satisfaction Failure” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.405 “Quality Satisfaction Survey” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.406 “Quarter” means a three month period commencing on the 1 April, 1 July, 1 October or 1 January or such other dates as agreed to by the Parties having regard to the dates applicable to the beginning and end of each Contract Year, provided that:
- (a) the first Quarter shall be such period that commences on the date of this Agreement and ends on the next 1 April, 1 July, 1 October or 1 January, as applicable; and
  - (b) the final Quarter shall be such period that commences on 1 April, 1 July, 1 October or 1 January, as applicable, that precedes the date on which this Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of this Agreement.
- 1.407 “Re-Commissioning” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.408 “Reactive Cleaning” has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.
- 1.409 “Reactive Maintenance” has the meaning given in Section 4.E2.1 of Schedule 18 – Output Specifications.
- 1.410 “Recording Frequency” has the meaning given in Section 4.1.2.2.2 of Schedule 18 – Output Specifications.

- 1.411 “Recovery Amount” has the meaning given in Section 56.3(g).
- 1.412 “Rectification” means, where that term is specifically defined for all or any part of Schedule 18 – Output Specifications, the meaning it is given therein, but only in respect of that part of Schedule 18 – Output Specifications to which such definition applies, and in all other instances has the meaning given in Schedule 23 - Payment Mechanism.
- 1.413 “Rectification Confirmation Notice” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.414 “Rectification Costs” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.415 “Rectification Time” means, where that term is specifically defined for all or any part of Schedule 18 – Output Specifications, the meaning it is given therein, but only in respect of that part of Schedule 18 – Output Specifications to which such definition applies, and in all other instances has the meaning given in Schedule 23 - Payment Mechanism.
- 1.416 “Refinancing” has the meaning given in Schedule 31 - Refinancing.
- 1.417 “Refinancing Financial Model” has the meaning given in Schedule 31 - Refinancing.
- 1.418 “Refinancing Gain” has the meaning given in Schedule 31 - Refinancing.
- 1.419 “Reimbursement Event” has the meaning given in Section 32.5(a).
- 1.420 “Relevant Base Rates” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.421 “Relevant Change in Law” means any Change in Law other than a Project Co Change in Law.
- 1.422 “Relevant Market Rates” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.423 “Relevant Person” has the meaning given in Schedule 31 – Refinancing.
- 1.424 “Relevant Services” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.425 “Reliance Background Documents” has the meaning given to it in Section 6.4(b).
- 1.426 “Relief Events” has the meaning given to it in Section 43.1(a).
- 1.427 “Religious Diet” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.428 “Request for Payment Approval” has the meaning given to it in Section 21.1(q).
- 1.429 “Rescue Refinancing” has the meaning given in Schedule 31 – Refinancing.

- 1.430 "Restricted Person" means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
  - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
  - (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence, other than minor traffic offences, less than five years prior to the date at which the consideration of whether such individual is a "Restricted Person" is made hereunder;
  - (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
  - (e) is subject to a material claim of Health Co, the Health Authorities or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a "Restricted Person" is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in Health Co's view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under this Agreement; or
  - (f) has a material interest in the production of tobacco products.
- 1.431 "Return Date" has the meaning given in Schedule 23 – Payment Mechanism.
- 1.432 "Review Procedure" means the procedure set out in Schedule 11 - Review Procedure.
- 1.433 "Revised Facility Condition Report" has the meaning given in Schedule 27 – Expiry Transition Procedure".
- 1.434 "RHD Funding" has the meaning given in Section 34.17(a).
- 1.435 "RHD Funding Table" has the meaning given in Section 34.17(a).
- 1.436 "Routine Cleaning" has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.
- 1.437 "Schedule" means a schedule hereto.
- 1.438 "Schedule of Accommodation" is as set out in the Clinical Output Specifications, as modified through the Review Procedure.

