

**NORTHERN HEALTH AUTHORITY
FUNDING AGREEMENT**

for the Fort St. John Hospital

NORTHERN HEALTH AUTHORITY

and

ISL HEALTH (FSJ) GENERAL PARTNERSHIP

Dated as of July 16, 2009

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- Exhibit A-1 - Definition
- Exhibit B - [Not Used]
- Exhibit C-1 - Form of Notice of NHA Funding Instalment
- Exhibit C-2 - Instalment Schedule
- Exhibit C-3 - Form of Project Co Instalment Certificate
- Exhibit C-4 - Form of Authority's Technical Advisor Instalment
- Exhibit D-1 - Form of Project Co's Closing Certificate
- Exhibit E-1 - Schedule of Applicable Permits
- Exhibit E-2 - Construction Budget
- Exhibit E-3 - Operating Budget
- Exhibit E-4 - Life Cycle budget
- Exhibit E-5 - Project Schedule
- Exhibit E-6 - Base Case Project Projections
- Exhibit F - Ownership Structure

NORTHERN HEALTH AUTHORITY FUNDING AGREEMENT

THIS AGREEMENT dated as of July 16, 2009 is entered into:

BETWEEN:

NORTHERN HEALTH AUTHORITY

(the "Authority")

AND:

ISL HEALTH (FSJ) GENERAL PARTNERSHIP

("Project Co")

WHEREAS:

- A. The Authority is a regional health board under the *Health Authorities Act* (British Columbia), and is a government body under and as defined in the *Financial Administration Act* (British Columbia);
- B. The Authority and Project Co have entered into an agreement (the "**Project Agreement**") dated July 16, 2009 with respect to the design, construction, financing and maintenance of the Facility, which includes the new Fort St. John Hospital, a residential care facility and a regional services facility;
- C. In furtherance of the public interest in the Facility, the Authority will provide government assistance by making a grant (the "**NHA Funding**") to Project Co to assist with the design and construction of the Facility by Project Co for the Authority;
- D. The NHA Funding will be paid by the Authority to Project Co in instalments during the construction period in accordance with and subject to the terms and conditions of this Agreement; and
- E. Each party acknowledges and agrees that the purpose of the NHA Funding is to assist Project Co with a portion of the costs of design and construction of the Facility.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by each of the parties hereto, the parties hereto agree as follows:

1.0 INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the capitalized terms shall have the meanings set out in Exhibit A-1 [Definitions and Rules of Interpretation]. Certain words and expressions are defined within the schedules hereto and such definitions shall apply, unless the context otherwise requires, in all other parts of this Agreement whether or not Exhibit A-1 [Definitions and Rules of Interpretation] contains a cross-reference to such definitions.

1.2 Interpretation

This Agreement shall be interpreted and construed in accordance with the provisions set out in Exhibit A-1 [Definitions and Rules of Interpretation].

1.3 Exhibits

The exhibits hereto and the terms set out therein shall be deemed fully a part of this Agreement.

2.0 THE NHA FUNDING

2.1 NHA Funding Availability

Subject to the terms and conditions set forth in this Agreement, the Authority shall disburse the NHA Funding by depositing Instalments into the Proceeds Account as provided in Section 2.2 in an aggregate amount of up to \$121,464,900, exclusive of GST. To the extent applicable, the amount of GST shall be set forth in each Notice of NHA Funding Instalment delivered pursuant to Section 2.3 and shall be paid by the Authority to Project Co in addition to the relevant Instalment in accordance with Section 2.6. Project Co shall remit all GST so paid to the appropriate Governmental Authority in accordance with Applicable Law.

2.2 NHA Funding Instalments

Subject to satisfaction of the conditions precedent described in Sections 4.1 and 4.2 and the other terms and conditions hereof, the NHA Funding shall be available for drawing by Project Co by way of Instalments to be deposited into the Proceeds Account.

2.3 Notice of NHA Funding Instalment

Project Co shall request Instalments of NHA Funding from the Authority up to once monthly (or more frequently as may be agreed to by Project Co and the Authority), by

delivering to the Authority a written notice in the form of Exhibit C-1 (a “**Notice of NHA Funding Instalment**”), which specifies, among other things:

- (a) the amount of the requested Instalment, which, except for the last Instalment, shall be in a minimum amount of \$500,000;
- (b) the amount of GST payable in connection with the requested Instalment; and
- (c) the date of the requested Instalment (the “**Instalment Date**”), which shall be not earlier than the 15th day of the month.

