

PROJECT AGREEMENT

for the Academic Ambulatory Care Centre
at Vancouver General Hospital

VANCOUVER COASTAL HEALTH AUTHORITY

and

AHV ACCESS HEALTH VANCOUVER LTD.

Dated September 2, 2004

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PROJECT AGREEMENT

THIS AGREEMENT is dated as of September 2, 2004.

BETWEEN

VANCOUVER COASTAL HEALTH AUTHORITY
("VCHA")

AND:

AHV ACCESS HEALTH VANCOUVER LTD.
("Project Co")

WHEREAS:

- A. VCHA wishes to arrange for the design, construction, financing, operation and maintenance of the Facility on the Site (the "**Project**") and accordingly issued a Request for Proposals dated June 20, 2003 (the "**RFP**"); and
- B. Following VCHA's review of the proposals and selection of the preferred proponent as provided by the RFP, VCHA wishes to enter into this Agreement with Project Co to set out the terms and conditions upon which Project Co will carry out the Project in a "public private partnership" with VCHA.

IN CONSIDERATION OF the covenants and agreements in this Agreement, the parties agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals and Schedules hereto:

"**Additional Rent**" has the meaning given in the VCHA Sublease;

"**Affiliate**" has the meaning given to "affiliate" in the *Business Corporations Act* (British Columbia);

"**Agreement**" means this agreement including the recitals and Schedules, as amended or supplemented from time to time;

"**Approval Period**" means:

- (a) where a period for approval is specified in this Agreement, that period;
and

- (b) in all other cases a period of ten Business Days from the date the approving person receives or is deemed to have received the relevant information required to support the request for approval,

provided that, in each case, if at any time during the Approval Period a party reasonably requires further or additional information concerning the request for approval, the relevant period will not include the time that the other party takes to provide that information;

"Architect" means IBI Group/Henriquez Partners, which has been engaged by the Prime Contractor to undertake the design of the Facility;

"Architect's Collateral Agreement" means the collateral agreement between VCHA, Project Co, the Prime Contractor and the Architect in the form set out in Part 2 of Schedule 6, as amended or replaced from time to time in accordance with this Agreement;

"Architect's Contract" means the design contract between the Prime Contractor and the Architect, as amended or replaced from time to time in accordance with this Agreement;

"Beneficiary" has the meaning given in Section 12.3;

"Building" means the building to be built on the Site and located as shown on the plan attached to the Building Lease, and includes all additions and improvements thereto from time to time;

"Building Lease" means the lease between VCHA and Project Co in the form attached as Schedule 2, as modified from time to time by the parties hereto;

"Business Day" means a day other than a Saturday, Sunday or statutory holiday in Vancouver, British Columbia;

"Change in Control" means a change in the corporate or partnership structure of the entity or of any company which is a holding company of the entity or of any company which is a general partner of an entity which is a limited partnership, which results in a person other than the equity holders of the entity immediately prior to the change:

- (a) controlling the composition of the majority of the board of directors of the entity or of a general partner of the entity;
- (b) controlling the voting power of the board of directors or any class of shareholders of the entity or of a general partner of the entity, or both; or
- (c) holding, directly or indirectly, more than one half of the equity (either beneficially or otherwise) of that entity,

other than as occurs as part of a Tax Loss Consolidation Transaction and subject to Section 6.5.

For purposes of this definition, "**control**" has the meaning set out in Section 2(3) of the *Business Corporations Act* (British Columbia);

"**Change in Law**" means, at any time after the date of this Agreement, the coming into effect or repeal (without re-enactment or consolidation) of any Law or any amendment or variation of any Law, including any judgment of a relevant court of law which changes binding precedent, in each case other than Tax Laws of general application;

"**Closing Date**" means the first Business Day after the later of:

- (a) the issuance of a permit by the City of Vancouver to allow the Prime Contractor to commence excavation on the Site; and
- (b) September 20, 2004 or such other date as VCHA and Project Co may agree in writing;

"**Collateral Agreements**" means the Prime Contractor's Collateral Agreement, the Architect's Collateral Agreement and the Services Contractor's Collateral Agreement;

"**Commercial Leases**" means all leases or licences, offers to lease or licence, agreements to lease, renewals of leases or subleases or sublicences and any other rights or licences granted by or on behalf of Project Co which entitle any person to possess or occupy any portion of the Commercial Space;

"**Commercial Space**" means the portion of the Building having a rentable area of approximately 14,000 square feet and designated as the "Commercial Space" in the plans attached as Schedule A to the VCHA Sublease and not leased to VCHA under the VCHA Sublease, intended to be subleased or sublicensed by Project Co to tenants or licensees for retail operations, as modified from time to time by the parties hereto;

"**Confidential Information**" has the meaning given in Section 19.1;

"**Construction**" means the construction of the Facility that occurs during the period from the date of this Agreement to and including the Total Completion Date (as distinct from a Correction, a Repair, Operation and Maintenance or a Renovation) as required by this Agreement, including all labour, materials and equipment;

"**Construction Contract**" means the design-build construction contract dated the date hereof between Project Co and the Prime Contractor, as amended or replaced from time to time in accordance with this Agreement;

"**Construction Liens**" means, collectively, any Encumbrances created or arising under the *Builders Lien Act* (British Columbia) relating to improvements constructed upon or located upon the lands affected thereby;

"**Correction**" means the correction of any Defect in the Design or Construction that is discovered and undertaken after the Total Completion Date;

"**Default Interest Rate**" means the Prime Rate plus **DELETION**

"Defects" means any defect or fault in the Design or Construction;

"Deficiency Notice" has the meaning given in Schedule 7;

"Delay Events" has the meaning given to it in Schedule 4;

"Design" means the entire process for the design of the Facility that occurs up to and including the Total Completion Date (as distinct from the design of Corrections, Repairs or Renovations) as required by this Agreement;

"Design and Construction Procedures" means the provisions set out in Schedule 4;

"Design and Construction Requirements" means the design, construction and performance requirements and specifications for the Facility set out in Schedule 5;

"Design Professionals" means the Architect's subconsultants and the design consultants engaged directly by the Prime Contractor or Project Co, including engineers and technical experts, who provide services with respect to the Design;

"Direct Losses" means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law, but excluding Indirect Losses;

"Disclosed Data" means any written information, data and documents made available or issued to Project Co or any Sub-Contractor in connection with the Project by or on behalf of VCHA, including any and all information relating to the Site or the requirements of any Governmental Authority including the City of Vancouver, whether before or after the execution of this Agreement;

"Disposition" means any disposal, transfer, assignment, charge or other alienation or any agreement to disclose, transfer, assign, charge or otherwise alienate;

"Dispute Resolution Procedure" means the procedure set out in Schedule 13;

"Easements" means, collectively, any easements, permits, licences, access rights, agreements, utility servitudes, restrictions, rights-of-ways, public ways, rights in the nature of easements or licences and other similar rights and agreements that at the time are registered on title;

"Emergency" means an unexpected event that causes or may cause serious personal injury or poses a serious risk to the security or reliability of the Facility or any material part thereof;

"Encumbrance" means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever;

"Escrow Agent" means Bull, Housser & Tupper;

"Escrow Documents" means the VCHA Escrow Documents and the Project Co Escrow Documents;

"Exempt Refinancing" means:

- (a) any Refinancing which occurs as a result of a Change in Law;
- (b) any Refinancing pertaining to any Variation by VCHA in the Work or Operation and Maintenance Services, expansion or new commercial activities;
- (c) any sale of the shares of Project Co by a shareholder of Project Co or securitization of the existing rights or interest attaching to the shares in Project Co; or
- (d) any refinancing or conversion into debt, other than first priority secured debt, of any Project Co Equity;

"Expiry Date" means the 30th anniversary of the Target Substantial Completion Date;

"Facility" means the facilities, including all buildings and infrastructure, to be designed, constructed and operated by Project Co in accordance with this Agreement;

"Financial Close" means the delivery of the documents described in Section 5.7;

"Fit and Proper Person" means a person who is of good character and has appropriate financial and technical capacity;

"Force Majeure" has the meaning given in Section 14.1;

"GAAP" means generally accepted accounting principles in effect in Canada including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants;

"Governmental Authority" means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

"Guarantor" means Her Majesty the Queen, in right of the Province of British Columbia, as represented by the Minister of Finance;

"Hazardous Substance" means any substance the storage, manufacture, disposal, treatment, generation, use, transportation, remediation, release into and concentration in the natural environment of which is regulated or controlled under Law, including any hazardous product, contaminant, toxic substance, deleterious substance, waste, special waste, dangerous good or reportable substance;

"Indemnifier" has the meaning given in Section 12.3;

"Independent Certifier" has the meaning given in Schedule 4;

"Indirect Losses" has the meaning given in Section 13.1;

"Initial Lending Agreements" means the lending agreements or trust indentures between Project Co or any of its Affiliates and Lenders as of the date of this Agreement or entered into as a mutual condition to Financial Close;

"Intended Purposes" means the intended purposes for the Facility, including the VCHA Sublease Premises and the Commercial Space, as described in Schedule 16;

"Key Contracts" means the Construction Contract and the Operation and Maintenance Services Contract;

"Law" means all present and future laws, statutes, regulations, treaties, judgments and decrees and, whether or not having the force of law, all official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority;

"Leases" means the Building Lease and the VCHA Sublease;

"Lenders" means all or any of the persons who provide or participate in any debt financing or funding in respect of the Project under the Lending Agreements including ABN AMRO Bank, N.V. and, if the context so permits, prospective financiers or lenders;

"Lenders' Remedies Agreement" means the agreement to be entered into between VCHA, BNY Trust Company of Canada (as indenture trustee), ABN AMRO Bank N.V., Canada Branch and Project Co in the form set out in Schedule 11, as amended or replaced from time to time in accordance with this Agreement;

"Lending Agreements" means the agreements, instruments or other documents to be entered into by Project Co or any of its Affiliates, including the Initial Lending Agreements, the Lenders' Remedies Agreement and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing, rescheduling or refinancing of their indebtedness and, for greater certainty, does not include a loan by Project Co to an Affiliate made in connection with a Tax Loss Consolidation Transaction;

"Life Cycle Costs" means all costs incurred to satisfy the Life Cycle Requirements as set out in Attachment 1 to Schedule 15 hereto;

"Life Cycle Component" means each component of plant, equipment or other items to be supplied, installed, constructed and commissioned to form part of the Facility during the Operational Term and as more particularly described in the Life Cycle Report and, for greater certainty, does not include improvements, furniture and equipment installed by a tenant of the Facility;

"Life Cycle Report" means the replacement and refurbishment plan referred to in Section 5.6 of Schedule 4 as developed, amended and updated from time to time in accordance with Section 7.5 of Schedule 7;

"Life Cycle Requirements" means the replacement and refurbishment of all Life Cycle Components by Project Co as contemplated in this Agreement;

"Life Cycle Works" means the permanent and physical works required for the supply, installation, construction and commissioning of each Life Cycle Component;