- 1.439 "Schedule of Small Works Rates" has the meaning given in Schedule 25 - Variation Procedure.
- 1.440 "Scheduled Final Completion Date" means the last date for the completion of Minor Deficiencies pursuant to the Minor Deficiencies List.
- 1.441 "Scheduled Maintenance" means, where that term is specifically defined for all or any part of Schedule 18 – Output Specifications, the meaning it is given therein, but only in respect of that part of Schedule 18 – Output Specifications to which such definition applies, and in all other instances means all maintenance and other work which Project Co is to perform in accordance with this Agreement, including the Output Specifications, and the Scheduled Maintenance Plan.
- 1.442 "Scheduled Maintenance Plan" has the meaning given to "Scheduled Maintenance" in Section 4.E8 of the Schedule 18 - Output Specifications.
- 1.443 "Scheduled Substantial Completion Date" has the meaning given in Schedule 9 - Financial Close Information.
- 1.444 "Security" has the meaning given in Schedule 4 – Funders' Direct Agreement.
- 1.445 "Security Documents" has the meaning given in Schedule 4 - Funders' Direct Agreement.
- 1.446 "Security Staff" has the meaning given in Section 4.E9.1 of Schedule 18 – Output Specifications.
- 1.447 "Senior Debt Amount" has the meaning given in Schedule 26 - Compensation on Termination.
- 1.448 "Senior Funders" means the bondholders pursuant to the trust indenture referred to in the definition of the Senior Funders Agreements, as represented by the Senior Funder's Agent;
- 1.449 "Senior Funder's Agent" has the meaning given in Schedule 26 – Compensation on Termination.
- 1.450 "Senior Funders Agreements" has the meaning given in Schedule 26 - Compensation on Termination.
- 1.451 "Sensitive Information" means financial or commercial information of Project Co or a Subcontractor (including costs of Project Co or a Subcontractor in performing the Works or Services), provided such information does not pertain to any payments (including relevant supporting information upon which payments are based), damages or liabilities under this Agreement, or is not otherwise required under this Agreement.
- 1.452 "Service Categories" means the Services to be provided under the 12 headings of Services in Sections 4.E1 to 4.E12, inclusive, of Schedule 18 - Output Specifications, and "Service Category" means any one of them.

- 1.453 “Service Contracts” means the contracts between Project Co and each Service Provider and the contracts entered into during the Project Term through Market Testing, by which Project Co shall cause the performance of the Services (as amended or replaced from time to time in accordance with this Agreement).
- 1.454 “Service Failure” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.455 “Service Failure Points” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.456 “Service Provider” means each of Sodexo, JCLP and Intercon or any other person engaged by Project Co from time to time as may be permitted by this Agreement to cause the provision of the Services provided by Sodexo, JCLP or Intercon or the Services to be performed by Project Co as described in Section 4.E1 of the FM Output Specifications.
- 1.457 “Service Providers’ Collateral Agreements” means the collateral agreements between Health Co, Project Co and the Sodexo, JCLP, or Intercon, in the form set out in Schedule 5-2 – Service Subcontractor’s Collateral Agreement (Sodexo), Schedule 5-3 – Service Subcontractor’s Collateral Agreement (JCLP), Schedule 5-4 – Service Subcontractor’s Collateral Agreement (Intercon), as applicable, together with execution thereof by the applicable guarantor or other party thereto as set out in such Service Providers’ Collateral Agreement.
- 1.458 “Service Request” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.459 “Service Response” means, where that term is specifically defined for all or any part of Schedule 18 – Output Specifications, the meaning it is given therein, but only in respect of that part of Schedule 18 – Output Specifications to which such definition applies, and in all other instances has the meaning given in Schedule 23 – Payment Mechanism.
- 1.460 “Service Response Time” means, where that term is specifically defined for all or any part of Schedule 18 – Output Specifications, the meaning it is given therein, but only in respect of that part of Schedule 18 – Output Specifications to which such definition applies, and in all other instances has the meaning given in Schedule 23 – Payment Mechanism.
- 1.461 “Service Standards” has the meaning given in Section 4.1.2.1 of Schedule 18 – Output Specifications.
- 1.462 “Service Tender Requirements” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.463 “Service Tender Validity Period” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.464 “Service Tenderers” has the meaning given in Schedule 24 - Market Testing Procedure.
- 1.465 “Service Weightings” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.466 “Services” means all Project Operations from and after Substantial Completion.