Project Co shall give the Notice of NHA Funding Instalment to the Authority with a copy to the Authority’s Technical Advisor at least ten Business Days before the Instalment Date together with the other documents required pursuant to Section 4.2 (excluding Section 4.2(d), which shall be provided on the date of the Instalment, and excluding Section 4.2(b)), except as the parties may otherwise agree with respect to the initial NHA Funding Instalment to be made on the initial Instalment Date or the second NHA Funding Instalment to be made on the second Instalment Date.

2.4 Authority’s Technical Advisor Certificate

The Authority shall procure that the Authority’s Technical Advisor reviews the Notice of NHA Funding Instalment, the Project Co Instalment certificate delivered pursuant to Section 4.2(a) and any other documents delivered by Project Co pursuant to Section 4.2 (collectively, the “**Instalment Request**”), and delivers the Authority’s Technical Advisor certificate referred to in Section 4.2(b) (the “**ATA Certificate**”) to the Authority with a copy to Project Co by 12:00 noon on the seventh Business Day following receipt of the Instalment Request by the Authority’s Technical Advisor.

If the Authority’s Technical Advisor identifies any deficiencies with the Instalment Request, the Authority’s Technical Advisor will provide Project Co with reasonable details of such deficiencies and the basis for its determination within five Business Days of its receipt of the Instalment Request, and Project Co may provide additional information to the Authority’s Technical Advisor to support the Instalment Request.

The Authority shall procure that the Authority’s Technical Advisor delivers its ATA Certificate for the full amount of the Instalment requested, less such amount as is reasonable having regard to the deficiencies it has identified in the Instalment Request and which have not been resolved to its satisfaction, in both cases acting reasonably.

2.5 **Use of NHA Funding Proceeds**

Except as the parties may otherwise agree with respect to the initial NHA Funding Instalment to be made on the initial Instalment Date or the second NHA Funding Instalment to be made on the second Instalment Date, Project Co shall use the proceeds of each Instalment solely for the purpose of paying Construction Costs and Eligible Costs.

2.6 **Manner of Payment**

Subject to fulfilment by Project Co of the terms and conditions set forth in Sections 4.1 and 4.2, the Authority shall make all amounts in respect of the Notice of NHA Funding Instalment (including the Instalment and applicable GST) available to Project Co by depositing the same for value prior to 1:00 pm (Victoria time) on the applicable Instalment Date to the Proceeds Account.

3.0 **TERM**

3.1 **Term**

The term of this Agreement shall commence on the Closing Date and continue until the Service Commencement Date or, if earlier, the Termination Date.

4.0 **CONDITIONS PRECEDENT**

4.1 **Conditions Precedent to the Closing Date**

The obligation of the Authority to make the initial NHA Funding Instalment on the Closing Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by the Authority):

- (a) Delivery to the Authority of (i) certified copies of one or more resolutions, authorizations or similar proceedings of Project Co, the Partners, the Sponsors and each Major Project Participant, certified by the appropriate officers of each such entity as being in full force and effect on the Closing Date, authorizing the execution, delivery and performance of this Agreement, the other Funding Documents, the Material Project Documents and any instruments or agreements required hereunder or thereunder to which such Person is a party; and (ii) certified copies of any approval by any Governmental Authority required in connection with any of the foregoing.
- (b) Delivery to the Authority of a certificate reasonably satisfactory in form and substance to the Authority from Project Co, the Partners, the Sponsors and each Major Project Participant, signed by the appropriate authorized officer or

representative of each such entity and dated the Closing Date, as to the incumbency of the natural persons authorized to execute and deliver this Agreement, the other Funding Documents, the Material Project Documents and any instruments or agreements required hereunder or thereunder to which such Person is a party.