"Normal Business Hours" means the hours of 7:00 a.m. to 7:00 p.m. each Business Day and such additional times as are reasonable and normal for the Intended Purposes and an academic ambulatory care facility;

"notice" has the meaning given in Section 21.5;

"Operation and Maintenance" has the meaning given in Schedule 7;

"Operation and Maintenance Requirements" means the requirements and applicable standards for the performance of Operation and Maintenance, including the Service Requirements and the Life Cycle Requirements, as set out in Schedule 7;

"Operation and Maintenance Services" means Operation and Maintenance to be provided by Project Co (whether directly or through one or more Sub-Contractors) to VCHA in accordance with the Operation and Maintenance Requirements and the other terms of this Agreement;

"Operation and Maintenance Services Contract" means the contract between Project Co and the Services Contractor dated the date hereof, as amended or replaced from time to time in accordance with this Agreement;

"Operational Term" means the period from the Substantial Completion Date until the Termination Date;

"Parking Area" means the approximately 210,000 square feet of the Facility to be used for vehicle parking, as modified from time to time by the parties hereto;

"Payment Guarantee" means the payment guarantee in the form set out in Schedule 18 to be executed and delivered by the Guarantor;

"Permits" means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations required by Law, and all necessary consents and agreements from any third parties, needed to carry out the Project in accordance with this Agreement but does not include any Permits required in connection with (a) VCHA entering into the Project Documents or performing any of its obligations thereunder, or (b) the proposed operations of VCHA or any Facility Users at the Site;

"Permitted Encumbrances" means:

- (a) any Real Property Tax Encumbrances securing taxes and charges not at the time of determination due, or if due the validity of which is being contested in good faith by or on behalf of Project Co and by way of appropriate proceedings and for which adequate reserves are being maintained;
- (b) any Construction Liens, a claim for which will not at the time of determination have been registered or filed in the applicable land titles office, or of which notice in writing will not at the time have been given to Project Co;
- (c) any Statutory Lien, a claim for which will not at the time of determination have been registered, or any Statutory Lien which relates to obligations not overdue or delinquent, or any Statutory Lien the validity of which is being contested by or on behalf of Project Co in good faith and by way of appropriate proceedings and for which adequate reserves are being maintained;
- (d) any provisos, restrictions, limitations, conditions, exceptions and reservations (including royalties, reservations of mineral rights and the like) expressed in any original grants from the Crown;
- (e) any Easements, and any Encumbrances granted or served in respect of any Easements, and agreements with any Governmental Authority or any other person relating to the use or development of the lands affected thereby or any portion thereof or requiring the installation of services, conveyances or Easements or conveyances for road widenings and/or park dedications and/or the payment of levies, including development, site plan control, tunnel and similar agreements;
- (f) any rights reserved to or vested in any Governmental Authority or other person by the terms of any lease, licence, franchise, grant or permit held by Project Co;
- (g) the Leases and any Commercial Leases and any notice in respect thereof;
- (h) zoning, land use and building restrictions, by-laws, regulations and ordinances of any Governmental Authority, including municipal by-laws and regulations and restrictive covenants and other land use limitations;
- (i) any private building restrictions or private restrictive covenants or other private land use limitations;
- (j) any encroachment on, under or above lands abutting the lands in which Project Co has an interest, including public streets and lanes, by improvements located on, under or above such Project Co's lands, and any encroachments on, under or above such Project Co's lands by improvements located on, under or above such abutting lands;

- (k) any privileges or rights of any tenant, occupant, lessee or licensee under a Commercial Lease to remove fixed machinery, plant, equipment, apparatus and fittings and other fixtures;
- (l) any defects or irregularities which are of a minor nature;
- (m) any Encumbrances constituted by or contained in the agreements or encumbrances to which VCHA, acting reasonably, may from time to time consent to in writing; and
- (n) any Encumbrances registered on title to the subject property as at the date of this Agreement;

"Prescribed Financial Market" means the Toronto Stock Exchange, the New York Stock Exchange, the London Stock Exchange or the Amsterdam Stock Exchange;

"Prime Contractor" means PCL Constructors Westcoast Inc, which has been engaged by Project Co to carry out the Work and any substitute design or building contractor engaged by Project Co as may be permitted by this Agreement;

"Prime Contractor's Collateral Agreement" means the collateral agreement between VCHA, Project Co and the Prime Contractor in the form set out in Part 1 of Schedule 6, as amended or replaced from time to time in accordance with this Agreement;

"Prime Rate" on any day means the annual rate of interest announced by Royal Bank of Canada (or any other Canadian chartered bank agreed to by the parties) from time to time as its reference rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

"Project" has the meaning given in Recital A;

"Project Co Equity" has the meaning given in Schedule 12;

"Project Co Escrow Documents" means the documents described in Section 1.1 of Schedule 1;

"Project Co Event of Default" has the meaning given in Section 15.1;

"Project Co's Representative" has the meaning give in Section 10.2;

"Project Documents" means collectively, this Agreement, the Leases, the Key Contracts, the Collateral Agreements and the Lending Agreements;

"Proportionate Share" has the meaning given in the VCHA Sublease;

"Proposal Extracts" means those portions of the proposal dated November 17, 2003 submitted by Access Health Vancouver in response to the RFP, as the same has been modified by the parties and as are contained in Schedule 4A;

"Real Property Tax Encumbrances" means, collectively, any Encumbrances for taxes, utility charges (including levies or imposts for sewers and other utility services), rates, assessments, charges or levies;

"Refinancing" means any waiver, amendment, supplement, novation or replacement of any Lending Agreement which, whether independently or in combination with any connected arrangement, has the effect of changing Project Co's total cost of borrowing;

"Refinancing Date" means the date on which any Refinancing takes effect or is to take effect;

"Refinancing Gain" for any period after a Refinancing (other than an Exempt Refinancing) means the amount, if any, by which Project Co's total cost of borrowing for the period is less than what Project Co's total cost of borrowing for the period would have been, provided that if the Refinancing has resulted in a different initial principal amount or a different principal repayment schedule than that provided for prior to the Refinancing, the Refinancing Gain will be calculated as if the principal amount and principal repayment schedule prior to the Refinancing was the same as after the Refinancing (but otherwise based on all of the terms prevailing prior to the Refinancing);

"Renovation" means an alteration of the Facility undertaken at any time after the Total Completion Date other than pursuant to the Life Cycle Requirements;

"Repair" means a repair to the Facility undertaken at any time after the Total Completion Date other than pursuant to the Life Cycle Requirements;

"Restricted Person" means any person who (or any member of a group of persons acting together, any one of which) as of the relevant date:

- (a) has (directly or indirectly) its principal or controlling office in a country other than Canada, any of the other G8 countries, any member state of the European Union or the European Economic Area or New Zealand or Australia, 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 narcotic 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 the board of directors or its senior executive managers who will be involved in the day-to-day management of Project Co) 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 or misdemeanours) less than five (5) years prior to the effective date of any proposed transfer of shares to such person;

- (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; or
- (e) is subject to any material claim of VCHA or the Ministry of Health Services in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time of any proposed transfer and which (in respect of any such pending claim, if it were to be successful) would, in VCHA's view, in either case, be reasonably likely to materially affect the ability of Project Co to perform its obligations under this Agreement;

"**RFP**" has the meaning given in Recital A;

"**Senior Management**" means Barry Pearce, Terry MacKay and Brent Alley;

"**Services Contractor**" means Brookfield LePage Johnson Controls Facility Management Services and any substitute Sub-Contractor engaged to perform the Operation and Maintenance Services as may be permitted by this Agreement;

"**Services Contractor's Collateral Agreement**" means the agreement between VCHA, Project Co and the Services Contractor in the form set out in Part 3 of Schedule 6, as amended or replaced from time to time in accordance with this Agreement;

"**Site**" has the meaning given in the Building Lease;

"**Statutory Lien**" means, individually, any Encumbrance arising by operation of law (other than Real Property Tax Encumbrances and Construction Liens), including repairers', vendors' and other statutory or common law liens and liens created by workers' compensation, unemployment insurance, pension, employment or other social benefits laws or regulations or any judgment under such laws or regulations;

"**Sub-Contract**" means the Construction Contract, the Operation and Maintenance Services Contract or any other contract entered into by Project Co with one or more third parties in relation to the carrying out of the Work, the Operation and Maintenance Services, a Renovation, Repair or Correction, or any of Project Co's other obligations hereunder, as amended or replaced from time to time in accordance with this Agreement, and "**Sub-Contracts**" means all such contracts;

"**Sub-Contractor**" means the Prime Contractor, the Services Contractor or any other third party that enters into a Sub-Contract;

"**Sub-Contractor Losses**" means:

- (a) for the period prior to the Substantial Completion Date, without duplication, the amount payable by Project Co under the terms of the Construction Contract and all other Sub-Contracts or otherwise owing by Project Co to the Prime Contractor and any other Sub-Contractor as a direct result of the termination of this Agreement; and

- (b) during the Operational Term, the amount payable by Project Co under the terms of the Operation and Maintenance Services Contract or otherwise owing by Project Co to the Services Contractor as a direct result of the termination of this Agreement,

provided that such amounts will be reduced to the extent that the Prime Contractor, the Services Contractor or any other Sub-Contractor, as the case may be, fails to use reasonable commercial efforts to mitigate against losses incurred as a consequence of the early termination of this Agreement;

"Substantial Completion" has the meaning given in Schedule 4;

"Substantial Completion Date" has the meaning given in Schedule 4;

"Target Substantial Completion Date" means the last day of the 98th week after the Closing Date;

"Tax" or **"Taxes"** includes all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges;

"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* ("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; or
- (ii) an acquisition of property other than the Project Co Loan and amounts received in connection therewith.

"Teaching Clinic Space" has the meaning given in Schedule 8;

"Term" has the meaning given in Section 2.2;

"Termination Date" means the Expiry Date or such earlier date on which termination of this Agreement takes effect in accordance with its terms;

"Total Completion" and **"Total Completion Date"** each have the meaning given in Schedule 4;

"Uninsurable" has the meaning given in Schedule 14;

"User Consultation Group" has the meaning given in Schedule 4;

"Variation" has the meaning given in Schedule 17;

"VCHA Escrow Documents" means the documents described in Section 2.1 of Schedule 1;

"VCHA Event of Default" has the meaning given in Section 16.1;

"VCHA's Representative" means the person so appointed by VCHA pursuant to Section 10.1;

"VCHA Space" means the approximately 263,500 square feet of rentable area of the VCHA Sublease Premises that is not Teaching Clinic Space or Parking Area, as modified from time to time by the parties hereto;

"VCHA Sublease" means the lease between VCHA and Project Co in the form attached as Schedule 3, as modified from time to time by the parties hereto;

"VCHA Sublease Premises" means the Building, other than the Commercial Space, that is leased to VCHA under the VCHA Sublease, and containing the VCHA Space, the Teaching Clinic Space and the Parking Area;

"Warning Notice" has the meaning given in Schedule 7;

"Work" means anything and everything required to be done to achieve Total Completion and includes the Design, Construction, testing, commissioning and completion of the Facility and components of the Facility (including any temporary works) to be performed

by Project Co in accordance with this Agreement (as varied, amended or supplemented from time to time in accordance with this Agreement); and

"**written**" includes printed, typewritten, faxed or otherwise capable of being visibly reproduced at the point of reception and "**in writing**" has a corresponding meaning.