- 1.467 “Services Coordination Agreement” means the agreement made on or about the date hereof among Project Co, JCLP, Sodexho and Intercon, as the same may be amended, supplemented or replaced from time to time.
- 1.468 “Services Quality Plan” means such plan to be developed pursuant to the FM Output Specifications and the Final Commissioning Program.
- 1.469 “Session” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.470 “Shareholder(s)” means a Party listed in Schedule 3 - Project Co Information as changed from time to time in accordance with this Agreement.
- 1.471 “Shaw Service Requirements” has the meaning given in Section 22.5.
- 1.472 “Shaw Works” has the meaning given in Section 22.5.
- 1.473 “Site” means the land located in the City of Abbotsford, British Columbia, legally described as PID: 026-035-006, Lot A Sections 16 and 17 Township 16 New Westminster District Plan BCP12488.
- 1.474 “Site Conditions” means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.475 “Site Fire Management/Fire Management Plan” has the meaning given in Section 4.E8.1 of Schedule 18 – Output Specifications.
- 1.476 “Small Works” means any works, including facilities and equipment, of a minor nature that are requested by Health Co to be performed having an individual cost or aggregate cost with other linked works, including facilities and equipment, of a minor nature, not exceeding \$50,000 (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of Failure Events, will increase the cost to Project Co of performing the Project Operations or will materially hinder Project Co in the performance of the Services.
- 1.477 “Sodexho” means, collectively, Sodexho MS Canada Limited and Sodexho, Inc.
- 1.478 “Special Diet” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.479 “Specific Service Specification” has the meaning given in Section 4.1.2.1 of Schedule 18 – Output Specifications.
- 1.480 “Specified Category F Equipment” means the items of Category F Equipment identified in the Equipment List and identified with a checkmark in the column headed Category F Fixed Quantities.
- 1.481 “SST Act” means the *Social Service Tax Act* (British Columbia), as amended, or any successor legislation.
- 1.482 “Step-In Period” has the meaning given in Schedule 4 - Funders’ Direct Agreement.

- 1.483 "Subcontractor Losses" has the meaning given in Schedule 26 – Compensation on Termination.
- 1.484 "Subcontractors" means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including the Constructor and the Service Providers and any subcontractor of any other subcontractor at any tier, and includes the Constructor, any Service Providers and any Suppliers or consultants.
- 1.485 "Subcontracts" means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Constructor and the Service Providers, and any other Subcontractors at any tier in relation to any aspect of the Project Operations.
- 1.486 "Submittal" has the meaning given in Schedule 11 - Review Procedure.
- 1.487 "Submittal Schedule" has the meaning given in Schedule 11 - Review Procedure.
- 1.488 "Subordinated Funders" means any persons providing funding under Subordinated Funding Agreements.
- 1.489 "Subordinated Funding Agreement" has the meaning given to it in Schedule 26 - Compensation on Termination.
- 1.490 "Subsequent Payment" has the meaning given in Schedule 9 - Financial Close Information.
- 1.491 "Substantial Completion" means the completion of the Facility in accordance with this Agreement, other than Minor Deficiencies, and all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.
- 1.492 "Substantial Completion Certificate" means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d).
- 1.493 "Substantial Completion Date" means the date on which Substantial Completion is achieved as evidenced by the Substantial Completion Certificate, as such date shall be stated therein.
- 1.494 "Substantial Completion Notice" has the meaning given in Section 24.4(b).
- 1.495 "Suitable Substitute Contractor" has the meaning given in Schedule 26 – Compensation on Termination.
- 1.496 "Suitably Qualified Person" has the meaning given in Section 4.E8.1 of Schedule 18 – Output Specifications.
- 1.497 "Supplier" means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Project Operations.

