

**SCHEDULE 2**

**DESIGN AND CONSTRUCTION PROTOCOLS**

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## SCHEDULE 2

### DESIGN AND CONSTRUCTION PROTOCOLS

#### 1. INTERPRETATION

##### 1.1 Definitions

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

**"CaGBC"** means the Canada Green Building Council;

**"Certificate of Service Commencement"** has the meaning set out in Section 3.4 of this Schedule;

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

**"Deficiencies"** has the meaning set out in Section 12.2 of this Schedule;

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

**"Design Review Procedure"** has the meaning set out in Section 1(a) of Appendix 2E [Review Procedure];

**"Green Timbers Way Inspector"** has the meaning set out in Section 6.15(f);

**"Green Timbers Way Works"** has the meaning set out in Section 6.15;

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

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

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

**"Life Cycle Report"** has the meaning set out in Section 5.10 of this Schedule;

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

**"Permitted Uses"** means the potential uses for the Facility as described in Appendix 2B [Permitted Uses];

**"Project Co's Additional Observer"** has the meaning set out in Section 2.6 of this Schedule;

**"Project Co's Quality Consultant"** has the meaning set out in Section 8.3 of this Schedule;

**"Project Schedule"** has the meaning set out in Section 10.1 of this Schedule;

**"Proposal Extracts (Design and Construction)"** means the provisions of Appendix 2C [Proposal Extracts (Design and Construction)];

**"Quality Assurance Plan"** has the meaning set out in Section 8.4;

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

“**User Consultation Group**” has the meaning set out in Section 5.5 of this Schedule; and

“**User Consultation Procedure**” has the meaning set out in Section 1(a) of Appendix 2F [User Consultation Procedure];

“**User Consultation Schedule**” has the meaning set out in Section 2(a) of Appendix 2F [User Consultation Procedure];

## **2. PARTIES’ DESIGN AND CONSTRUCTION REPRESENTATIVES**

### **2.1 Appointment of Representatives**

Both parties will within 5 Business Days of the Closing Date designate in writing:

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

A party’s Design Representative and a party’s Construction Representative may be the same person and may or may not be a Key Individual. Except as otherwise set out in this Agreement, all costs or expenses incurred by or with respect to a party’s Design Representative and Construction Representative will be for the account of that party.

### **2.2 Replacement**

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

### **2.3 Authority of Representatives**

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

### **2.4 The Authority’s Review, Acceptance, Approval or Confirmation**

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

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

If the Authority's Design Representative or the Authority's Construction Representative, as the case may be, has not responded to a request for review and comment, or a request for acceptance, approval or confirmation, where required under this Schedule within 15 Business Days after the request is made, then the Authority's right of review and comment, or to accept, approve or confirm, will be deemed to be waived and/or as applicable the submission will be deemed to be accepted, approved or confirmed.

## **2.5 Authority Not Responsible for Design or Construction**

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

## **2.6 Project Co's Additional Observer**

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

- (a) Project Co's Additional Observer will generally be permitted to participate in, observe and be fully informed on all aspects of the Design and Construction, including:
  - (1) accompanying Project Co's Design or Construction Representative to any Design and Construction meeting with the right to speak and be heard at such meeting (including for illustration the meetings described in Section 6.13 of this Schedule);

- (2) participating in the inspections and discussions relating to the issuance of the Service Commencement certificate as described in Section 3.4 of this Schedule; and
  - (3) participating in the inspections to identify Deficiencies as described in Section 12.2 of this Schedule;
- (b) the appointment of Project Co's Additional Observer will not amend or alter the authority of Project Co's Design Representative or Project Co's Construction Representative as provided by this Agreement;
  - (c) Project Co may, from time to time, give notice to change the person who is Project Co's Additional Observer but at any one time there may not be more than one person who is Project Co's Additional Observer;
  - (d) the Authority will cooperate to facilitate the participation of Project Co's Additional Observer, but the Authority will not have any duty or obligation to give notice to or provide information to Project Co's Additional Observer; and
  - (e) all costs and expenses incurred by or with respect to Project Co's Additional Observer, and all additional costs incurred by the Authority on account of the participation of Project Co's Additional Observer, will be for the account of Project Co.