- (c) Delivery to the Authority of (i) a copy of the certificate of status (or equivalent) of Project Co, the Partners, the Sponsors (other than Innisfree F3 Sàrl) and each Major Project Participant, and (ii) certified copies of the Constatting Documents of Project Co, the Partners, the Sponsors and each Major Project Participant.
- (d) Delivery to the Authority of executed originals of this Agreement and a certified list and true and correct copies of each Material Project Document and of the Management Agreement, and any supplements or amendments thereto, all of which this Agreement, Material Project Documents and Management Agreement and supplements or amendments shall be satisfactory in form and substance to the Authority and shall have been duly authorized, executed and delivered by the parties thereto. The copies of all of such Material Project Documents and of the Management Agreement shall be certified by an Authorized Officer of Project Co as being true, complete and correct and in full force and effect on the Closing Date pursuant to Project Co's Closing Certificate. An Authorized Officer of Project Co shall also certify to the Authority pursuant to Project Co's Closing Certificate that all appropriate financing statements, filings, registrations and recordings in respect of the Collateral Documents were filed and/or submitted for filing or recording as required hereunder or by law.
- (e) The Authority shall have received a certificate, dated as of the Closing Date, signed by an Authorized Officer of Project Co, in substantially the form of Exhibit D-1 (the "**Project Co's Closing Certificate**").
- (f) Delivery to the Authority of an opinion(s) each in form and scope satisfactory to Authority of:
 - (i) counsel for Project Co, Partners and the Sponsors (other than Innisfree F3 Sàrl) with respect to, inter alia, the existence of Project Co, the Partners and the Sponsors (other than Innisfree F3 Sàrl), the due authorization, execution and delivery and enforceability of the Funding Documents and Material Project Documents to which they are a party, and in respect of Innisfree F3 Sàrl, an opinion in respect of the enforceability of the Material Project Documents to which it is a party; and

- (ii) counsel to each Major Project Participant with respect to the existence of such Major Project Participant and the due authorization, execution and delivery and enforceability of the Material Project Documents and of the Funding Documents to which it is a party.
- (g) Insurance which Project Co is required to maintain or cause to be maintained under the Project Agreement shall be in full force and effect and all premiums then due in accordance with applicable credit terms shall have been paid, and delivery to the Authority of certified copies of all policies evidencing such insurance (or binders or certificates of insurance signed by the insurer or a broker authorized to sign on behalf of the insurer) as required to be in effect on the Closing Date, in form and substance reasonably satisfactory to the Authority.
- (h) Delivery to the Authority of a copy of the Authority's Technical Advisor's report confirming *inter alia*:
 - (i) that the Authority's Technical Advisor has reviewed the Planning and Design Documents, Construction Budget, Life Cycle Budget, Project Schedule, Project Agreement and Design-Build Agreement provided to the Authority pursuant to Section 4.1(d) and that such documents are in form and substance satisfactory to the Authority's Technical Advisor and that completion of the Design and Construction in accordance with the foregoing is capable of complying with all Applicable Permits required in respect thereof;
 - (ii) the Total NHA Funding Commitment plus the Total Equity Commitment together with the amount of the RHD Funding is sufficient to achieve completion of the Design and Construction of the Project in accordance with the Planning and Design Documents and the requirements under the Project Agreement and to pay all Project Costs;
 - (iii) the Design and Construction of the Project is capable of being completed on or prior to the Target Service Commencement Date for the amount set forth in the Construction Budget delivered pursuant to Section 4.1(m);
 - (iv) that there are no material omissions from the list of Applicable Permits in Exhibit E-1 and that all Applicable Permits required to be obtained are capable of being obtained by the dates set out in Exhibit E-1.
- (i) Delivery to the Authority of the report of the Financial Model Auditor confirming, *inter alia*, its satisfactory audit of the Financial Model and otherwise to be in form and substance satisfactory to the Authority.