1.498 “Supplier Installation” means the following activities to the extent that the Supplier of Cash Allowance Equipment ordinarily performs such activities in its contracts to supply equipment:

- (a) delivery to the Site;
- (b) unpacking and removing packing material;
- (c) offloading and handling on the Site;
- (d) installation;
- (e) assembling and testing;
- (f) commissioning; and
- (g) providing start-up training (to clinical and technical personnel of Health Co and the Health Authorities) and start-up “train the trainer” classes that will permit Project Co to train its own personnel for First Response Maintenance.

1.499 “Survey” has the meaning given to it in Section 26.6(a).

1.500 “Tax Loss Consolidation Transaction” means a transaction undertaken by Project Co with one or more corporations that are affiliates of Project Co for purposes of the Income Tax Act (Canada) (“Participating Affiliates”) that:

- (a) complies with the guidelines for corporate loss utilization transactions as established by the Canada Revenue Agency in Income Tax Technical News Issue No. 30, dated May 21, 2004, under the heading “Corporate Loss Utilization Transactions” or such other guidelines as may be in place from time to time (the “Guidelines”);
- (b) involves the issuance by Project Co of non-voting preference shares (the “Shares”) to a Participating Affiliate and the lending of the proceeds received on the issuance of the Shares by Project Co to a Participating Affiliate pursuant to an interest-bearing note (the “Project Co Loan”) or such other terms as may be permitted by the Guidelines; and
- (c) does not involve:
  - (i) a disposition of assets by Project Co otherwise than to acquire the Project Co Loan, to pay dividends on or redeem or otherwise acquire the Shares or to pay fees and expenses to persons who deal at arm’s length with Project Co incurred in connection with such transaction;
  - (ii) an acquisition of property other than the Project Co Loan and amounts received in connection therewith;
  - (iii) any transaction or transactions, including anticipated future transactions such as a payment of dividends or a redemption or retraction of Shares,



that materially and adversely affects the ability of Project Co to perform its obligations under this Agreement, that has the effect of increasing any liability of Health Co, whether actual or potential or that otherwise prejudices Health Co under this Agreement;

- (iv) any transaction or transactions with a Restricted Person; or
- (v) a Qualifying Refinancing.

- 1.501 “Taxes” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all PST and GST except where stated to the contrary, provided however that “Taxes” shall not include Health Co Taxes.
- 1.502 “Telus Service Requirements” has the meaning given in Section 22.5.
- 1.503 “Telus Works” has the meaning given in Section 22.5.
- 1.504 “Temporary Alternative Accommodation” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.505 “Tender Costs” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.506 “Tender Process” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.507 “Tender Process Monitor” has the meaning given in Schedule 26 – Compensation on Termination.
- 1.508 “Terasen Service Requirements” has the meaning given in Section 22.5.
- 1.509 “Terasen Works” has the meaning given in Section 22.5.
- 1.510 “Termination Date” means the earlier of the Expiry Date and such earlier date, if any, on which termination of this Agreement takes effect in accordance with its terms.
- 1.511 “Therapeutic Diet” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.512 “Third Party Arbitration” has the meaning given in Schedule 30 - Dispute Resolution Procedure.
- 1.513 “Third Party Litigation” has the meaning given in Schedule 30 - Dispute Resolution Procedure.
- 1.514 “Title Encumbrances” means the Encumbrances referred to in Schedule 19 - Title Encumbrances and any other Encumbrances reasonably required in connection with the development of the Facility and the Project Operations and permitted by Section 15.2(b)

(excluding such Encumbrances permitted by Section 15.2(b) that do not relate to the Project Operations), but excluding the Other Encumbrances.