### **3. INDEPENDENT CERTIFIER**

#### **3.1 Appointment**

Within 30 days after the Effective Date, the parties will cooperate to jointly appoint a person (or firm of persons) (the "**Independent Certifier**"), who is:

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

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

#### **3.2 Appointment and Replacement**

If the Independent Certifier has not been appointed within the time required by Section 3.1, or if for any reason during the Construction Period the Independent Certifier is unable or unwilling to continue to perform the Independent Certifier services or if the Independent Certifier's appointment has been terminated by the Authority and Project Co, then:

- (a) within 5 Business Days of the Closing Date, or if the Independent Certifier's appointment has been terminated then within 5 Business Days of the date of such termination, Project Co will provide the names of 3 candidates acceptable to Project Co for consideration by the Authority;
- (b) within 10 Business Days of receiving the candidate names, the Authority will notify Project Co of the candidates acceptable to the Authority, and the parties will cooperate to enter into a contract with an acceptable candidate generally in the form set out in Appendix 2A [Independent Certifier Agreement]; and
- (c) if none of the candidates are acceptable to the Authority, acting reasonably, or if for any reason an Independent Certifier is not appointed within the later of:
  - (1) 20 Business Days of the Closing Date; or
  - (2) if the Independent Certifier's appointment has been terminated then within 20 Business Days of the date of such termination,

then either party may immediately apply to the British Columbia International Commercial Arbitration Centre for the selection of an Independent Certifier, providing the other party the opportunity to participate in the selection and appointment process.

### **3.3 Monthly Inspections and Report**

Under its agreement with the parties the Independent Certifier will:

- (a) consult with the Design-Builder and others involved in the Design; and
- (b) conduct inspections of the Construction,

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

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

### **3.4 Application for Certificate of Service Commencement**

The Independent Certifier will, no later than 5 Business Days after application by Project Co for a Certificate of Service Commencement, in cooperation with Project Co's Construction Representative and

the Authority's Construction Representative make an inspection of the Facility and then within a further 5 Business Days either:

- (a) issue a certificate indicating that Service Commencement has been achieved (a "**Certificate of Service Commencement**"); or
- (b) advise Project Co and the Authority's Construction Representative of the Service Commencement requirement(s) that has not been met.

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

### **3.5 Permitted Access**

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

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

and Project Co will:

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

### **3.6 No Responsibility for Design or Construction**

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

## **4. PROJECT CO'S RESPONSIBILITIES**

### **4.1 Design/Build Responsibility**

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

- (a) have complete responsibility for the Design and Construction of the Facility;

- (b) perform and complete the Design and Construction:
- (1) in accordance with all terms of this Agreement including the terms of this Schedule and the Design and Construction Specifications;
  - (2) including the scope as described in Appendix 2L [Scope Information];
  - (3) so as to provide a new patient care facility that at Service Commencement:
    - (A) is complete and operational and fit for the Permitted Uses as specified in the Design and Construction Specifications (but excluding for such purposes Section 2.3 of Schedule 3 [Design and Construction Specifications]) and the Proposal Extracts (Design and Construction);
    - (B) will permit Project Co to provide the Services in accordance with the requirements of this Agreement; and
    - (C) is fully integrated with planned buildings or structures at the Site, as described in Appendix 3D [Site Drawings]; and
  - (4) to reflect and capture the intent and benefits of the Proposal Extracts (Design and Construction).

Each of the obligations in Sections 4.1(b)(1), 4.1(b)(2), 4.1(b)(3) and 4.1(b)(4) of this Schedule are independent obligations, and the fact that Project Co has satisfied one obligation will be no defence to an allegation that it has failed to satisfy another.

#### **4.2 Standard of Performance for Design and Construction**

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

#### **4.3 Defects in Design or Construction**

Project Co will, without cost to the Authority, and without limiting Project Co's obligations to perform the Services as set out in this Agreement, including Schedule 4 [Services Protocols and Specifications], correct any Defect that becomes apparent at any time during the Term, subject to the terms of this Agreement, including any Scheduled Maintenance and the Handback Requirements.

#### **4.4 Compliance with Laws**

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

#### 4.5 Permits and Approvals for the Design and Construction

Except as otherwise provided in this Agreement, Project Co will obtain all Permits required for the Design and Construction, including "Development Permits" and "Servicing Agreements". Project Co will keep each of the Authority's Design Representative and Construction Representative fully informed of the details of all discussions and negotiations with Governmental Authorities with respect to all Permits for which it is responsible and upon request from the Authority's Design Representative or Construction Representative Project Co will provide to the Authority copies of all documentation and correspondence with a Government Authority relating to such Permits. Except as otherwise expressly provided in this Agreement, Project Co will assume the risk of and all costs of delays to the Project Schedule arising from delays in obtaining Permits, or amendments to such Permits as may be required.