- (j) The Authority shall have received the most recent annual audited financial statements of each Major Project Participant together with an opening balance sheet of Project Co and each Partner.
- (k) The Authority shall have received satisfactory evidence that all of the Project Accounts have been opened.
- (l) The Authority shall have received a search report from Project Co's counsel of recent date before the Closing Date for each of the jurisdictions in which the Collateral Documents or notice thereof are intended to be filed in form and substance satisfactory to the Authority.
- (m) Project Co shall have furnished to the Authority a budget in substantially the form of Exhibit E-2 ("**Construction Budget**") together with a Project Schedule, both reasonably satisfactory to the Authority.
- (n) Project Co shall have furnished to the Authority a budget in substantially the form of Exhibit E-3 ("**Operating Budget**") which is reasonably satisfactory to the Authority and is consistent with the Financial Model in all material respects.
- (o) Project Co shall have furnished to the Authority a budget in substantially the form of Exhibit E-4 ("**Life Cycle Budget**") which is reasonably satisfactory to the Authority, which incorporates the requirements of the Life Cycle Plan and is consistent with the Financial Model in all material respects.
- (p) Project Co shall have furnished to the Authority the Financial Model in form and substance satisfactory to the Authority, acting reasonably.
- (q) Delivery to the Authority of certified copies of the following documents in form and substance satisfactory to the Authority (collectively, the "**Construction Performance Security**"):
 - (i) **DELETED DELETED DELETED DELETED DELETED DELETED**
 - DELETED DELETED DELETED DELETED DELETED DELETED**
 - (ii) one or more Acceptable Letters of Credit for an aggregate amount equal to **DELETED** or such other cash or equivalent security in the same amount, as mutually agreed to secure the Design-Builder's obligations under the Design-Build Agreement and which shall remain in full force and effect at

the **DELETED** amount until the Service Commencement Date (“**Design-Builder Letter of Credit**”).

DELETED DELETED DELETED and the Design-Builder Letter of Credit must permit assignment or novation to the Authority or a person designated by the Authority in accordance with Section 4 of the Material Contract Party Collateral Agreement with the Design-Builder if the Design-Build Agreement has been assigned or novated pursuant to such Material Contract Party Collateral Agreement.

4.2 Conditions Precedent to Instalments of NHA Funding

The obligation of the Authority to make an Instalment of NHA Funding on the initial Instalment Date and any subsequent Instalment Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by the Authority):

- (a) The Authority shall have received a certificate signed by an Authorized Officer on behalf of Project Co dated the date of such proposed Instalment and substantially in the form of Exhibit C-3 certifying (i) the Project Costs incurred to such date broken down by major expense category, (ii) details of any variances from the Construction Budget including a breakdown of all Cost Overruns, (iii) the estimated date of Service Commencement, (iv) that the remaining Project Costs to be incurred or incurred but not yet paid for by Project Co, exclusive of GST, do not exceed Available Construction Funds, (v) that the aggregate cumulative amount of all NHA Funding Instalments under this Agreement does not exceed the corresponding amount set out in Column C of the Instalment Schedule, (vi) Project Co’s compliance with the applicable provisions of the *Builders Lien Act* (British Columbia) including the making of all required holdbacks, and (vii) in respect of that portion of the Instalment request which relates to Construction Costs, copies of statutory declarations from the Design Builder and each Material Sub-Contractor to the Design-Builder indicating that the respective Material Sub-Contractor has been paid up to and including the prior month, except for holdback moneys properly retained, payments deferred by agreement and amounts withheld by reason of legitimate dispute.
- (b) The Authority shall have received and be satisfied with a certificate from the Authority’s Technical Advisor dated the date of such Instalment and substantially in the form of Exhibit C-4 (i) stating that it is reasonable to expect the Service Commencement Date to be achieved by the Longstop Date, (ii) confirming that the amounts to be funded by the Instalment are all in respect of Construction Costs or Eligible Costs, or both, and (iii) certifying the matters set forth in the certificate of Project Co delivered pursuant to Section 4.2(a).

- (c) Project Co shall have requested the Instalment pursuant to a Notice of NHA Funding Instalment and delivered to the Authority at least ten Business Days before the requested date of the Instalment.
- (d) The Authority shall have received a subsearch report from Project Co's counsel as of the date of such Instalment of the applicable registries showing that the Project is free and clear of all Liens, including, without limitation, builders' Liens, provided that if any such Liens are shown in the applicable registry, the Authority shall make the relevant Instalment but shall withhold the amount of all such registered Liens plus 25% until the Authority receives a subsearch report showing that the Project is free and clear of all Liens.
- (e) The Authority shall have received satisfactory evidence that all Applicable Permits with respect to the construction and operation of the Project that are both required to have been obtained by the proposed date of such Instalment from any Governmental Authority, as set out on Exhibit E-1 and are necessary for the current status of the Project, have been issued and are in full force and effect and not subject to appeal or further proceedings or to any unsatisfied conditions that may allow material modification or revocation.