- 1.515 “Total Annual Service Payment” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.516 “Total Volume Adjustment” has the meaning given in Schedule 23 - Payment Mechanism.
- 1.517 “Trade-marks” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.518 “Traffic and Parking Analysis” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.519 “Treatment Visit” has the meaning given in Section 2.A1(h).1.1.4 of Schedule 18 – Output Specifications.
- 1.520 “Trust Indenture” means the agreement made on or about the date hereof between Project Co, the BNY Trust Company of Canada, as trustee, and ABN AMRO Bank N.V., Canada Branch, as bond manager, in respect of management services of ABN AMRO Bank N.V., Canada Branch.
- 1.521 “Unavailable” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.522 “Uninsurable Risks” has the meaning given in Schedule 28 - Insurance Requirements.
- 1.523 “Universal Design” has the meaning given in Section 1.1.2.1 of Schedule 18 – Output Specifications.
- 1.524 “Upper Limit Payment Amount” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.525 “Upper Utility Limit” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.526 “Upper Utility Price” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.527 “USGBC” has the meaning given in Section 22.3(a)(vii).
- 1.528 “Utilities” has the meaning given in Section 4.E11.1 of Schedule 18 – Output Specifications.
- 1.529 “Utilities Management” has the meaning given in Section 4.E11.1 of Schedule 18 – Output Specifications.
- 1.530 “Utility” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.531 “Utility Company” has the meaning given in Section 4.E11.1 of Schedule 18 – Output Specifications.

- 1.532 “Utility Contract” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.533 “Utility Price” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.534 “Utility Threshold” has the meaning given in Schedule 23 – Payment Mechanism.
- 1.535 “Utility User(s)” has the meaning given in Section 4.E11.1 of Schedule 18 – Output Specifications.
- 1.536 “Variation” has the meaning given in Schedule 25 – Variation Procedure.
- 1.537 “Variation Confirmation” has the meaning given in Schedule 25 - Variation Procedure.
- 1.538 “Variation Directive” has the meaning given in Schedule 25 - Variation Procedure.
- 1.539 “Variation Enquiry” has the meaning given in Schedule 25 - Variation Procedure.
- 1.540 “Variation Procedure” means the procedure set out in Schedule 25 - Variation Procedure.
- 1.541 “Vegan Diet” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.542 “Vegetarian Diet” has the meaning given in Section 4.E4.1 of Schedule 18 – Output Specifications.
- 1.543 “Viability Statement” means a notice by Health Co to Project Co that the Facility, or substantially all of it, is no longer required.
- 1.544 “Vision and Guiding Principles” means the following vision and guiding principles developed for the AHCC:

**Project Vision**

*Together we will create an innovative environment that inspires caring and the pursuit of knowledge and excellence*

**Guiding Principles**

*Develop and maintain a healing and aesthetically pleasing environment that is sensitive to diversity*

*Design care processes that optimize patient, client and family satisfaction*

*Foster a safe, comfortable and productive work environment that promotes provider recruitment, retention and satisfaction*

*Create a flexible and adaptable design to accommodate future structures, processes, care delivery systems and technological needs*

*Build and promote partnerships that improve effectiveness and efficiency*

*Maximize cost effectiveness and the use of available resources*

*Develop and apply integrated resources to enable:*

*Seamless and sustainable care and support for patients and families;*

*Effective exchange of information;*

*Sharing of technology and services; and*

*The ongoing learning and the development of new knowledge.*

*Use technologies as a tool to improve cost effectiveness, integration of services and health outcomes*

*Maintain the individual identities of each of the Health Authorities while sharing resources and providing seamless services*

*Minimize impact on the natural and physical environment*

- 1.545 "Volume Adjusted Periodic Service Payment" has the meaning given in Schedule 23 – Payment Mechanism.
- 1.546 "Warning Notice" has the meaning given in Section 31.3(a).
- 1.547 "Waste" has the meaning given in Section 4.E7.1 of Schedule 18 – Output Specifications.
- 1.548 "Waste, Clinical" has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.
- 1.549 "Waste, Non-Clinical" has the meaning given in Section 4.E5.1 of Schedule 18 - Output Specifications.
- 1.550 "Waste Removal" has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.
- 1.551 "Waste, Solid" has the meaning given in Section 4.E5.1 of Schedule 18 – Output Specifications.