1.2 Construction and Interpretation

The division of this Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Agreement and will not be used to affect the construction or interpretation of this Agreement. The word "including" will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this Agreement to "**Section**" and "**Schedule**" is to a Section of, and a Schedule to, this Agreement;
- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Vancouver, British Columbia;
- (e) all references to amounts of money mean lawful currency of Canada; and
- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with GAAP consistently applied.

1.3 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia.

1.4 Severability

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement, or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction,

except that if:

- (c) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable, and
- (d) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of this Section 1.4, the basic intentions of the parties in this Agreement are materially affected, the parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

1.5 Schedules

All Schedules are included in and form a part of this Agreement.

2. PUBLIC PRIVATE PARTNERSHIP

2.1 Purpose of the Project

VCHA and the University of British Columbia Faculty of Medicine have for many years desired a consolidation of specialty hospital clinics, teaching physician offices, academic offices, teaching space, research offices and related commercial operations into one facility on one site. Such a facility will provide seamless care from the physician's office to diagnostic and treatment clinics. Interactions between specialties and between disciplines will be enhanced, leading to therapeutic recommendations that reflect a more complete knowledge base. It is anticipated that this new model of facility and service will improve performance levels and clinical outcomes. It is also expected that it will create higher consumer satisfaction and improve job satisfaction in a more rewarding work setting.

Accordingly, the purpose of the Project is to design, construct, finance, operate and maintain a Facility that will:

- (a) be dynamic and flexible, and that will accommodate evolving requirements of a health care system where ambulatory care visits are increasing in response to new technology and the high cost of acute care visits;
- (b) replace old buildings with a new consolidated facility;
- (c) meet the re-zoning requirements of the City of Vancouver;
- (d) accommodate the expansion of the medical school as it relates to ambulatory care at Vancouver General Hospital; and
- (e) allow for the integration of lecture rooms, seminar rooms, a library and clinical teaching rooms with specialized hospital clinics and teaching physician offices to create a dynamic environment for teaching and health care delivery.

2.2 Term

The term of this Agreement (the "**Term**") will commence on the date of this Agreement and will continue until the Termination Date.

2.3 Cooperation

The parties acknowledge that this Agreement constitutes what is commonly known as a "public private partnership" (which reference is not intended to create a partnership at law, as confirmed in Section 21.7 hereof) in which both parties have the objective of achieving greater efficiencies and benefits for the Facility Users. Accordingly throughout the Term the parties will cooperate with each other with a view to furthering the purposes and objectives of this Agreement, including through the establishment of such committees, groups and lines of communication as may reasonably be requested by either party to improve the cooperation of the parties.

3. OBLIGATIONS AND RESPONSIBILITIES OF PROJECT CO

3.1 The Work

Project Co will carry out or cause to be carried out the Work in accordance with the Design and Construction Procedures, the Design and Construction Requirements and the other applicable terms of this Agreement.

3.2 Operation and Maintenance Services

Throughout the Operational Term, Project Co will provide or cause to be provided the Operation and Maintenance Services in accordance with the Operation and Maintenance Requirements and the other applicable terms of this Agreement.

3.3 No Other Business

Project Co will not engage in any business or activity other than the business or activities related to, and conducted for, the purposes of the Project.

3.4 Project Co Responsible

Project Co will, as between itself and VCHA, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all Sub-Contractors and all directors, officers, employees and agents of Project Co or any Sub-Contractor. All references in this Agreement to any act, default, omission, breach or negligence of Project Co will be construed accordingly to include any such act, default, omission, breach or negligence of a Sub-Contractor or any director, officer, employee or agent of Project Co or a Sub-Contractor.

4. PAYMENT

4.1 Payment Schedule

The parties will pay each other as set out in Schedule 15.

4.2 Limitation on Payments

Other than any payments specifically provided for in or determined pursuant to this Agreement, including Schedule 15 and the Leases, Project Co will have no right to any further payment from VCHA in connection with the Work or the Operation and Maintenance Services or otherwise in connection with the Project.

4.3 VCHA's Right of Set Off

VCHA may set off any payments owing by Project Co to VCHA under this Agreement or either of the Leases against any payments otherwise due by VCHA to Project Co under this Agreement or either of the Leases, including the payments set out in Schedule 15.

4.4 Time for Payment

If any provision of this Agreement calling for payment by one party to the other does not specify a time for payment, payment will be due 30 days after receipt by the obligor of an invoice from the obligee.

5. CLOSING

5.1 Document Deliveries

Concurrently with the execution and delivery of this Agreement:

- (a) Project Co will deliver to the Escrow Agent the Project Co Escrow Documents (unless the requirement to deliver any such document is waived by notice from VCHA to Project Co); and
- (b) VCHA will deliver to the Escrow Agent the VCHA Escrow Documents (unless the requirement to deliver any such document is waived by notice from Project Co to VCHA).

5.2 Escrow Documents

The Escrow Agent will hold the Escrow Documents, undelivered, until the Escrow Agent has received:

- (a) a direction from VCHA pursuant to Section 5.7(a); and
- (b) a direction from Project Co pursuant to Section 5.7(b).

5.3 Financial Close

Financial Close will take place at the offices of Bull, Housser & Tupper at 10:00 a.m. Vancouver time on the Closing Date, or at such other place as VCHA and Project Co may agree.

5.4 VCHA Conditions to Financial Close

The obligation of VCHA to complete Financial Close is subject to the fulfilment by Project Co of all of the terms, covenants and obligations set out in this Agreement to be complied with or performed by Project Co before the Closing Date in all material respects, including the delivery obligations set out in Section 5.7(b).

If the foregoing condition is not performed or fulfilled on or before the Closing Date, VCHA may terminate this Agreement, in which event, VCHA will be released from all obligations under this Agreement, and Project Co will also be released unless Project Co was reasonably capable of causing such condition or conditions to be fulfilled or has breached any of its material covenants or obligations in or under this Agreement.

5.5 Project Co Conditions to Financial Close

The obligation of Project Co to complete Financial Close is subject to the fulfilment by VCHA of all of the terms, covenants and obligations set out in this Agreement to be complied with or performed by VCHA before the Closing Date in all material respects, including the delivery obligations set out in Section 5.7(a).

If the foregoing condition is not performed or fulfilled on or before the Closing Date, Project Co may terminate this Agreement, in which event, Project Co will be released from all obligations under this Agreement, and VCHA will also be so released unless VCHA was reasonably capable of causing such condition or conditions to be fulfilled or has breached any of its material covenants or obligations in or under this Agreement.

5.6 Mutual Conditions to Financial Close

The obligations of VCHA and Project Co to complete Financial Close are subject to no injunction or restraining order or other decision, ruling or order of a court or administrative tribunal of competent jurisdiction being in effect which prohibits, restrains, limits or imposes conditions on, the transactions contemplated by this Agreement.

If any of the foregoing conditions are not performed or fulfilled on or before the Closing Date, either VCHA or Project Co may terminate this Agreement, in which event, the party so terminating will be released from all obligations under this Agreement, and VCHA, if Project Co is the party terminating this Agreement, and Project Co, if VCHA is the party terminating this Agreement, will also be so released unless VCHA or Project Co was reasonably capable of causing such condition or conditions to be fulfilled or has breached any of its material covenants or obligations in or under this Agreement.

5.7 Delivery of Closing Documents

On the Closing Date:

- (a) VCHA will, provided that all of the conditions precedent set out in Sections 5.4 and 5.6 have been waived by VCHA or otherwise satisfied:

- (1) direct the Escrow Agent to deliver the VCHA Escrow Documents to Project Co; and
- (2) deliver to Project Co the documents described in Section 2.2 of Schedule 1;
- (b) Project Co will, provided that all of the conditions precedent set out in Sections 5.5 and 5.6 have been waived by Project Co or otherwise satisfied:
 - (1) direct the Escrow Agent to deliver the Project Co Escrow Documents to VCHA; and
 - (2) deliver to VCHA the documents described in Section 1.2 of Schedule 1.

6. PROJECT DOCUMENTS

6.1 Project Documents

Project Co will enforce the material terms of and observe and comply with all of the material provisions of the Project Documents to which it is a party and will not:

- (a) terminate or agree to the termination of all or part of the Key Contracts other than in accordance with their terms; or
- (b) make or agree to any material amendment of the Key Contracts (including any amendment that could increase Indirect Losses payable by Project Co pursuant to Schedule 12) or in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect) or allow others in any material respect to depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), in each case, under the Key Contracts,

without the prior written consent of VCHA, which consent will not be unreasonably withheld or delayed. If within 10 Business Days after the request from Project Co for consent (and delivery of the relevant documentation), VCHA has not advised Project Co as to whether VCHA consents to the matter referred to in Sections 6.1(a) or (b), as the case may be, then VCHA will be deemed to have approved the matter referred to in Sections 6.1(a) or (b), as the case may be.

6.2 Replacement of Key Contracts

If any of the Key Contracts at any time lapses, terminates or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise) or is to be assigned to a replacement Sub-Contractor, Project Co:

- (a) will forthwith enter into a replacement contract (subject to compliance with Section 6) upon terms which are either materially not less favourable to Project Co than the terms of the contract so replaced or which are the most commercially reasonable terms then available to Project Co from a potential Sub-Contractor

that is a Fit and Proper Person without diminishing any of Project Co's obligations to VCHA under this Agreement; and

- (b) will, and will cause the replacement Sub-Contractor to, enter into a Collateral Agreement on the same or substantially the same terms as the Collateral Agreement entered into by the previous Sub-Contractor, if any.

6.3 Changes to Lending Agreements and Refinancing

Project Co will be free, at any time, to enter into, terminate, amend, waive its rights and generally deal with its Lending Agreements on such terms and conditions as it sees fit provided that (at the time such action is contemplated and effected):

- (a) such action will not:
 - (1) materially and adversely affect the ability of Project Co to perform its obligations under the Project Documents or the Leases;
 - (2) with the exception of an Exempt Refinancing (excluding subsections(c) and (d) thereof), increase the amount of any borrowing in excess of the amount described as committed Senior Debt in Project Co's Escrow Document delivered pursuant to Section 1.1(l) of Schedule 1 (as such amount may be adjusted for interest rate movements as contemplated therein);
- (b) if such action is, or is a part of, a Refinancing (other than an Exempt Refinancing), Project Co will:
 - (1) promptly advise VCHA of its intention to effect such Refinancing with sufficient details to allow VCHA to assess the impact of such Refinancing and to calculate the amount of any Refinancing Gain;
 - (2) act in good faith throughout so as not to deprive VCHA of VCHA's share of the Refinancing Gain; and
 - (3) from and after the Refinancing Date, pay to VCHA quarterly an amount equal to:
 - (A) **DELETION** of the total Refinancing Gain to the payment date; less
 - (B) the total of amounts previously paid to VCHA hereunder on account of its share of such Refinancing Gain.