4.3 Omission of Longstop Date Confirmation

- (a) In the event the certificate of the Authority's Technical Advisor delivered pursuant to Section 4.2(b) in respect of a requested Instalment (the "**Particular Instalment**") does not contain the statement in Section 4.2(b)(i) (the "**Longstop Confirmation**"), that omission will not preclude the making of the Particular Instalment. The parties acknowledge that Project Co may refer the omission for resolution in accordance with the Dispute Resolution Procedure under the Project Agreement.
- (b) If, at the time of the next requested Instalment following the Particular Instalment (the "**Second Instalment**"), the Dispute Resolution Procedure has been commenced by Project Co in respect of the omission of the Longstop Confirmation for the Particular Instalment, but a determination of the issue has not yet been made, the omission of the Longstop Confirmation from the certificate of the Authority's Technical Advisor in respect of the Particular Instalment or the Second Instalment will not preclude the making of the Second Instalment.
- (c) If, at the time of the next requested Instalment following the Second Instalment (the "**Third Instalment**"), either:

- (i) the Dispute Resolution Procedure referred to in paragraph (b) has resulted in a determination that the omission of the Longstop Confirmation from the certificate of the Authority's Technical Advisor in respect of the Particular Instalment was appropriate, or
- (ii) the Dispute Resolution Procedure referred to in paragraph (b) has not yet resulted in a determination of the issue;

and in either case the Authority's Technical Advisor does not include the Longstop Confirmation in its certificate in respect of the Third Instalment delivered pursuant to Section 4.2(b), then the Authority shall not be obligated to make the Third Instalment.

- (d) If, at the time of the Third Instalment, the Dispute Resolution Procedure referred to in paragraph (b) has resulted in a determination that the omission of the Longstop Confirmation from the certificate of the Authority's Technical Advisor in respect of the Particular Instalment was inappropriate, the omission of the Longstop Confirmation from the certificate of the Authority's Technical Advisor in respect of the Particular Instalment, the Second Instalment or the Third Instalment will not preclude the making of the Third Instalment, unless the Authority's Technical Advisor is unable to include the Longstop Confirmation in its respective certificates in respect of such Instalments for reasons unrelated to the matter which was the subject of the Dispute Resolution Procedure referred to in paragraph (b).
- (e) If, after the time of the Third Instalment, the Dispute Resolution Procedure referred to in paragraph (b) results in a determination that the omission of the Longstop Confirmation from the certificate of the Authority's Technical Advisor in respect of the Particular Instalment was inappropriate, the omission of the Longstop Confirmation from the certificate of the Authority's Technical Advisor in respect of the Third Instalment and any subsequent Instalment requests will no longer preclude the making of any such Instalment, unless the Authority's Technical Advisor is unable to include the Longstop Confirmation in its respective certificates in respect of such Instalments for reasons unrelated to the matter which was the subject of the Dispute Resolution Procedure referred to in paragraph (b).

5.0 REPRESENTATIONS AND WARRANTIES

Project Co makes the following representations and warranties to and in favour of the Authority as of the date hereof and, except as otherwise provided, as of each date such representations and warranties are repeated in a Notice of NHA Funding Instalment delivered pursuant to Section 2.3.

5.1 Existence

Each Partner is a corporation validly existing under the laws of the Province of British Columbia and Project Co is a general partnership formed under the laws of the Province of British Columbia, and each of Project Co and each Partner has all necessary corporate or other power and authority to own its properties and carry on its business as presently carried on.

5.2 Corporate Authority

Each of Project Co and each Partner has full power and authority to enter into this Agreement and the other Funding Documents and Material Project Documents to which it is a party.

5.3 Authorization

Each of Project Co and each Partner has taken all necessary action to authorize the creation, execution, delivery and performance of the Funding Documents and the Material Project Documents to which it is a party and to observe and perform the provisions of each in accordance with its terms. Each of the Funding Documents and the Material Project Documents to which Project Co and each Partner is a party has been duly executed and delivered by Project Co or such Partner, as the case may be.