- 1.552 “WHMIS” means the system for the labelling and warning of Hazardous Substances used in the workplace, commonly referred to as a workplace hazardous materials information system, prescribed by Applicable Law over the delivery, storage and use of Hazardous Substances in the Province of British Columbia.
- 1.553 “Works” means all Project Operations to be performed from the date of this Agreement to achieve Substantial Completion.
- 1.554 “Works Change in Law” means a change in the building code or other Change in Law which requires Project Co to perform works affecting the Facility (being any work of alteration, addition, demolition or extension or variation in the quality or function of the Facility) which are not Maintenance Work or capital replacement work which Project Co would otherwise be required to perform under this Agreement notwithstanding such Change in Law.
- 1.555 “Works Period Report” means a report provided by Project Co as to the status and progress of the Works.

- 2. Interpretation.** This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in this Agreement are for convenience of reference only, shall not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of this Agreement) references to specific Parts, Sections, Clauses, Paragraphs, Sub-paragraphs, Schedules, and other divisions of this Agreement are references to such Sections, Clauses, Paragraphs, or Sub-Paragraphs of, Schedules to, or divisions of this Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Parts, Sections, Clauses, Paragraphs, Sub-paragraphs, Schedules, and other divisions of this Agreement followed by a number are references to the whole of the Part, Section, Clause, Paragraph, Sub-paragraphs, Schedule or other division of this Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Sub-paragraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, such that, for example:
- (a) Section 5.1 (Healing Environment) in Section 1.2 of Schedule 18 - Output Specifications shall be interpreted as Section 1.2.5.1; and
- (b) Section A1(b).2.2.1 of Section 2 (Clinical Services) shall be interpreted as Section 2.A1(b).2.2.1,
- and all cross-references to any Section in Schedule 18 - Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules.
- 2.6 All references in this Agreement to a Schedule shall be to a Schedule of this Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.

- 2.8 The language of the Output Specifications and other documents comprising this Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words "Project Co shall" immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in this Agreement, all accounting and financial terms used in this Agreement shall be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied from one period to the next.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assignees. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in this Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of Health Co, the Health Authorities or any Health Co Party shall be construed having

regard to the interactive nature of the activities of Health Co, the Health Authorities, the Health Co Parties and Project Co and further having regard to:

- (a) acts contemplated by the Clinical Output Specifications or the Non-Clinical Output Specifications;
- (b) acts or omissions in the ordinary course of the Clinical/Non-Clinical Services and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the Services; or
- (c) acts otherwise provided for in this Agreement.

2.18 The words in this Agreement shall bear their natural meaning.

2.19 All of Project Co's and Health Co's respective obligations shall be construed as separate obligations owed to the other.

2.20 References containing terms such as:

- (a) "hereof," "herein," "hereto," "hereinafter," and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole;
- (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall in all cases be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation"; and
- (c) "manufacture", "manufacturer", "manufacturing", "fabricate", "fabricator", "fabricating" and terms of like import are, unless the context clearly indicates to the contrary, synonymous and mean both those that are on Site as well as those who are off-Site.

2.21 In construing this Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

2.22 Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.

2.23 Where this Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of days before a stipulated date or event or "by" a date which is a prescribed number of days before a stipulated date or event, the latest time for



performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- 2.24 Where this Agreement states that an obligation shall be performed “on” a stipulated date the latest time for performance shall be 5:00 p.m. on that day, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Whenever the terms “will” or “shall” are used in this Agreement in relation to Project Co or Health Co they shall be construed and interpreted as synonymous and to read “Project Co shall” or “Health Co shall” as the case may be.
- 2.26 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.27 Unless otherwise identified in this Agreement, all units of measurement in any documents submitted by Project Co to Health Co shall be in accordance with the SI system of units.
- 2.28 Terms not defined herein and used in this Agreement which have a technical meaning commonly understood by the health care sector in British Columbia will be construed as having that meaning unless the context otherwise requires.
- 2.29 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:
- $$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_d}{\text{CPI}_o}$$
- Where  $\text{CPI}_d$  is the most recent published monthly CPI value, and  $\text{CPI}_o$  is the CPI value for the Base Date.
- 2.30 References to a “director” of the Health Authorities shall include references to members of the board of such organizations.