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

#### 4.6 LEED Gold Certification

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

- (a) within 60 days of the Effective Date Project Co will register the Building with CaGBC;
- (b) Project Co will, subject to this Section, achieve all necessary prerequisites, credits and points under the LEED Canada Rating System required to achieve the LEED Gold Certification and may in its discretion determine which of the credits and points to pursue except that Project Co will achieve the credit for Energy and Atmosphere Credit 1.4 - Optimize Energy Performance: 38% (MNECB);
- (c) if at any time after Project Co obtains registration with the CaGBC in accordance with Section 4.6(a) of this Schedule the requirements to achieve LEED Gold Certification under the LEED Canada Rating System change, and Project Co is required to comply with such change in order to achieve LEED Gold Certification of the Building, then Project Co will forthwith notify Authority of such change and such change will be a Change pursuant to Schedule 6 [Changes, Minor Works and Innovation Proposals];
- (d) if for any reason Project Co fails to achieve the Energy and Atmosphere Credit 1.4 within 18 months of the Service Commencement Date then Project Co will, upon written demand from the Authority, and in addition to any payment owing under Section 4.6(e) of this Schedule, immediately pay to the Authority \$500,000;
- (e) if for any reason Project Co fails to obtain LEED Gold Certification within 18 months of the Service Commencement Date, then Project Co will, upon written demand from the Authority, immediately pay to the Authority \$100,000 for every point less than 39, to a maximum payment amount of \$500,000, and upon payment Project Co will have no further obligations in respect of obtaining LEED Gold Certification; and
- (f) upon payment of amounts, if any, owing under this Section 4.6 Project Co will have no further obligations in respect of obtaining LEED Gold Certification, except to provide Authority with such information and administrative assistance as the Authority may

reasonably require in relation to obtaining LEED Gold Certification, and for greater certainty the failure to obtain LEED Gold Certification will not be a Project Co. Event of Default.

#### **4.7 Energy**

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

### **5. DESIGN**

#### **5.1 Additional Design Considerations**

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

- (a) is undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the Design, as of the date of this Agreement, and Project Co will appoint a design team that:
  - (1) is so qualified;
  - (2) includes (as required by applicable Law) licensed or registered professional engineers and architects; and
  - (3) has sufficient expertise and experience to expeditiously and efficiently perform all of the Design in a proper and professional manner to the standard set out in this Agreement;
- (b) includes specific consideration of "constructability" and "life cycle" cost issues at all stages of Design, as appropriate; and
- (c) includes consideration of efficient and cost-effective operation and maintenance.

#### **5.2 Zoning Approval**

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

#### **5.3 Designs Supplied by the Authority or Others**

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

## 5.4 Design Process

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

- (a) in co-operation with the Authority in accordance with Appendix 2E [Review Procedure];
- (b) in phases progressively, with each phase capturing the information and detail approved in a previous phase, as follows:
  - (1) Design Development Phase – this phase will include drawings and other documents, including a Site plan, elevations and sections, together with a written project brief detailing area calculations, building systems and outline specifications, to fully describe the size and character of the entire Facility including the architectural, structural, mechanical, and electrical systems, materials and other elements to fully describe the Facility; and
  - (2) Construction Drawings Phase - this phase will include construction documents consisting of drawings and specifications describing in detail the requirements for the construction of the Facility delivered to the Authority in accordance with the Submittal Schedule and Appendix 2E and in a timely way in advance of Construction with sufficient detail to permit the Authority to understand and assess the design of the Facility. If Project Co intends to proceed with construction of one element of the Facility in advance of the completion of the design of the entire Facility then Project Co will deliver the 50% and 95% construction documents for that element with sufficient accompanying detail to permit the Authority to understand and assess the design of that element;
- (c) so that in each phase Project Co will provide to the Authority the level of detail and documentation that a health care authority would customarily receive for a facility similar to the Facility in accordance with Good Industry Practice, including:
  - (1) dimensioned floor plans showing all millwork,
  - (2) furniture and equipment,
  - (3) interior elevations for all outpatient rooms and key functional areas;
  - (4) exterior building elevations;
  - (5) completed Site and landscaping plans;
  - (6) room finish schedules; and
  - (7) room data sheets; and
- (d) in consultation with representatives of Facility Users as described in Section 5.5 of this Schedule.

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

### **5.5 User Consultations**

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

### **5.6 Green Timbers Heritage Society Agreement**

The Authority has reached agreement with the Green Timber Society with respect to planting of trees and hedges on the Site and Project Co will comply with and satisfy the Authority's obligations under that agreement as follows:

- (a) Project Co will consult with the Green Timbers Society in all stages of the development of landscaping involving trees and shrubs on the Site;
- (b) Project Co will to the extent that it is reasonably practical undertake the Design of the Facility so that major interior public spaces within the new Facility will have view towards the historical trees planted along the east property line of the Site;
- (c) the Green Timbers Society will provide 30 unique trees, to be grown from seedlings, to Project Co for planting onto the site;
- (d) the Green Timbers Society will provide 10 tree seedlings that represent the 10 provinces which Project Co will plant in a row to follow/create a direct path through the Site leading from 140<sup>th</sup> street towards Green Timbers Way;
- (e) Project Co will retain a vacant area at least of 20ft x 20ft at the corner of 140<sup>th</sup> and Fraser Highway in which the Green Timbers Society can install an 8ft x 10ft history board, designed in consultation with the Authority.