5.4 Enforceability

The Funding Documents and each of the Material Project Documents to which Project Co and each Partner is a party constitute valid and legally binding obligations of Project Co and the Partners, enforceable against them, in accordance with their respective terms, subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights. Neither the execution and delivery of any Funding Document or any Material Project Document by Project Co or the Partners nor compliance by them with the terms, conditions and provisions contained therein will (i) result in a violation of, breach of or contravene their Constating Documents or any Applicable Laws, or (ii) result in a breach or violation of any other Funding Document or Material Project Document to which any of them is a party or any other material agreement or instrument to which any of them is a party or by which any of them is bound.

5.5 No Draw Stop

No Draw Stop has occurred and is continuing.

5.6 Litigation

There are no Claims pending and, to the best of Project Co's knowledge, no Claims threatened, against Project Co, any Partner or the Project which could reasonably be expected to have a Material Adverse Effect. As at the date of this Agreement, to the best of Project Co's knowledge, there are no Claims pending or threatened against any Major Project Participant which could reasonably be expected to have a Material Adverse Effect.

5.7 Material Project Documents

As at the date hereof, the Material Project Documents represent all of the agreements and documents material and necessary to carry out the Project and to perform all obligations of Project Co under the Project Agreement, subject to receipt of the NHA Funding Instalments pursuant to this Agreement. The copies of the Material Project Documents which have been delivered to the Authority are true and complete copies of those documents and all amendments thereto. Each of the Material Project Documents is in full force and effect, and except as disclosed to the Authority, no written notice of a default or breach thereunder, or of the occurrence of any condition entitling any party to terminate its obligations thereunder, has been delivered to Project Co. There are no material agreements to which Project Co, any Partner or, to the best of Project Co's knowledge, any Major Project Participant or any Sponsor (other than Innisfree F3 Sàrl) is a party which relate to the Project or the Collateral copies of which have not been delivered to the Authority.

5.8 Applicable Laws

All Applicable Laws applicable to the construction of the Project and the ongoing operation and maintenance of the Project and performance of all obligations under the Project Agreement have been complied with by Project Co and the Partners, except to the extent non-compliance would not have a Material Adverse Effect.

5.9 Applicable Permits

All Permits which are required to be obtained by or on behalf of Project Co and each Major Project Participant in connection with the Funding Documents and each Material Project Document have been obtained on or before the date they are required in order to implement the Project (as set forth in Exhibit E-1) and are in full force and effect, except to the extent such failure to obtain, revocation or cancellation would not have a Material Adverse Effect, and to the knowledge of Project Co no steps have been taken to revoke or cancel any such Applicable Permit.

5.10 Taxes

Project Co and each Partner has filed or caused to be filed all filings which are required to be filed by it in respect of all Taxes and has paid or caused to be paid all such Taxes to the extent that such Taxes have become due, except such as may be diligently contested in good faith and by appropriate proceedings or as to which a bona fide dispute may exist and for the payment of which adequate reserves have been allocated and set aside in trust or deposited in accordance with GAAP.

5.11 Debt

Neither Project Co nor any Partner has any Debt or other liabilities otherwise than arising under or contemplated in the Funding Documents and the Material Project Documents, other than Permitted Debt.

5.12 Collateral Documents

The Collateral Documents create or will create valid and enforceable first priority Liens upon the Collateral on the terms set out therein, and neither Project Co nor any Partner has created or consented to any Liens on its property or assets, other than Permitted Liens.

5.13 Priority

The obligations of Project Co and the Partners under the Collateral Documents rank in all respects in priority to all unsecured and unsubordinated indebtedness (except liabilities mandatorily preferred by law or as otherwise expressly provided in the Collateral Documents).

5.14 Financial Model

As of the date of delivery, the Financial Model and the Base Case Project Projections delivered by Project Co to the Authority for purposes of Financial Close take into account all the provisions of the Funding Documents and the other Material Project Documents and contain Project Co's reasonable estimate of the projected receipts and expenditures and costs required to achieve the Service Commencement Date in accordance with the Project Agreement, all as at such date. The Financial Model and the Base Case Project Projections have been prepared in good faith and with due care.

5.15 Budgets

Each of the Construction Budget, Operating Budget and Life Cycle Budget delivered by Project Co to the Authority as required pursuant to this Agreement, as at the date of delivery thereof, takes into account all of the provisions of the Funding Documents and the Material

Project Documents and contains Project Co's reasonable estimate of the actual or projected receipts and expenditures and costs required to achieve the Service Commencement Date in accordance with the Project Agreement, provide the Services in accordance with the Project Agreement and comply with its obligations under the Funding Documents, as at the date of delivery thereof by Project Co.