Project Co will use all reasonable efforts to provide VCHA with a copy of the relevant agreement in settled draft form not less than 5 Business Days before it enters into any Lending Agreement (other than the Initial Lending Agreements). Provided that Project Co has complied with the foregoing, VCHA will enter into a new or replacement Lenders' Remedies Agreement,

substantially in the form set out in Schedule 11, with the agent of the Lenders under such Lending Agreements.

6.4 Delivery of Key Contracts

With respect to any material amendments to a Key Contract approved or deemed approved by VCHA in accordance with Section 6.1(b) or the replacement Key Contract referred to in Section 6.2 (or any agreement which materially affects the interpretation or application of any Key Contract), Project Co will deliver to VCHA a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

6.5 Tax Loss Consolidation Transaction

Project Co may undertake a Tax Loss Consolidation Transaction, provided that such transaction will not:

- (a) increase the liability of, or otherwise adversely affect, VCHA under the Project Agreement or the Leases; or
- (b) materially and adversely affect the ability of Project Co to perform its obligations under the Project Documents or the Leases.

7. LICENCES AND LEASES

7.1 Licence During Construction

VCHA hereby grants to Project Co and its Sub-Contractors a non-exclusive licence to enter on and occupy the Site during the period prior to the Operational Term for the purposes of carrying out Project Co's obligations under this Agreement. VCHA hereby confirms that such licence includes the unrestricted right to full access to the Site during such period without interference by VCHA.

7.2 Licence During Operating Period

VCHA hereby grants to Project Co and its Sub-Contractors a non-exclusive licence to enter on and occupy the VCHA Sublease Premises during the Operational Term for the purposes of carrying out Project Co's obligations under this Agreement.

7.3 Teaching Clinic Space

Schedule 8 sets out certain rights and obligations of the parties with respect to the Teaching Clinic Space.

7.4 Commercial Space

Project Co may sublet any portion of the Commercial Space or grant any licence or other right of use or occupancy of the Commercial Space without the prior written consent of VCHA if:

- (a) the proposed sublease or other grant is to a Fit and Proper Person not involved in a business or activity which is incompatible or inappropriate in relation to the operation of a public hospital, (it being understood that the owner, operator or franchisee of a recognized and established retailer of goods or services shall constitute a Fit and Proper Person involved in a compatible and appropriate business or activity); and
- (b) the only uses permitted under the sublease or other grant fall within or are complimentary to the Intended Purposes or such other uses or purposes as VCHA and Project Co may agree, acting reasonably.

7.5 Terms of Commercial Space Licences

With respect to the Commercial Leases:

- (a) the terms will:
 - (1) subject to Section 7.5(c), be determined by Project Co in its sole discretion, including with respect to the rent payable thereunder; and
 - (2) not be required to provide fixed long term pricing or service levels to the same standard as Project Co provides to VCHA pursuant to the Project Agreement and the VCHA Sublease;
- (b) the location of any occupant within the Commercial Space will be determined by Project Co, in its sole discretion;
- (c) if Project Co proposes to enter into a Commercial Lease the proposed term of which, including any options to renew, exceeds the term of the Building Lease:
 - (1) Project Co will seek the prior written consent of VCHA before entering into such Commercial Lease; and
 - (2) VCHA will consent to such proposed Commercial Lease provided that:
 - (A) the conditions set out in Section 7.4 have been satisfied; and
 - (B) the terms and conditions of the proposed Commercial Lease are satisfactory to VCHA, acting reasonably; and
- (d) VCHA will not unreasonably refuse a request by Project Co to extend Parking Area hours to accommodate the reasonable requirements of a proposed tenant of the Commercial Space.

7.6 Termination of Licences at Other VCHA Buildings

VCHA will deliver notices of termination to teaching physicians within the functional programs identified in the Design and Construction Requirements occupying premises owned or leased by VCHA, pursuant to which the licences granted by VCHA to such physicians will terminate on the

Substantial Completion Date and will provide Project Co with a copy of such notices of termination contemporaneously with the delivery thereof, including the teaching physicians in the following buildings:

- (a) Heather Pavilion;
- (b) Heather Pavilion North;
- (c) Pathology Building;
- (d) Women's Residence;
- (e) Doctor's Residence;
- (f) Health Centre;
- (g) Echelon Building (Leased by VCHA);
- (h) General Surgery Building (Leased by the University of British Columbia);
- (i) Cardiology Building (Leased by VCHA); and
- (j) Willow Pavilion.

On or before the Closing Date, VCHA will advise all such physicians (without giving formal termination notice) of VCHA's intention to terminate as set out above and of the User consultation process contemplated herein.

7.7 VCHA Sublease - Subletting by VCHA

If and to the extent there is Vacant Teaching Clinic Space for which a license has not been entered into, VCHA will not, without the consent of Project Co, sublet, or grant licences for the use or occupation of, portions of the VCHA Space to any physician or group of physicians who could reasonably have been expected to enter into a licence for some or all of the Vacant Teaching Clinic Space.

7.8 Non-Disturbance Agreements

VCHA will not unreasonably refuse to enter into consent or non-disturbance agreements with tenants of the Commercial Space or licensees of the Teaching Clinic Space with a view to ensuring such tenants/licensees continue in the Building following termination of this Agreement.

8. NAMING AND SIGNAGE

8.1 Naming

VCHA will have the exclusive right to name the Facility and any parts thereof.

8.2 Signs

Project Co will be permitted to maintain an appropriate sign or signs indicating the presence of the Project on the Site. The name(s) of Project Co and the Sub-Contractors may appear on the signage on the Facility and at the entrance to the Site. The signs must comply with all applicable laws and the Design and Construction Procedures.

8.3 Commercial Space Signs

During the Operating Term, Project Co will be permitted to grant signage rights to tenants of the Commercial Space provided that such signs comply with applicable Laws and the reasonable requirements of VCHA with respect to size, quality and location.

9. REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of Project Co

Project Co represents and warrants to VCHA that at the date of this Agreement:

- (a) all necessary actions to authorize, and (except as otherwise identified to VCHA) all required consents to, and approvals for, the execution by Project Co of, and performance of its obligations under, this Agreement have been taken or received;
- (b) except in respect of debts, liabilities or obligations that have been incurred by Project Co in preparing to enter into this Agreement and all other agreements referred to herein, Project Co has no material financial obligations;
- (c) the information concerning Project Co set out in Schedule 9 is true and accurate and there is not outstanding at the date hereof any offer, agreement or other arrangement, other than as contemplated in such information itself, whereby:
 - (1) any person, firm or company is at the date hereof or at any time entitled to or obligated to subscribe for or take by means of transfer or by conversion of any other form of investment or bond any interest in Project Co (including any such entitlement or obligation that may arise in exercise of an option enforceable by or against Project Co or any sponsor); or
 - (2) any alteration to the constitution of the board of directors of Project Co may take effect;
- (d) the copy of the constating documents of Project Co certified by appropriate officers of Project Co and delivered to VCHA in accordance with Schedule 1 is

true and accurate and there are no outstanding proposals to amend such documents;

- (e) Project Co has satisfied itself as to the purposes of the Project and the nature and extent of the risks assumed by it in relation to the Project as set out in this Agreement and has gathered all information necessary to commence its obligations under this Agreement.

9.2 Representations and Warranties of VCHA

VCHA represents and warrants to Project Co that at the date of this Agreement:

- (a) all necessary actions to authorize, and (except as otherwise identified to Project Co) all required consents to, and approvals for, the execution and delivery by VCHA of, and performance of its and the Province of British Columbia's obligations under, this Agreement and the documents herein contemplated have been taken or received; and
- (b) Senior Management is not aware of any material information relevant to the Project and in the possession or control of VCHA which has not been disclosed to Project Co, and is not aware of any other information, including any material inaccuracies or misrepresentations in the material information that has been disclosed to Project Co, that, if disclosed to Project Co, would have a material effect on Project Co's assessment of the Project.

9.3 No Liability for Disclosed Data

VCHA:

- (a) except as set out in Section 9.2(b), gives no warranty or undertaking of whatever nature in respect of the Disclosed Data and, except as aforesaid, specifically, VCHA does not warrant that the Disclosed Data represents all of the information in its possession or control (either during the conduct of the request for proposals process for the Project or at the time of execution 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;
- (b) except as set out in Section 9.2(b), will not be liable to Project Co in respect of any failure to disclose or make available to Project Co prior to the execution of this Agreement any information, documents or data, nor any failure to review or to update the Disclosed Data, save and except for any failure to inform Project Co prior to the execution of this Agreement of any inaccuracy, error, omission or defects in the Disclosed Data of which Senior Management is aware; and
- (c) will not be liable to Project Co for and Project Co will not seek to recover from VCHA (or from any director, officer or employee of VCHA) any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Disclosed Data by, or on

behalf of, Project Co or any Sub-Contractor, save and except as set out in Sections 9.2(b) and 9.3(b) hereof.

9.4 Project Co Investigation and Assumption of Risk

Except as expressly set out in this Agreement, Project Co acknowledges and confirms that:

- (a) it has conducted its own analysis and review of the Project and has, before the execution of this Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any Disclosed Data upon which it places reliance; and
- (b) it will not be entitled to and will not make (and will ensure that no Sub-Contractor makes) any claim against VCHA or any director, officer or employee of VCHA 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:
 - (1) of any misunderstanding or misapprehension in respect of the Disclosed Data; or
 - (2) that incorrect or insufficient information relating to the Disclosed Data was given to it by any person unless Senior Management knew such information to be incorrect,

nor will Project Co be relieved from any obligation imposed on, or undertaken by, it under this Agreement on any such ground.

10. REPRESENTATIVES

10.1 VCHA's Representative

The following will apply with respect to the appointment and authority of VCHA's Representative:

- (a) VCHA's Representative during the Design and Construction phase will be VCHA's Design Representative appointed under Schedule 4. During the Operational Term, VCHA's Representative will be the member of the Operation and Maintenance Committee appointed by VCHA under Schedule 7 or such other person appointed by VCHA pursuant to this Section 10.1. In addition to those functions and powers of VCHA in relation to the Project that are identified in this Agreement as functions or powers to be carried out by VCHA's Representative, VCHA's Representative will also exercise such other functions and powers of VCHA under this Agreement as VCHA may notify to Project Co from time to time;
- (b) VCHA's Representative will be entitled at any time by notice to Project Co to authorize any other person to exercise the functions and powers of VCHA delegated to him pursuant to this Section 10.1, either generally or specifically.