### **5.7 Design Change**

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

- (a) revisions to drawings and specifications and additional Design requested by the Authority under the consultation processes described in Section 5 of this Schedule, including Section 5.4 (Design Process) and Section 5.5 (User Consultations), are not Changes and will be completed at Project Co's cost (except to the extent that any such requested revision would constitute a change to the Design and Construction Specifications, or to the intent of the Proposal Extracts (Design and Construction) the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply and such revision will not be implemented except under a Change Certificate issued by the Authority);

- (b) if and to the extent the Authority requires a variation of any design described in the Reviewed Drawings and Specifications then such variation will be a Change and the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.

### **5.8 Document Control and Coordination**

Project Co will ensure that all documentation submitted to the Authority as part of the Design process:

- (a) indicates the Design phase to which it relates;
- (b) is recorded on a schedule describing the changes to related drawings and documents as compared to previous submittals;
- (c) includes an explanation of how any Design changes comply with the requirements of this Agreement; and
- (d) is provided in a format and number of copies reasonably acceptable to the Authority.

### **5.9 Mock Up Rooms**

Project Co will, at its cost, prior to the “Construction Drawings Phase” described in Section 5.4(b)(2) of this Schedule, prepare a “mock up” of:

- (a) an Examination Room;
- (b) a Large Examination Room;
- (c) an OR; and
- (d) a Procedure Room;

all in sufficient detail to include all finishes, millwork, services, equipment and furniture so that the Authority, users and the Design-Builder’s Sub-Contractors can visualize all features of the final design.

### **5.10 Life Cycle Report**

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

### **5.11 Ownership of Design**

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

- (a) the Authority will not have an ownership interest in the Design, including any of the drawings or specifications prepared and produced by Project Co, the Design-Builder or any Sub-Contractor;
- (b) Project Co grants to the Authority, or as required will cause the Design-Builder and all Sub-Contractors to grant to the Authority, an irrevocable licence giving the Authority the non-exclusive right to use the Design in connection with the Facility, including any of the documents and information listed in Section 6.14 of this Schedule, beyond the end of the Term and as long as the Facility exists, including for renovations, additions and alterations to the Facility, provided that, except for reference purposes, the Design, including the plans, sketches, drawings, electronic files, graphic representations and specifications will not be used on any other project; and
- (c) Project Co will execute and deliver, or cause to be executed and delivered, any and all further and other documents as the Authority may reasonably request to effect and record the licence referred to in Section 5.11(b) above.

## **6. CONSTRUCTION**

### **6.1 Construction of the Facility**

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

### **6.2 Amendments and Changes to the Drawings and Specifications**

During the Construction, Project Co will submit all amendments or additions to the Reviewed Drawings and Specifications to the Authority's Design Representative for review to confirm compliance with the requirements of this Agreement (which review and confirmation will be indicated by initialling by the Authority's Design Representative) and upon review and acceptance such drawings and specifications will be deemed to be included in the Reviewed Drawings and Specifications. For clarity, the review by the Authority's Design Representative, and the initialling of the Reviewed Drawings and Specifications will be subject to Sections 2.4 and 2.5 of this Schedule.

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

### **6.3 Skilled Workers**

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

### **6.4 Control of the Construction**

Project Co will have total control of the Construction and will effectively direct and supervise the Construction so that it is undertaken in compliance with the terms of this Agreement. Project Co will be

responsible for all construction means, methods, techniques, sequences and procedures with respect to the Construction and for coordinating the various elements of the Construction, and nothing in this Agreement (including this Schedule) will be interpreted as giving any responsibility for the above to the Authority, the Authority's Design Representative, the Authority's Construction Representative or any other representative or agent of the Authority, or to the Independent Certifier.

### **6.5 Site Investigation**

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

- (a) the adequacy of the rights of access to and through the Site for the Construction;
- (b) vehicular access and parking; and
- (c) temporary storage of building materials and equipment.

### **6.6 Geotechnical Conditions**

The Authority has made available certain geotechnical reports (the "**Geotechnical Reports**") as listed in Appendix 2D [Geotechnical Reports]. In accordance with the terms of the Geotechnical Reports, the authors of the Geotechnical Reports do not permit Project Co or other entity other than the Authority to rely on any information in the Geotechnical Reports. The Authority has taken no steps to verify the accuracy of the Geotechnical Reports but is not aware of any errors in the Geotechnical Reports.

Project Co may, at its election and risk, use the information, if any, contained in a Geotechnical Report describing the location of a test bore hole completed on the Site, and also the description of the soil and geotechnical material in a specific bore hole, and the Authority will, to the extent permitted by law, assign to Project Co the Authority's rights with respect to such information in the Geotechnical Reports, but in no event may Project Co rely on any other information whatsoever that may be contained in a Geotechnical Report, including the adequacy of the number or locations of the described bore holes, or any opinions or recommendations interpreting the bore hole information for any purpose.

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

### **6.7 The Authority's Access to Site**

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

- (a) attend the Site and view the Construction; and

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

The Authority's Design Representative and the Authority's Construction Representative will have the right to attend all monthly progress meetings and site meetings.