5.16 Disclosure

As at the date made available to the Authority by Project Co, all other documents, agreements and information relating to each of Project Co, the Partners and the Major Project Participants or their properties, assets or financial condition or relating to or affecting the Collateral or the Project do not (when taken as a whole) contain any inaccurate or misleading statement of material fact and do not (when taken as a whole) omit as of such time a material fact known to Project Co which is necessary to make the statements contained therein not misleading as of such time in light of the circumstances in which they were made.

5.17 No Authorization or Consent Necessary

No action of or filing with any Governmental Authority is required to authorize the execution, delivery and performance by Project Co, the Partners or the Parent Guarantors of any Funding Documents or Project Documents to which it is a party or to render such Funding Documents and Material Project Documents legal, valid, binding or enforceable, except those actions which have been taken or filings which have been made.

5.18 Ownership Structure

Attached as Exhibit F is a diagram showing the ownership structure of Project Co as at the date of this Agreement.

5.19 Financial Statements

The financial statements most recently delivered to the Authority in respect of Project Co and the Partners have been prepared in accordance with GAAP.

5.20 No Other Business

Neither Project Co nor any of the Partners has engaged in any business or activities, either alone or in partnership or joint venture other than those contemplated in the Material Project Documents or the Funding Documents. Neither Project Co nor any of the Partners has any Subsidiaries.

5.21 No Infringement

To the best of the knowledge of Project Co, the design, construction and operation of the Project does not infringe and will not infringe upon any patents, trade marks, trade names, service marks, or copyrights, domestic or foreign, or any other industrial property or intellectual property rights of any other Person.

5.22 Project Facilities

No notices, complaints or orders of violation or non-compliance or liability have been issued or, to the best knowledge of Project Co, threatened, by any person with respect to the Project or the Facility or the present or intended future use of the Site or the Facility, except for any such notices, complaints or orders which could not reasonably be expected to have a Material Adverse Effect, and Project Co is not aware of any circumstances which could give rise to the issuance of any such notices, complaints or orders.

6.0 POSITIVE COVENANTS OF PROJECT CO

Project Co covenants and agrees that so long as this Agreement is in effect during the Construction Period, it and the Partners shall, unless the Authority waives compliance in writing:

6.1 Use of NHA Funding Proceeds

Use the proceeds of the NHA Funding solely for the purposes and in the manner provided in Section 8.1. For clarity, proceeds of all NHA Funding Instalments shall be deposited into the Proceeds Account but, except as the parties may otherwise agree with respect to the initial NHA Funding Instalment to be made on the initial Instalment Date or the second NHA Funding Instalment to be made on the second Instalment Date, shall be used only to pay Construction Costs and Eligible Costs, and not for any other purpose to which funds in the Proceeds Account may be applied under Section 8.1.

6.2 Taxes and Utility Charges

Pay, or cause to be paid, as and when due and prior to delinquency, all Taxes that may at any time be lawfully assessed or levied against or with respect to Project Co, the Partners or the Project. However, Project Co may contest in good faith any such Taxes and, in such event, may permit the Taxes so contested to remain unpaid during any period, including appeals, when Project Co is in good faith contesting the same.

6.3 Access of Authority's Technical Advisor

Subject to the terms of the Project Agreement, ensure that the Authority's Technical Advisor shall (i) be permitted to attend design development meetings for the Project; (ii) be kept apprised of design development in respect of the Project; and (iii) be permitted access to the Project and the Facility to the extent necessary to ensure that the design requirements set forth in the Project Agreement are being implemented and followed, that the Project Schedule is being adhered to and for the purpose of providing any certificates, reports or other advice to the Authority in respect of the Project as contemplated under this Agreement.

6.4 Construction of Project

Ensure that the Project is designed, constructed and commissioned in accordance with the Project Agreement and all Applicable Law.

6.5 Access to Project and Records

Subject to all contractual or other reasonable requirements of confidentiality to protect the business and affairs of third parties with whom it conducts business, during normal business hours and from time to time upon reasonable notice, provide to the Authority, the Authority's Technical Advisor, and any of their respective officers, employees and agents, reasonable access to the Project and the Site and to the technical and statistical data, accounting books, records and other data with respect to the Project in the possession or control of Project Co.