Any act of any such person will, for the purposes of this Agreement, constitute an act of VCHA's Representative and all references to the "VCHA's Representative" in this Agreement (apart from this Section) will be taken as references to such person so far as they concern matters within the scope of such person's authority;

- (c) VCHA may by notice to Project Co change VCHA's Representative. VCHA will (as far as practicable) consult with Project Co prior to the appointment of any replacement for VCHA's Representative, taking into account the need for liaison and continuity in respect of the Project. Such change will have effect on the date specified in the notice (which date will, other than in the case of an Emergency, be a date that will not cause material inconvenience to Project Co in the execution of its obligations under this Agreement);
- (d) during any period when no VCHA's Representative has been appointed (or when VCHA's Representative is unable through illness, incapacity or other reason whatsoever to carry out or exercise his functions under this Agreement) VCHA will carry out the functions which would otherwise be performed by VCHA's Representative within the time periods set out in this Agreement with respect to actions to be undertaken by the VCHA Representative; and
- (e) except as previously notified in writing before such act by VCHA to Project Co, Project Co and Project Co's Representative will be entitled to treat any act of VCHA's Representative in connection with this Agreement as being expressly authorized by VCHA and Project Co and Project Co's Representative will not be required to determine whether an express authority has in fact been given.

10.2 Project Co's Representative

The following will apply with respect to the appointment and authority of Project Co's Representative:

- (a) during the Design and Construction phase both Project Co's Design Representative and Project Co's Construction Representative (each as defined in Schedule 4) will be considered Project Co's Representative as used in this Agreement. During the Operational Term, Project Co's Representative will be the member of the Operation and Maintenance Committee appointed by Project Co under Schedule 7 or such other person appointed pursuant to this Section 10.2. Project Co's Representative will have such authority to act on behalf of Project Co as Project Co may notify VCHA from time to time, provided that if such Project Co's Representative is not given full authority to act on behalf of Project Co for all purposes of this Agreement Project Co will make readily available such other representatives of Project Co as do have the proper authority. Except as previously notified in writing before such act by Project Co to VCHA, VCHA and VCHA's Representative will be entitled to treat any act of Project Co's Representative in connection with this Agreement as being expressly authorized by Project Co and VCHA and VCHA's Representative will

not be required to determine whether any express authority has in fact been given; and

- (b) Project Co may by notice to VCHA change Project Co's Representative. Project Co will (as far as practicable) consult with VCHA prior to the appointment of any replacement for Project Co's Representative, taking into account the need for liaison and continuity in respect of the Project. Such change will have effect on the date specified in the notice (which date will, other than in the case of an Emergency, be a date that will not cause material inconvenience to VCHA in the execution of its obligations under this Agreement).

11. INSURANCE, DAMAGE AND DESTRUCTION

11.1 Insurance

Project Co and VCHA will respectively obtain and maintain insurance as set out in Schedule 14.

11.2 Agreement Not Affected by Damage or Destruction

Except to the extent expressly provided in this Agreement, the partial destruction or damage or complete destruction by fire or other casualty of the Facility will not terminate this Agreement or entitle Project Co or VCHA to surrender possession of the Site or the Facility or to demand any abatement or reduction of any amounts payable under this Agreement, any law or statute now or in the future to the contrary and, to the extent permitted, the parties hereby waive the application of any such law or statute.

11.3 Project Co's Obligations When the Facility is Damaged or Partially Destroyed

If the Facility is damaged or partially destroyed, except to the extent the cause of such damage or destruction was Uninsurable or an event which is an excluded peril or is not included in the events to be insured against, in each case, by Project Co pursuant to Schedule 14, Project Co will repair, replace, or restore any part of the Facility so destroyed subject to the regulations and requirements of any applicable Governmental Authority having jurisdiction and subject to any insurance coverage limitations specifically set out in Schedule 14 or agreed to in writing by VCHA.

11.4 Project Co's Obligations When the Facility is Completely or Substantially Destroyed

Unless VCHA elects to terminate this Agreement in accordance with the provisions of Section 17, if the Facility is completely or substantially completely destroyed, except to the extent the cause of such destruction was Uninsurable or an event which is an excluded peril or is not included in the events to be insured against, in each case, by Project Co pursuant to Schedule 14, Project Co will reconstruct or replace the Facility with structures comparable to those which were destroyed subject to the regulations and requirements of any applicable Governmental Authority having jurisdiction and subject to any insurance coverage limitations specifically set out in Schedule 14 or agreed to in writing by VCHA.

11.5 Standards of Replacement, Repair or Reconstruction

Any replacement, repair, or reconstruction of the Facility or any part thereof pursuant to the provisions of Sections 11.3 or 11.4 will be made or done in compliance with the Design and Construction Procedures, subject to any agreement made between VCHA and Project Co to revise the Design and Construction Procedures as they pertain to any replacement or repaired Facility.

11.6 Mitigation

Project Co will take all reasonable steps to mitigate the effects of any risks or claims covered by this Section 11 (including minimizing the amount of any costs and expenses which might result).

12. INDEMNITIES

12.1 Project Co Indemnities to VCHA

- (a) Project Co will indemnify and keep VCHA indemnified at all times from and against all Direct Losses sustained by VCHA as a result of any claim for, or in respect of, the death or personal injury of any third party or any loss of or damage to property or assets of VCHA or any third party arising by reason of any negligent or wrongful act or omission of Project Co or persons for whom it is legally responsible, except to the extent caused (or contributed to) by breach of any express provision of this Agreement or the Leases by VCHA or persons for whom it is legally responsible (including users of the VCHA Sublease Premises) or any negligent or wrongful act or omission of VCHA or such persons for whom it is legally responsible.
- (b) Project Co will, as between itself and VCHA, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all Sub-Contractors and all directors, officers, employees and agents of Project Co or any Sub-Contractor and all Direct Losses sustained by VCHA as a result of the foregoing, except to the extent caused (or contributed to) by specific written instructions or actions from VCHA or the VCHA Representative, breach of any express provision of this Agreement or the Leases by VCHA or persons for whom it is legally responsible or any negligent or wrongful act or omission of VCHA or persons for whom it is legally responsible (including users of the VCHA Sublease Premises). All references in this Agreement to any act, default, omission, breach or negligence of Project Co will be construed accordingly to include any such act, default, omission, breach or negligence of a Sub-Contractor or any director, officer, employee or agent of Project Co or a Sub-Contractor.
- (c) Project Co will indemnify and save harmless VCHA, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all Direct Losses which may be paid by, incurred by or asserted against VCHA, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, during or

after the Operational Term, arising from or in connection with any breach of or non-compliance with the provisions of Section 11 of Schedule 7 by Project Co or arising from or in connection with:

- (1) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including any Governmental Authority, against any one or more of them pursuant to or under applicable Law relating to environmental matters; or
- (2) any release or alleged release of any Hazardous Substance at or from the Site,

related to or as a result of either the use and occupation of the Site by Project Co or those for whom it is in law responsible or any act or omission of Project Co or any person for whom it is in law responsible.

12.2 VCHA Indemnities to Project Co

- (a) VCHA will indemnify and keep Project Co indemnified at all times from and against all Direct Losses sustained by Project Co as a result of any claim for, or in respect of, the death or personal injury of any third party or any loss of or damage to property or assets of Project Co or any third party arising by reason of any negligent or wrongful act or omission of VCHA or persons for whom it is legally responsible (including users of the VCHA Sublease Premises), except to the extent caused (or contributed to) by breach of any express provision of this Agreement or the Leases by Project Co or persons for whom it is legally responsible or any negligent or wrongful act or omission of Project Co or persons for whom it is legally responsible.
- (b) VCHA will indemnify and save harmless Project Co, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all Direct Losses which may be paid by, incurred by or asserted against Project Co, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, during or after the Operational Term, arising from or in connection with any breach of or non-compliance with the provisions of Section 4.6 of the VCHA Sublease by VCHA or arising from or in connection with:
 - (1) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including any Governmental Authority, against any one or more of them pursuant to or under applicable Law relating to environmental matters; or
 - (2) any release or alleged release of any Hazardous Substance at or from the Site,

related to or as a result of (i) the use and occupation of the Site by VCHA or those for whom it is in law responsible, (ii) any act or omission of VCHA or any

person for whom it is in law responsible, or (iii) any pre-existing conditions of the Site.

12.3 Conduct of Claims

This Section 12.3 will apply to the conduct, by a party from whom an indemnity is sought under this Agreement, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. 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**". Accordingly:

- (a) 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 Agreement, the Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 5 Business Days of receipt thereof. Such notice will specify with reasonable particularity (to the extent that the information is available): (i) the factual basis for the claim, and (ii) the amount of the claim. If the Beneficiary fails to give such written notice to the Indemnifier, such failure will not preclude the Beneficiary from making a claim against the Indemnifier under this Section 12.3 but the Beneficiary's right to indemnification will be reduced to the extent that such delay prejudiced the defence of the claim or increased the amount of liability or the cost of the defence;
- (b) subject to Sections 12.3(c), 12.3(d) and 12.3(e), on the giving of a notice by the Beneficiary pursuant to Section 12.3(a), if it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not less than all) of the liability arising out of the claim, the Indemnifier will (upon notice to the Beneficiary within 30 days from its receipt of the Beneficiary's notice referred to above and subject to providing the Beneficiary with a secured indemnity against all costs and expenses that it 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 will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (c) with respect to any claim conducted by the Indemnifier pursuant to Section 12.3(b):
 - (1) the Indemnifier will keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (2) the Indemnifier will not bring the name of the Beneficiary into disrepute;
 - (3) the Indemnifier will not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

- (4) the Indemnifier will 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
 - (5) the Indemnifier will use all reasonable efforts to have the Beneficiary named as beneficiary under any release given by the persons bringing the claim to which this Section 12.3 pertains and to have such release delivered to the Beneficiary;
- (d) subject to Section 12.4, the Beneficiary will be free to pay, settle or defend any claim on such terms as it thinks fit and, without prejudice to its rights and remedies under this Agreement, if:
- (1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 12.3(b); or
 - (2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 30 days of the Indemnifier's receipt of the notice from the Beneficiary referred to in Section 12.3(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (3) the Indemnifier fails to comply in any material respect with the provisions of Section 12.3(c);
- (e) with respect to any claim conducted by the Beneficiary pursuant to Section 12.3(d):
- (1) the Beneficiary will keep the Indemnifier fully informed and consult with it about material elements of the conduct of the claim;
 - (2) the Beneficiary will not bring the name of the Indemnifier into disrepute;
 - (3) the Beneficiary will not pay or settle such claims without the prior consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;
 - (4) the Beneficiary will not admit liability or fault to any third party without the prior consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;
 - (5) the Beneficiary will not disclose to the claimant the existence of the indemnity; and
 - (6) in the event that the claimant is aware of the indemnity (without the Beneficiary breaching Paragraph 12.3(e)(5)), the Beneficiary will use all reasonable efforts to have the Indemnifier named as beneficiary under any release given by the persons bringing the claim to which this Section 12.3(e) pertains and to have such release delivered to the Indemnifier;

- (f) the Beneficiary may, with the prior consent of the Indemnifier (which consent may be unreasonably withheld), retain or take over (as the case may be) at any time the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which Section 12.3(b) applies. If the Indemnifier consents to the Beneficiary retaining or taking over the claim (as the case may be), the Indemnifier will promptly take all steps (including the delivery to the Beneficiary of all relevant documentation) necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary retains or takes over any claim pursuant to this Section 12.3(f), then the Indemnifier will be released from any liability under its indemnity under Sections 12.1 or 12.2 (as the case may be) and, without prejudice to any accrued liabilities, any liability under its Indemnity given pursuant to Section 12.3(b) in respect of such claim;
- (g) subject to Section 12.3(f), the Indemnifier will be free at any time to give notice to the Beneficiary that it is taking over the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which this Section 12.3 applies. Upon receipt of such notice, the Beneficiary will promptly take all steps (including the delivery to the Indemnifier of all relevant documentation) necessary to transfer the conduct of such claim to the Indemnifier, and will provide to the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (h) if the Indemnifier pays to the Beneficiary an amount in respect of any indemnity and the Beneficiary subsequently recovers or receives (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum or anything else of value which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary will forthwith repay to the Indemnifier, with interest at the Default Interest Rate, the lesser of:
- (1) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering such sum; and
 - (2) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,
- provided that there will be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any Direct Losses sustained by the Beneficiary; and
- (i) any person taking any of the steps contemplated by Sections 12.3(a) to 12.3(h) will 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.