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

## **6.8 Inspection**

Prior to the Service Commencement Date, Project Co will, upon request by the Authority's Construction Representative including detailed reasons for the request, open up for inspection by the Authority's Construction Representative any part of the work on the Facility which the Authority's Construction Representative, acting reasonably, believes is defective and:

- (a) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are no Defects in the relevant part of such work and Project Co complied with the requirements of Section 3.5 of this Schedule, then any delay caused by the exercise of such rights will be treated as a Compensation Event and be subject to Section 8.3 of this Agreement;
- (b) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that any relevant part of the work on the Facility is defective, then:
  - (1) Project Co will rectify and make good such Defect(s);
  - (2) any consequence of such rectification or making good Defect(s) will be carried out by Project Co at no cost to the Authority; and
  - (3) Project Co will not be entitled to any extension of time to the Project Schedule in relation to such rectification and making good of such work; and
- (c) if the parties are unable to reach agreement in accordance with Sections 6.8(a) or (b) above, then the matter will, at the request of either party, be referred to the Dispute Resolution Procedure. If, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of the matter in Dispute, the parties will proceed in accordance with the position of the Authority, provided that Project Co proceeding in accordance with the Authority's position will be a Compensation Event if the relevant matter in Dispute is determined in favour of Project Co.

## **6.9 Builders Lien Act and Builders Liens**

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

- (a) the Authority will not have any responsibility to be the payment certifier under any contract related to Construction;
- (b) no builders lien holdback will be retained by the Authority under this Agreement, and Project Co will indemnify the Authority from any damages, costs, claims and expenses of any kind, including actual solicitors costs, arising from the failure of the Authority to retain a builders lien holdback; and
- (c) failure to hold back payment of amounts due to any Person in accordance with section 4 of the *Builders Lien Act* (British Columbia) will not constitute a Project Co Event of Default.

#### **6.10 Safety and Protection of Property**

Project Co will be solely responsible for safety at the Site during the Construction Period, including the safety of all persons on the Site (whether on the Site lawfully or not) and members of the public, and will comply with the requirements of applicable Laws, applicable construction safety legislation, regulations and codes and Good Industry Practice. Project Co will protect the Authority's property and any third party's property from damage in the performance of the Construction.

#### **6.11 Signage**

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

#### **6.12 Temporary Works**

Project Co will have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use.

#### **6.13 Project Meetings**

At the Authority's request, Project Co's Construction Representative will attend meetings to update the Authority on the progress of Construction and to discuss any issues that have arisen. The meetings will be at least weekly unless agreed otherwise by the Authority.

#### **6.14 Project Records**

Notwithstanding any other provision of this Agreement:

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

- (2) as requested from time to time during the Construction, make available such as-built drawings and specifications to the Authority's Design Representative for review to permit the Authority's Design Representative to monitor Project Co's compliance with the requirements of this Section; and
  - (3) provide a hard copy of the completed as-built drawings and specifications to the Authority's Design Representative on or before Service Commencement.
- (b) Maintenance Manuals: Project Co will:
- (1) on or before Service Commencement, make available all maintenance manuals, specifications, warranties and related information, in either written or electronic form, for all the equipment and systems that have been included in the Design and Construction of the Facility for review by the Authority's Design Representative; and
  - (2) organize and store such information in accordance with Schedule 14 [Records and Reports];
- (c) Design Records: Project Co will retain records of the Design development;
- (d) Minutes of Meetings: Project Co will retain minutes of meetings between the Authority and Project Co relating to the Design and Construction, and will circulate such minutes to the Authority's Design or Construction Representative for review and comment;
- (e) Inspection Reports and Tests Results: Project Co will retain official reports and certified test records of all inspections and tests which were undertaken as part of the Construction;
- (f) Utility Plans: Project Co will retain utility plans for the Facility and the Site;
- (g) Landscape and Irrigation Plans: Project Co will retain landscape and irrigation plans for the Facility and the Site;
- (h) Copies of all Permits: Project Co will retain copies of all Permits for the Construction and occupation of the Facility; and
- (i) Signed Quality Assurance Plan: Project Co will retain a signed copy of the Quality Assurance Plan for the Construction and all records of the Quality Assurance Program implemented as required by this Agreement.