12.4 Mitigation

VCHA and Project Co will at all times take all commercially reasonable steps to minimize and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement. Any indemnity under this Section 12 will not extend to Direct Losses to the extent that they would have been reduced or avoided by the Beneficiary complying with the provisions of this Section 12.4.

13. LIMITS ON LIABILITY

13.1 No Consequential Damages

The indemnities under this Agreement will not apply and there will be no right to claim damages for breach of this Agreement or tortious act, whether under statute, contract, tort, common law 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 ("**Indirect Losses**") suffered or allegedly suffered by either party. Notwithstanding the foregoing, Sub-Contractor Losses will be treated as Direct Losses.

13.2 No Double Compensation

Notwithstanding any other provision of this Agreement, neither party will be entitled to recover compensation or make a claim under this Agreement, the Leases 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 it has already been compensated in respect of that loss or failure pursuant to this Agreement, the Leases or otherwise.

14. FORCE MAJEURE

14.1 Force Majeure Defined

- (a) For the purposes of this Agreement, "**Force Majeure**" means **[DELETED]**

14.2 Relief From Liability

Subject to Section 14.3, the party claiming relief will be relieved from liability under this Agreement to the extent that by reason of Force Majeure it is not able to perform its obligations under this Agreement.

14.3 Mitigation

If a party is (or claims to be) affected by an event of Force Majeure:

- (a) it will take all reasonable steps to mitigate the consequences of such an event upon the performance 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 endeavours to remedy its inability to perform; and

- (b) it will not thereafter be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure (if any) to comply with its obligations under Section 14.3(a) above.

14.4 Initial Notice

The party claiming relief will serve notice on the other party within five Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice will give sufficient details to identify the particular event claimed to be an event of Force Majeure.

14.5 Subsequent Notice

The party claiming relief will serve a subsequent notice on the other party within a further five Business Days which will 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 14.3, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it or its effects. If, following the issue of any such 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), it will submit such further information to the other party as soon as reasonably possible.

14.6 Notice of Resumption

The party claiming relief will 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.

14.7 Equitable Modifications

The parties will endeavour to agree on modifications to the Agreement which may be equitable having regard to the nature of an event or events of Force Majeure.

14.8 Termination for Force Majeure

If, in the circumstances referred to in this Section 14, the parties have failed to reach agreement on any modification to this Agreement pursuant to Section 14.7 within six months of the date on which the party affected serves notice on the other party in accordance with Section 14.4 either party may at any time afterwards submit any outstanding issues in respect of equitable modifications for resolution pursuant to Sections 2.2, 2.3 and 2.4 of the Dispute Resolution Procedure, but failing resolution of such issues and provided that the relevant event of Force Majeure continues to prevent either party from performing any material obligation under this Agreement either party may terminate this Agreement by notice to the other party having immediate effect.

15. DEFAULT BY PROJECT CO

15.1 Project Co Events of Default

For the purposes of this Agreement, "**Project Co Event of Default**" means any of the following events or circumstances:

- (a) Project Co committing a breach of any of its obligations under this Agreement or either of the Leases (other than as a consequence of a breach by VCHA of its obligations under this Agreement or either of the Leases), and such breach materially adversely affects the ability of VCHA to perform any of its material obligations or enjoy any of its material rights under this Agreement or either of the Leases and, if such breach is capable of being cured, such breach has not been cured within 30 days after VCHA has given notice of the breach to Project Co or, if such breach cannot reasonably be cured within such 30 day period, such longer period as is reasonably required to cure such breach provided Project Co continuously makes diligent efforts to cure such breach until so cured;
- (b) Project Co abandoning the Project, including the Work (other than as a consequence of a breach by VCHA of its obligations under this Agreement);
- (c) the Building Lease is terminated in accordance with its terms by reason of a Project Co default thereunder;
- (d) the VCHA Sublease is terminated in accordance with its terms by reason of a Project Co default thereunder;
- (e) at any time after the Substantial Completion Date, Project Co committing a material breach of its obligations under this Agreement (other than as a consequence of a breach by VCHA of its obligations under this Agreement or either of the Leases) which results in the criminal investigation, prosecution and conviction of Project Co, any Sub-Contractor or any director, officer or employee of Project Co or any Sub-Contractor, provided that a conviction of a Sub-Contractor or one of its directors, officers or employees will not constitute a Project Co Event of Default if, within 90 days from the date of the conviction (whether or not the conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant person (which in the case of an individual director, officer or employee will be deemed to include the Sub-Contractor of which that person is a director, officer or employee) is terminated and a replacement is appointed by Project Co in accordance with the terms of this Agreement;
- (f) the occurrence of any of the following events in respect of Project Co (other than as a consequence of an act of, or omission by, VCHA), namely:
 - (1) Project Co is adjudged or declared bankrupt or insolvent or makes an assignment for the benefit of creditors, or petitions or applies to any tribunal for the appointment of a receiver, custodian, trustee or similar

- officer for it or for any substantial part of its property, or commences any proceedings relating to it under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding for it or for any substantial part of its property;
- (2) any proceedings commenced by Project Co, or against Project Co (and not being contested in good faith using all reasonable efforts), under the *Companies' Creditors Arrangement Act*;
 - (3) a receiver, receiver manager, custodian, liquidator, trustee or encumbrancer (or other person with like powers) taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being discharged within 10 Business Days) upon, the whole or any substantial part of the assets of Project Co;
 - (4) Project Co ceasing to carry on business;
 - (5) a petition being filed (and not being contested in good faith using all reasonable efforts), a resolution being passed or an order being made for the dissolution, liquidation or bankruptcy, or proceedings being commenced for the winding-up, of Project Co;
- (g) the occurrence of a Change in Control other than in accordance with the terms hereof to which VCHA has not expressly consented in writing provided that if:
- (1) the Change in Control was inadvertent on the part of Project Co; and
 - (2) Project Co has rectified the Change in Control within 30 days of having become aware of it,
- such Change in Control will be deemed not to be an Event of Default; or
- (h) Project Co not achieving Substantial Completion on or before the last day of the second year after the Target Substantial Completion Date, such date to be extended for Delay Events or Variations determined in accordance with the terms hereof;
 - (i) Project Co has not replaced the Service Contractor if required to do so in accordance with the terms of Section 15.4.

15.2 Notification

Project Co will notify VCHA 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 or otherwise, to constitute or give rise to a Project Co Event of Default, in either case promptly on Project Co becoming aware of its occurrence.

15.3 VCHA Termination Right

On the occurrence of a Project Co Event of Default, or within a reasonable time thereafter, and while it is subsisting, VCHA may terminate this Agreement in its entirety by giving notice to Project Co having immediate effect.

15.4 Replacement of Non-Performing Sub-Contractor

VCHA may, in its discretion, require Project Co by notice to terminate or cause the termination of the Services Contractor and cause a replacement Sub-Contractor to be appointed in accordance with this Agreement to provide all those parts of the Operation and Maintenance Services which were performed by the Services Contractor within 90 days if Project Co receives three or more Warning Notices in respect of the Operation and Maintenance Service performed by the Services Contractor in any 12 month period, provided this Section will not give rise to partial termination of either the obligation to provide the Operation and Maintenance Services or this Agreement.

15.5 VCHA Costs

Project Co will reimburse VCHA for all reasonable costs incurred by VCHA in exercising any of its rights (including any relevant increased administrative expenses and actual legal expenses) under this Section 15. VCHA will take reasonable steps to mitigate such costs.

15.6 Exercise of Termination Rights

VCHA will not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement and in compliance with the terms of the Lenders' Remedies Agreement. The rights of VCHA (to terminate or otherwise) under this Section 15 are in addition (and without prejudice) to any other right which VCHA may have to claim the amount of Direct Losses suffered by VCHA on account of the acts or omissions of Project Co (or to take any action other than termination of this Agreement).

16. DEFAULT BY VCHA

16.1 VCHA Events of Default

For the purposes of this Agreement, "**VCHA Event of Default**" means any of the following events or circumstances:

- (a) VCHA commits a breach of any of its obligations hereunder or under either of the Leases (other than as a consequence of a breach by Project Co of its obligations under this Agreement or either of the Leases) and such breach materially adversely affects the ability of Project Co to perform any of its material obligations or enjoy any of its material rights under this Agreement or either of the Leases and:

- (1) if such breach is a breach of a payment obligation hereunder, such breach has not been cured within five Business Days after Project Co has given notice of the breach to VCHA; or
- (2) otherwise, if such breach is capable of being cured, such breach has not been cured within 30 days after Project Co has given notice of the breach to VCHA or, if such breach cannot reasonably be cured within such 30 day period, such longer period as is reasonably required to cure such breach provided VCHA continuously makes diligent efforts to cure such breach until so cured;
- (b) the Building Lease is terminated in accordance with its terms by reason of a VCHA default thereunder;
- (c) the VCHA Sublease is terminated in accordance with its terms by reason of a VCHA default thereunder; or
- (d) if a Governmental Authority requires a sum of money to be set aside or otherwise paid pursuant to Section 48 of the *Hospital Act* (British Columbia) with the result that Project Co does not have sufficient funds to fulfill its obligations under Section 11.3 or 11.4 and VCHA does not pay a like sum to Project Co within five Business Days of demand therefore in order for Project Co to carry out such obligations.

16.2 Project Co's Options

On the occurrence of a VCHA Event of Default, or within a reasonable time after Project Co becomes aware of it, and while it is still subsisting, Project Co may, at its option:

- (a) in respect of execution of the Work prior to the Substantial Completion Date, suspend performance by it of its obligations under this Agreement until such time as VCHA has demonstrated to the reasonable satisfaction of Project Co that it will perform and is capable of performing its obligations under this Agreement;
- (b) serve notice on the Guarantor to make payment under the Payment Guarantee; and/or
- (c) serve notice on VCHA of the occurrence (and specifying details) of such VCHA Event of Default and if the relevant matter or circumstance has not been rectified or remedied by VCHA (or otherwise) within 20 Business Days of such notice, terminate this Agreement in its entirety by notice having immediate effect.