### 6.15 Construction of Green Timbers Way

Project Co will undertake the design and construction of improvements to the roadway labelled as "Green Timbers Way" on the drawing No 15.8 included in Appendix 3D [Site Drawings] as follows:

- (a) the improvements to Green Timbers Way (collectively the "**Green Timbers Way Works**") will include:

- (1) detailed design of the roadway alignment and geometry from the intersection with 140<sup>th</sup> Street to the eastern end of the Site, as a “collector” street based on the alignments, geometrics and widths as described on Drawing 15.8, in accordance with Section 6.1(a)(3) of Schedule 3 [Design and Construction Specifications] (connected to but excluding the design of the 140<sup>th</sup> Street intersection which will be undertaken by the City of Surrey);
  - (2) the construction of the road bed and asphaltic concrete paved surfacing over the roadway length described in Section 6.15(a)(1) of this Schedule in accordance with Section 6.1(a)(3) of Schedule 3 [Design and Construction Specifications], and the two vehicular connections from the roadway to the Site as indicated on Drawing 15.8;
  - (3) roadway drainage over the roadway length described in Section 6.15(a)(1) of this Schedule in accordance with Section 6.1(a)(3) of Schedule 3 [Design and Construction Specifications];
  - (4) curb and gutter on both sides over the roadway length described in Section 6.15(a)(1) of this Schedule in accordance with Section 6.1(a)(3) of Schedule 3 [Design and Construction Specifications];
  - (5) 1.5 m sidewalk as indicated on Drawing 15.8 in accordance with Section 6.1(a)(3) of Schedule 3 [Design and Construction Specifications];
  - (6) street lighting over the length of the new roadway in accordance with Section 6.1(a)(3) of Schedule 3 [Design and Construction Specifications];
  - (7) pavement makings in accordance with Section 6.1(a)(3) of Schedule 3 [Design and Construction Specifications];
  - (8) landscaping between the sidewalk and the curb along the roadway adjacent to the Site as indicated in Drawing 15.8; and
  - (9) preservation of all trees on the Site and on the south side of the roadway, and minimum removal or disturbance of trees on the north side of the roadway;
- (b) as part of the Green Timbers Way Works, Project Co will be responsible for all coordination:
- (1) as required with Project Co's construction of the Facility,
  - (2) as required with the construction of the works on 140<sup>th</sup> Street by Project Co or by the City, including the construction or relocation of all utilities; and
  - (3) as required for the construction and relocation by Project Co or the City of third parties of utilities as may be required on Green Timbers Way;
- (c) the Authority will provide the necessary rights for Project Co to enter onto and occupy the lands along the proposed right of way for the new roadway as Project Co will reasonably

require for the construction of the Green Timbers Way Works but such rights of access and occupation will:

- (1) not permit Project Co to use the road right of way adjacent to the Site for any purpose other than:
    - (A) to perform the Green Timbers Way Works; and
    - (B) to provide access to the Site;
  - (2) not be exclusive, and Project Co will undertake the Green Timbers Way Works in such a manner as to permit local traffic the continued use of Green Timbers Way;
  - (3) be subject to a one-way traffic regulation such that trucks travelling to the Site will travel along Green Timbers Way only in an east to west direction; and
  - (4) be subject to a requirement that the travelling surface over the entire length of Green Timbers Way, from 96<sup>th</sup> Avenue on the east to 140<sup>th</sup> Street to the west, is at all times from the commencement of Construction until the Service Commencement Date maintained by Project Co at least to the standard of the travelling surface existing at the time of the commencement of Construction;
- (d) except for the rights of access as described in Section 6.15(c) of this Schedule, Project Co will obtain all permits and approvals as may be required for the construction of the Green Timbers Way Works;
- (e) the roadway will be constructed as a private roadway but the Authority anticipates that at some time after completion of the construction of the Green Timbers Way Works ownership of the roadway will be transferred to the City of Surrey and accordingly:
- (1) the Authority has prepared the preliminary alignment and identified the specifications as described in Section 6.15(a) of this Schedule in consultation with the City of Surrey for the purpose of designing and constructing the roadway acceptable to the City of Surrey; and
  - (2) prior to the commencement of construction of the Green Timbers Way Works Project Co will submit preliminary design drawings and the construction drawings to the Authority's Design Representative in accordance with Section 2.4 of this Schedule for review and approval, which review may include consultation with the City of Surrey;
- (f) Project Co will retain an independent person or firm with experience and expertise in the inspection of works similar to the Green Timbers Way works to the satisfaction of the Authority acting reasonably (the "**Green Timbers Way Inspector**") to:
- (1) perform periodic inspections and approval of all aspects of the Green Timbers Way Works, which inspections and approvals may, at the direction of the Authority, including consultation with representatives of the City of Surrey who

may also perform inspections to confirm that the Green timbers Way Works comply with the requirements of the City of Surrey;

- (2) declare substantial completion of the construction of the Green Timbers Way Works, applying the test of “completion” under the *Builders Lien Act*, and
  - (3) provide a monthly written inspection report on the progress of the work, until total completion of such work, with a copy to the Authority’s Construction Representative;
- (g) Project Co will in a timely way complete all deficiencies in the Green Timbers Way Works, and Project Co will promptly correct, at no expense to the Authority, any defects or deficiencies in the Green Timbers Way Works that appear prior to or during the period of 1 year from the date of substantial completion as declared by the Green Timbers Way Inspector under Section 6.15(f)(2) of this Schedule;
  - (h) the Green Timbers Way Works will not be included as part of the Facility and for greater certainty the Green Timbers Way Works will not be taken into consideration in the certification of substantial performance of the Facility as required to achieve Service Commencement;
  - (i) Project Co will not be responsible for any maintenance or other costs relating to the Green Timbers Way Works during the Term after substantial completion of such works, subject to Project Co’s obligation to complete the deficiencies and undertake repairs as required under Section 6.15(g) of this Schedule; and
  - (j) Project Co will provide all required funds for the design and construction of the Green Timbers Way Works.