16.3 Project Co Costs

VCHA will reimburse Project Co for all reasonable costs incurred by Project Co in exercising any of its rights under this Section 16 (including any relevant increased administrative expenses and actual legal expenses). Project Co will take reasonable steps to mitigate such costs.

17. TERMINATION FOR CONVENIENCE

17.1 Termination by VCHA

VCHA may terminate this Agreement at any time by giving Project Co at least 60 days written notice that it is terminating this Agreement pursuant to this Section 17.1, it being understood and agreed however that VCHA shall endeavour to provide Project Co with as much prior notice of such termination as is reasonably possible given the circumstances at the time in order to effect an orderly transition and termination.

17.2 Termination and Replacement of Services Contractor

In addition to the rights of VCHA under Section 15 of this Agreement, VCHA may, at any time, submit to Project Co a Variation Enquiry pursuant to Schedule 17 requesting Project Co to provide an Estimate in respect of the termination and replacement of the Services Contractor (which termination and replacement will, for purposes of this Section 17.2, be deemed to be a Variation). In response to a Variation Enquiry made pursuant to this Section 17.2 the provisions of Schedule 17 will apply, however any amounts payable by Project Co to the Services Contractor included in the Estimate on account of such termination will be limited to an amount equal to Direct Losses and **DELETED**% of projected Operating Costs and projected Life Cycle Costs for the lesser of:

- (a) a period of five years from the date the Services Contractor is terminated; and
- (b) the remainder of the term of the Operation and Maintenance Services Contract.

18. EFFECT OF TERMINATION

18.1 Continued Effect – No Waiver

Notwithstanding any breach of this Agreement by either party, and without prejudice to any other rights which the other party may have in relation to it, 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. 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, will not be deemed a waiver of such right for any subsequent breach.

18.2 Continued Performance

Subject to any exercise by VCHA of its rights to perform, or to procure (pursuant to the provisions of this Agreement) a third party to perform, the obligations of Project Co, the parties will continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of the Agreement becomes effective in accordance with the provisions of this Section.

18.3 Transfer to VCHA of Assets, Contracts, etc.

On the service of a notice of termination in accordance with this Agreement for any reason (and subject to the terms of the Lenders' Remedies Agreement):

- (a) if prior to the Substantial Completion Date, in so far as any transfer will be necessary to fully and effectively transfer property to VCHA, Project Co will transfer to, and there will vest in, VCHA such part of the Facility as has been constructed and such items of plant and equipment as have then been procured by Project Co and if VCHA so elects:
 - (1) all plant and all materials on or near the Site which are subject to Sub-Contracts and which are not yet incorporated in the Works will remain available to VCHA for the purposes of completing the Work; and
 - (2) the Facility (to the extent then constructed) will remain available to VCHA for the purposes of completing the Work;
- (b) Project Co will deliver possession of and transfer to, and there will vest in, VCHA, free from all Encumbrances (other than Permitted Encumbrances), the Facility;
- (c) if VCHA so elects, Project Co will cause any of Key Contracts to be novated or assigned, to the extent assignable, to VCHA, provided that if termination occurs under Section 16.2 the consent of the Sub-Contractor will be required;
- (d) Project Co will, upon request by VCHA, assign to VCHA, to the extent assignable, the Commercial Leases;
- (e) Project Co will, or will cause any Sub-Contractor to (as the case may be), offer to sell to VCHA at fair market value (determined as between a willing vendor and willing purchaser, with any disputes as to such fair market value arising prior to Total Completion being referred to the Independent Certifier pursuant to Section 3.7 of Schedule 4, but otherwise determined pursuant to the Dispute Resolution Procedure), free from any Encumbrance (other than Permitted Encumbrances) all or any part of the stocks of material and other assets, spare parts and other moveable property owned by Project Co or any Sub-Contractor for the sole purpose of the Project and reasonably required by VCHA in connection with the operation of the Facility or the provision of the Operation and Maintenance Services;
- (f) Project Co will deliver to VCHA (to the extent not already delivered to VCHA) one complete set of:
 - (1) if after Total Completion, "as built drawings" showing all alterations made to the Facility since the commencement of operation of the Facility; and
 - (2) maintenance, operation and training manuals for the Facility;

- (g) Project Co will use all reasonable efforts to ensure that the benefit of all manufacturer's warranties that have not expired in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Agreement and included in the Facility are assigned, or otherwise transferred, (to the extent assignable or transferable) to VCHA free from any Encumbrances (other than Permitted Encumbrances); and
- (h) Project Co will deliver to VCHA all records required to be kept by Project Co pursuant to Schedule 10 unless such documents are required by Law to be retained by Project Co or a Sub-Contractor (in which case Project Co will deliver complete copies to VCHA).

If this Agreement is terminated other than pursuant to Section 15.3, all costs and expenses incurred by Project Co in fulfilling its obligations under this Section 18.3 will be borne by VCHA, without duplication of any amounts to be paid pursuant to Schedule 12.

Project Co will use all commercially reasonable efforts to ensure that provision is made in all applicable contracts to ensure that VCHA will be in a position to exercise its rights, and Project Co will be in a position to comply with its obligations, under this Section 18.3.

On completion of the requirements of this Section 18 (except in so far as any of the requirements of this Section may be waived by the relevant party receiving the benefit thereof), this Agreement will terminate and, except for any rights or obligations which expressly survive the termination of this Agreement (such as any payment obligations of VCHA to Project Co) or by necessary implication survive the termination of this Agreement, all rights and obligations of VCHA and Project Co under this Agreement will cease and be of no further force and effect.

18.4 Transitional Arrangements

On the termination of this Agreement for any reason, for a reasonable period both before and after any such termination, Project Co will have the following duties:

- (a) for a period of not greater than six months, and, provided that this Agreement was not terminated pursuant to Section 15.3 at the sole cost and expense of VCHA (which amounts will be reimbursed to Project Co on a weekly basis), Project Co will co-operate fully with VCHA and any successor providing to VCHA services in the nature of any of the Operation and Maintenance Services or any part of the Operation and Maintenance Services in order to achieve a smooth transfer of the manner in which VCHA obtains services in the nature of the Operation and Maintenance Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of VCHA and members of the public;
- (b) Project Co will as soon as practicable remove from the Site all property or assets not assigned or transferred to VCHA pursuant to this Section 17 and if it has not done so within 60 days after any notice from VCHA requiring it to do so (which notice will not be effective until all determinations made by the Independent Certifier or under the Dispute Resolution Procedure relating to assignments or

transfers in accordance with this Section 17 have been settled or finalized and all payments relating thereto have been made by VCHA to Project Co) VCHA may (without being responsible for any loss, damage, cost or expense) remove and sell any such property or assets and will hold any proceeds less all costs incurred to the credit of Project Co (subject to any right in favour of Project Co to dispute any notice delivered by VCHA hereunder pursuant to the Dispute Resolution Procedure);

- (c) Project Co will forthwith deliver to VCHA's Representative:
- (1) any keys, access cards and other devices which allow entry to the Facility; and
 - (2) any copyright licences for any computer programs (or licences to use the same) necessary for the operation of the Facility (but excluding computer programs which have been developed or acquired by a Sub-Contractor for its own use and not solely for the purposes of provision of any of the Operation and Maintenance Services at the Facility or the assignment or transfer of which is otherwise restricted or not available). In connection with the foregoing, Project Co will:
 - (A) use commercially reasonable efforts to obtain any consent required for the assignment or transfer of such copyright licences; and
 - (B) not be required to make any representation or warranty with respect to such copyright licences (or the computer programs relating thereto);
- (d) Project Co will as soon as practicable vacate the Site and will leave the Site and, to the extent within the reasonable control of Project Co, the Facility in a safe, clean and orderly condition; and
- (e) if this Agreement is terminated other than pursuant to Section 15.3, all costs and expenses incurred by Project Co in fulfilling its obligations under Sections 18.4(b), (c) and (d) will be borne by VCHA, without duplication of any amounts to be paid pursuant to Schedule 12.

18.5 Re-Entry

Upon the termination or forfeiture of this Agreement Project Co will at the request of VCHA immediately do any or all of the following acts:

- (a) execute and deliver to VCHA a deed of surrender, discharge or other document in form satisfactory to VCHA conveying and surrendering to VCHA all right, title and interest of Project Co to and in the Building; and

- (b) deliver to VCHA vacant possession of the portion of the Building occupied by Project Co (which, for greater certainty, is the portion of the Building not subject to the VCHA Sublease, any Commercial Leases or any licences or other agreements for the Teaching Clinic Space) in neat and clean condition,

and VCHA, without further notice to Project Co, may immediately enter such portion of the Building, to take possession thereof with or without process of law, to remove all personal property therefrom and all persons occupying the portion of the Building, to use all necessary force therefor, and in all respects to take the actual, full and exclusive possession of such portion of the Building as of VCHA's original estate, without incurring any liability to Project Co or to any Person occupying or using the portion of the Building for any damage caused or sustained by reason of such termination, forfeiture, surrender, entry, removal, use or taking.

18.6 Project Co to Cooperate

If VCHA wishes to conduct a competition 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 Operation and Maintenance Services or any of them) following the expiry of this Agreement, Project Co will cooperate with VCHA fully in such competition process at the sole cost and expense of VCHA (which amounts will be reimbursed to Project Co on a weekly basis) including by:

- (a) providing any information which VCHA may reasonably require to conduct such competition except that information which is commercially sensitive to Project Co or a Sub-Contractor will not be provided. For purposes of this Section 18.6(a), "commercially sensitive" means information which would (1) not in normal commercial circumstances be disclosed by a private corporation, or (2) if disclosed to a competitor of Project Co or a Sub-Contractor or an Affiliate of a competitor or any party which Project Co or a Sub-Contractor would deem to be an interested person, give that competitor, Affiliate of the competitor or interested person a competitive advantage over Project Co or the Sub-Contractor and thereby prejudice the business of Project Co or the Sub-Contractor. The determination as to whether a competitive advantage will result will be at the sole discretion of Project Co or the Sub-Contractor, as applicable; and
- (b) assisting VCHA by providing all (or any) participants in such competition process with access to the Site and the Facility to the extent that Project Co has any rights in the Site and the Facility and at the sole risk of VCHA.

18.7 Compensation on Termination

If this Agreement is terminated pursuant to Sections 14.8, 15.3, 16.2, or 17.1 then VCHA will pay compensation to Project Co in accordance with Schedule 12. This Section 18.7 and Schedule 12 will survive the termination of this Agreement.

19. CONFIDENTIALITY

19.1 Confidential Information

In this Section and subject to Section 19.3, "**Confidential Information**" means all information, documentation and records relating to the other party or a Sub-Contractor which is supplied by or on behalf of the other party or a Sub-Contractor (whether before or after the date of this Agreement) and which would be considered by a prudent businessperson, acting reasonably, to be confidential or proprietary in nature, including, without limitation, the Proposal Extracts and the Lending Agreement information and 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. "**Confidential Information**" also includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from the foregoing information, documentation and records.

19.2 Use and Disclosure of Confidential Information

Except as expressly authorized hereunder, each party will hold in confidence any Confidential Information, provided that the provisions of this Section will not restrict either party from disclosing such Confidential Information to its professional advisors (including its consultants, advisors and solicitors), to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that Project Co may, subject to Project Co instructing the following parties to comply with Project Co's obligations under this Section 19:

- (a) disclose to the Lenders or Affiliates of the Lenders (and the officers, directors, consultants, advisors and solicitors of any of the foregoing) such Confidential Information as is reasonably required by the Lenders in connection with the financing of the Project or which Project Co is obliged to supply to the Lenders pursuant to the terms of the Lending Agreements; and
- (b) disclose to the Prime Contractor and the Sub-Contractors or Affiliates of the Prime Contractor or Sub-Contractor (and the officers, directors, consultants, advisors and solicitors of any of the foregoing) Confidential Information which is necessary for Project Co's or the Sub-Contractor's performance of this Agreement.

19.3 Exceptions

The obligation to maintain the confidentiality of the Confidential Information does not apply to information, documentation and records:

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;

- (c) to the extent any person is required to disclose such Confidential Information by Law or by any Governmental Authority (but only to that extent);
- (d) to the extent consistent with any VCHA policy (provided such policy is reasonable) the details of which have been provided to Project Co in writing prior to the disclosure;
- (e) the information was in the possession of the party prior to its disclosure; or
- (f) the information is received by the party on a non-confidential basis from a source other than the other party hereto, provided that to the best of the first party's knowledge such source is not bound by a confidentiality agreement with the other party hereto or otherwise prohibited from disclosing the information to the first party by a contractual, legal or fiduciary obligation.

19.4 Announcements

Unless otherwise required by any Law, by any Governmental Authority or by the rules, orders or regulations of any stock exchange (but only to that extent), neither party will make or permit to be made any public announcement or disclosure (whether for publication in the press, radio, television or any other medium) of any Confidential Information or in the case of Project Co of its (or any Sub-Contractor's) interest in the Project, without the prior written consent of the other party (which will not be unreasonably withheld or delayed).

20. DISPUTE RESOLUTION

20.1 Procedure

Except as otherwise provided in this Agreement, any dispute arising out of or in connection with this Agreement will be resolved in accordance with the Dispute Resolution Procedure.

21. GENERAL

21.1 Enurement

This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

21.2 Assignment by Project Co

- (a) Subject to Section 21.2(b) or as otherwise set out in this Agreement, Project Co will not, without the prior written consent of VCHA (such consent not to be unreasonably withheld), assign, transfer, or otherwise dispose of any interest in this Agreement, the Key Contracts or the Leases.
- (b) Provided that Project Co has given no less than 10 Business Days notice to VCHA, the provisions of Section 21.2(a) will not apply to an assignment, transfer or other disposition to an Affiliate that complies with Sections 21.2(c)(2) and (3) or to the grant of any security for any loan or other form of financing made to

Project Co by Lenders provided that such Lenders enter into the Lenders' Remedies Agreement if VCHA so requires.

- (c) In exercising its discretion in respect of any proposed assignment, transfer or other disposition pursuant to Section 21.2(a), VCHA will not unreasonably withhold consent if:
- (1) the proposed assignee or transferee:
 - (A) has the financial capacity to perform the relevant obligations of Project Co under the Project Documents;
 - (B) is a Fit and Proper Person;
 - (C) is not involved in a business or activity which is incompatible or inappropriate in relation to the operation of a public hospital; and
 - (D) the direct or indirect consequences of the proposed assignment or transfer, if effected, would not and will not materially or adversely affect VCHA's rights, or VCHA's ability or capacity to exercise its rights, under the Project Documents;
 - (2) the proposed assignee or transferee enters into such deeds or other agreements as are reasonably required by VCHA to ensure that the applicable obligations of Project Co under this Agreement and the Project Documents are assumed by the proposed assignee or transferee for the benefit of all of the parties to those agreements; and
 - (3) the proposed assignee or transferee obtains all necessary approvals (other than from VCHA) in order to perform the applicable obligations under the Project Documents.

21.3 Change in Control

- (a) Subject to Sections 21.3(b) and (c), Project Co will not, without the prior written consent of VCHA, permit a Change in Control of Project Co, provided that VCHA will respond to a request for consent within the Approval Period and will not withhold its consent if:
- (1) the change will have no material adverse effect on VCHA, the Facility or the provision of the Operation and Maintenance Services; and
 - (2) the persons who will control Project Co are:
 - (A) institutional investors or Fit and Proper Persons; and
 - (B) not involved in a business or activity which is incompatible or inappropriate in relation to the operation of the Project; and

- (3) the request for consent from Project Co includes all relevant information reasonably required by VCHA to determine if the conditions described in Sections 21.3(a)(1) and 21.3(a)(2) have been satisfied.
- (b) This Section 21.3 will not apply (and the consent of VCHA is not required) if shares or other equity interests (including shares or units) in an entity with ultimate control of Project Co are quoted on a Prescribed Financial Market and a Change in Control occurs due to the transfer of such shares or interests on that market.
- (c) Despite Section 21.3(a), the consent of VCHA will not be required for a Change in Control occurring at any time after Financial Close under which:
 - (1) ABN AMRO Bank N.V. retains, directly or indirectly, not less than 51% economic ownership of the issued capital in Project Co; and
 - (2) that part of the economic ownership of the issued capital of Project Co which is disposed of by ABN AMRO Bank N.V. is acquired by an entity which is a Fit and Proper Person and is not involved in a business or activity which is incompatible or inappropriate in relation to the operation of a public hospital.
- (d) No Disposition at any time of any or all of the shares in Project Co (or any company, other than a public quoted company whose equity securities are quoted on a Prescribed Financial Market, of which Project Co is a subsidiary), will be permitted where the person acquiring the relevant interest is a Restricted Person or a person whose standing or activities are so inconsistent with VCHA's role as a community hospital as to potentially compromise the integrity of VCHA or inconsistent with the nature of British Columbia's health care system so as to potentially affect public confidence in that system or in VCHA.

21.4 Assignment by VCHA

Subject to Section 7.7, VCHA will not assign, transfer or otherwise dispose of any interest in this Agreement, the Leases, the Collateral Agreements, the Lenders' Remedies Agreement or any agreement in connection with this Agreement to which Project Co and VCHA are parties other than:

- (a) to any successor, where such successor arises as a result of a direction under the *Health Authorities Act* (British Columbia) or a reorganization of the delivery of health services initiated by the Government; or
- (b) with the prior written consent of Project Co which will not be unreasonably withheld if the transferee is a Fit and Proper Person and the Facility is still overseen by the Ministry of Health Services,

and, in any event, provided that the Facility continues to be used for the purpose of the Project as set out in Section 2.1 and that the Minister of Finance has expressly confirmed that the Payment Guarantee remains in full force and effect.

21.5 Notices

Each notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate or other communication required or permitted to be given or made under this Agreement (each, a "**notice**") to a party must be given in writing. A notice may be given by delivery to an individual or by fax, and will be validly given if delivered on a Business Day at the following address, or, if transmitted on a Business Day by fax addressed to the following party:

if to VCHA:

Vancouver Coastal Health Authority – Corporate Office
601 West Broadway, 11th floor
Vancouver, British Columbia, V5T 1X7

Attention: Executive Director, Facilities and Projects Manager

Facsimile: 604.875.5673

if to Project Co:

AHV Access Health Vancouver Ltd.
Three Bentall Centre
595 Burrard Street, Suite 2373
Vancouver, British Columbia, V7X 1J1

Attention: President

Facsimile: 604.484.7165

or to any other address, fax number or individual that the party designates. Any notice:

- (a) if validly delivered, will be deemed to have been given when delivered (provided that such notice is received by the contact person noted above or a person authorized on their behalf);
- (b) if validly transmitted by fax before 5:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day, and
- (c) if validly transmitted by fax after 5:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission.

21.6 Waivers

No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by those parties who have rights under, or hold the benefit of, the provision being waived if those parties promptly send a copy of the executed waiver to all other parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

21.7 No Partnership or Agency

Nothing in this Agreement will be construed as creating a partnership or as constituting one party the principal or agent of the other. Except as expressly provided in this Agreement, neither party will hold itself out as having any authority or power to bind the other party in any way.

21.8 Further Assurances

Each party will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated by this Agreement.

21.9 Conflicting Agreements

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

21.10 Remedies Cumulative

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

21.11 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

21.12 Facsimile and Electronic Mail Delivery

To evidence the fact that it has executed this Agreement or any other document contemplated by or delivered under or in connection with this Agreement, a party may transmit a copy of its executed counterpart to all other parties thereto by facsimile (fax) or by electronic mail and, unless the parties agree to some other date as the date of delivery, the transmitting party shall

be deemed to have delivered this Agreement on the date it transmitted such counterpart by facsimile (fax) or by electronic mail or such later date as the transmitting party specifies in a written notice to the other parties given with or prior to the transmission of its executed counterpart.

Any party transmitting an executed counterpart of this Agreement or such other document by facsimile (fax) or electronic mail shall promptly thereafter deliver to the other parties a counterpart bearing its original signature (but any failure or delay in so doing, shall not derogate in any way from the sufficiency or effectiveness of that party having transmitted its executed counterpart by facsimile (fax) or electronic mail).

The signature of an individual executing this Agreement (or any notice, certificate or other document contemplated by this Agreement) on behalf of a party, if sent and received by electronic mail or facsimile (fax) transmission, will be deemed to be genuine in the absence of evidence to the contrary and thus effective in the hands of the recipient, and binding upon the party on whose behalf that individual signed, for all purposes and with the same effect as if it were the original signature of that individual.

21.13 Amendments

No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each party to this Agreement at the time of the amendment, supplement, restatement or termination.

21.14 Submission to Jurisdiction

Each of the parties irrevocably submits to the jurisdiction of the courts of British Columbia in any suit, action, or other proceeding in any way related to or arising out of this Agreement commenced in the courts of British Columbia and all courts having appellate jurisdiction over those courts, by any party to this Agreement against any other party to this Agreement (a "**Permitted Action**") and each party to this Agreement waives, and will not assert by way of motion, as a defence, or otherwise, in any Permitted Action, any claim that:

- (a) that party is not subject to the jurisdiction of the courts of British Columbia;
- (b) the Permitted Action is brought in an inconvenient forum;
- (c) the venue of the Permitted Action is improper, or
- (d) any subject matter of the Permitted Action may not be enforced in or by the courts of British Columbia.

In any suit or action brought to obtain a judgment for the recognition or enforcement of any final judgment rendered in a Permitted Action, no party to this Agreement will seek any review with respect to the merits of any Permitted Action, whether or not that party appears in or defends the Permitted Action.

21.15 Entire Agreement

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement, constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or oral, express or implied, statutory or otherwise.

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

VANCOUVER COASTAL HEALTH AUTHORITY

Per: _____

Per: _____

AHV ACCESS HEALTH VANCOUVER LTD.

Per: _____

Per: _____