The Authority will make payments on account of the Green Timbers Way Works as provided by Section 9 of Schedule 8 [Payment].

#### **6.16 Construction of Tenant Improvements in Retail Areas**

It is intended that the construction of tenant fit ups or tenant improvements in the Retail Areas will be the responsibility of a Suitable Retail Tenant under a Retail Tenancy Agreement, managed by Project Co pursuant to Retail Management Services to be provided by Project Co pursuant to Appendix 4I. The following will apply to the initial tenant fit ups or tenant improvements to be constructed in the Retail Areas:

- (a) the completion of the construction of tenant fit ups or tenant improvements in the Retail Areas will not be taken into account in the determination of Service Commencement;
- (b) the Authority has an interest in seeing the tenant fit ups or tenant improvements completed in all Retail Areas rather than having vacant space and accordingly:
  - (1) Project Co will use reasonable commercial efforts to settle Retail Tenancy Agreements and complete tenant fit ups and tenant improvements for all Retail

Areas within 6 months of the Service Commencement Date, and for that purpose will accommodate and include the construction of tenant fit ups or tenant improvements in the Move-in Schedule; and

- (2) if for any reason any of such tenant fit ups or tenant improvements are not completed within 6 months of the Service Commencement Date then on written notice from the Authority to Project Co, the Authority may step in to assume responsibility for construction of tenant fit ups or tenant improvements in any Retail Area which, as of such time, do not have fit ups or tenant improvements.

## **7. EQUIPMENT SUPPLY AND INSTALLATION**

### **7.1 Design and Construction Requirements**

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

## **8. QUALITY MANAGEMENT**

### **8.1 Quality of the Design and Constructions**

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

### **8.2 Quality System**

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

### **8.3 Project Co's Quality Consultant**

Project Co will appoint, or cause the Design-Builder to appoint, a qualified expert in quality management ("**Project Co's Quality Consultant**") to develop a Quality Assurance Program, and for certainty such expert may be an employee of Project Co or the Design-Builder.

### **8.4 Quality Assurance Plan**

Within 15 days of the Closing Date, Project Co will deliver to the Authority a draft quality plan (the "**Quality Assurance Plan**") that describes the implementation of the Quality Assurance Program. The Authority may, within 30 days of receipt of the Quality Assurance Plan, provide comments on it to Project Co and Project Co will, acting reasonably, take account of the comments in finalizing the Quality Assurance Plan. Project Co will promptly implement and strictly comply with the Quality Assurance Plan as recommended by Project Co's Quality Consultant.

## 8.5 Reporting

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

## 8.6 Quality Review by the Authority

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

## 9. WORKERS COMPENSATION

### 9.1 Evidence of WCB Compliance

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

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

### 9.2 Indemnity for WCB Non-Compliance

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

### 9.3 Prime Contractor

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

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

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

If for any reason the Design-Builder's agreement with the Authority to be prime contractor is terminated, then Project Co will immediately upon such termination be the prime contractor, except that if the Authority has given consent to the replacement of the Design-Builder under section 4.6 of the Agreement then the Authority will enter into an agreement with the replacement Design-Builder to be the prime contractor on terms similar to the agreement between the Authority and the original Design-Builder. If for any reason the Workers Compensation Board of British Columbia refuses to recognize Project Co or the Design-Builder or a third party contractor as the case may be as the prime contractor then, to the extent permitted by law, Project Co will cooperate with the Authority and perform on behalf of the Authority the obligations which the Authority is required to undertake as prime contractor in connection with the Construction by virtue of the *Workers Compensation Act* and Regulations, or other statutes.

#### **9.4 Failure to Comply with WCB Requirements**

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

### **10. PROJECT SCHEDULE AND SCHEDULING**

#### **10.1 Initial Project Schedule**

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

#### **10.2 Project Schedule Updates**

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

- (a) adjustments resulting from Supervening Events and Changes, if any, as permitted by this Agreement;
- (b) as the Design progresses, best estimates of:
  - (1) the start and completion dates for the design phases described in Section 5.4 of this Schedule; and
  - (2) the commencement of Construction;
- (c) the planned start and completion dates of the major activities of Construction; and

- (d) the Target Service Commencement Date, which may not be updated or otherwise changed within 6 months of such date except as permitted under Section 8 or Schedule 6 of the Agreement, or unless the Authority, in its discretion, consents.

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

### **10.3 Failure to Update Project Schedule**

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

### **10.4 Compliance with Project Schedule**

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

### **10.5 Move-In Schedule**

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

As soon as reasonably practicable, but in any event no later than 180 days prior to the Target Service Commencement Date, Project Co will deliver to the Authority's Construction Representative a move-in schedule (the "**Move-in Schedule**") indicating the anticipated dates when the areas in the Facility will become available for occupation by the Authority so as to facilitate and permit the Authority to progressively take up occupation in the Facility in an efficient manner. The Authority's Construction Representative will advise Project Co of any key or significant moves or move-in requirements, and Project Co will, as reasonably possible, accommodate the Authority's requirements and requests. Project Co will, as may be required from time to time to reflect the progress of Construction, up-date the Move-in Schedule.

## **11. DELAYS AND ACCELERATION**

### **11.1 Acceleration to Recover Project Co Delays**

If at any time the Authority, acting reasonably, determines that Project Co is behind the Updated Project Schedule (other than due to a Supervening Event or a Change) and will not achieve Service Commencement by the Target Service Commencement Date, then the Authority may deliver notice to Project Co's Construction Representative to use its best efforts, at Project Co's own cost and at no cost to the Authority, to accelerate the Construction so as to conform to the Updated Project Schedule and achieve Service Commencement by the Target Service Commencement Date.

## 11.2 Service Commencement Delay Costs

If Project Co fails to achieve Service Commencement by the Target Service Commencement Date (other than due to a Supervening Event or a Change), then Project Co will reimburse the Authority for any additional incremental direct, arm's length out of pocket costs which the Authority reasonably incurs and evidences to Project Co related to the move of health care personnel and equipment into the Facility because the Authority relied on the Move-in Schedule which are in excess of the costs which the Authority would have incurred had Project Co achieved the dates set out in the Move-In Schedule (other than due to a Supervening Event or a Change). Notwithstanding anything contained in this Agreement (including any Schedule), the liability of Project Co for failing to achieve Service Commencement by the Target Service Commencement Date will not exceed \$1,000 (one thousand) per day.

## 11.3 Acceleration to Advance Service Commencement Date

If at any time the Authority determines that it requires the Construction to proceed in advance of the Updated Project Schedule then the Authority may give written notice to Project Co to provide the Authority with a written proposal to accelerate the Construction, including cost estimates and an estimate of the time saved, and if the Authority acting reasonably decides to proceed with the acceleration then Project Co will implement the directed acceleration and the Authority will pay Project Co's costs of the acceleration.

## 12. COMPLETION

### 12.1 LEED Checklist

As a condition of application for Service Commencement Project Co will prepare and deliver to the Authority a LEED Project Checklist, generally in accordance with the checklist as set out in Section 4.5 of Schedule 3 [Design and Construction Specifications] together with a commentary and explanation confirming that, in Project Co's judgement:

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

### 12.2 Deficiency List

Immediately upon issuance of the Certificate of Service Commencement under Section 3.4 of this Schedule the Independent Certifier will, in cooperation with Project Co's Construction Representative and the Authority's Construction Representative, prepare a complete list of Defects that are apparent upon inspection of the Facility (the "**Deficiencies**") and deliver the list of Deficiencies to Project Co and the Authority's Construction Representative. The Authority or Project Co may refer matters relating to the accuracy or completeness of the list of Deficiencies to the Dispute Resolution Procedure, but the Certificate of Service Commencement, when issued, will be final and not referable to the Dispute Resolution Procedure or otherwise subject to dispute between the parties. For greater certainty failure to obtain LEED Gold Certification will not be included as a Deficiency.

**12.3 Correction of Deficiencies**

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

**Appendix 2A**

**INDEPENDENT CERTIFIER AGREEMENT**

See attached.

**Appendix 2B**  
**PERMITTED USES**

See attached.

**Appendix 2C**

**PROPOSAL EXTRACTS (DESIGN AND CONSTRUCTION)**

**[NTD: To come from Project Co]**

**Appendix 2D**  
**GEOTECHNICAL REPORTS**

See attached.

**Appendix 2E  
REVIEW PROCEDURE**

**[NTD: under discussion]**

**Appendix 2F**

**USER CONSULTATION PROCESS**

**[NTD: under discussion]**

**Appendix 2G**

**EQUIPMENT**

**Appendix 2H**

**EQUIPMENT LIST (PART 1)**

**Appendix 2H**  
**EQUIPMENT LIST (PART 2)**

**Appendix 2I**  
**EQUIPMENT DATA SHEETS**

See attached.

**Appendix 2J**

**EQUIPMENT PROCUREMENT SCHEDULE**

**[To come from Project Co – Not Yet Completed]**

**Appendix 2K**

**INITIAL PROJECT SCHEDULE**

**Appendix 2L**

**SCOPE INFORMATION**

See attached.

**Appendix 2M**

**ENERGY**

See attached.