6.6 Notices

Promptly, upon acquiring notice or giving notice, as the case may be, or obtaining knowledge thereof, give written notice to the Authority of:

- (a) any litigation pending or, to Project Co's actual knowledge, threatened against Project Co, a Partner or the Project involving claims against Project Co, a Partner or the Project in excess of \$250,000 in the aggregate or involving any material injunctive, declaratory or other equitable relief, such notice to include copies of all material papers filed in such litigation and to be given monthly if any such papers have been filed since the last notice given;
- (b) any dispute or disputes which may exist between Project Co or the Partners and any Governmental Authority other than the Authority and which involve (i) claims against Project Co or any Partner which individually exceed \$100,000 or in the aggregate in any fiscal year of Project Co exceed \$250,000; (ii) injunctive or declaratory relief; (iii) failure to obtain when needed, revocation, material

modification, suspension or the like of any Applicable Permit or imposition of additional material conditions with respect thereto; or (iv) any Liens for Taxes in excess of \$100,000 due but not paid;

- (c) any Draw Stop or Potential Draw Stop;
- (d) any casualty, damage or loss, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of Project Co, the Partners, or any of their respective officers, directors, employees, agents, contractors, consultants or representatives, or of any other Person if such casualty, damage or loss affects Project Co, a Partner or the Project, in excess of \$100,000 for any one casualty or loss, or an aggregate of \$250,000;
- (e) any termination, default or event of default or notice thereof under any Material Project Document;
- (f) any (i) fact, circumstance, condition or occurrence at, on, or arising from, the Site that results in a material violation of any Hazardous Substances Law or any Release of Hazardous Substances on or from the Site and that could result in a claim against Project Co, any Partner, any Major Project Participant with respect to the Project or the Project, and (ii) material pending or, to Project Co's actual knowledge, threatened, Environmental Claim against Project Co, any Partner, any Major Project Participant or the Project or to Project Co's actual knowledge any of its or their Affiliates, contractors, lessees or any other Persons, arising in connection with their occupying or conducting operations on or at the Site with respect to the Project;
- (g) any abandonment of the Project or cessation of Services that Project Co is required to provide under the Project Agreement prior to the Service Commencement Date; and
- (h) any amendment to or replacement of the Management Agreement or any replacement of the Manager.

6.7 Notices under Material Project Documents

If Project Co or a Partner is provided with a notice of default with respect to any of the Material Project Documents (each a "Default Notice"), provide as soon as reasonably practicable thereafter a copy of such Default Notice to the Authority with a description of the applicable default or circumstance giving rise thereto and a report indicating the status of such default or circumstance and the steps taken and to be taken (as applicable) to cure such default or circumstance. If such default or circumstance is not cured within five Business Days after the receipt by Project Co or a Partner of the Default Notice, Project Co shall so advise the Authority and thereafter shall co-operate and work with the Authority to attempt to cure such default

promptly and within the then remaining cure period available to Project Co, if any, under the applicable Material Project Document.

6.8 Financial Statements

Deliver to the Authority (or cause to be delivered to the Authority), in form and detail reasonably satisfactory to the Authority:

- (a) as soon as available, but no later than 60 days after the close of each of the first 3 fiscal quarters in each fiscal year, quarterly (and year-to-date) unaudited financial statements of and prepared by Project Co, to include a statement of equity, a balance sheet as of the close of such fiscal quarter, an income and expense statement, a reconciliation of capital accounts and a statement of cash flows, all prepared in accordance with GAAP; and
- (b) as soon as available but no later than 120 days (180 days in the case of Acciona Infraestructuras S.A.U.) after the close of each applicable Person's fiscal year, audited financial statements of Project Co and each of the Design-Builder and Parent Guarantor under the Design-Builder Parent Guarantee, including a statement of equity, a balance sheet as of the close of such fiscal year, an income and expense statement, a reconciliation of capital accounts and a statement of cash flows, all prepared in accordance with GAAP. No certificate of a chartered accountant to be delivered in respect of Project Co's financial statements pursuant to this Section 6.8(b) may be materially qualified or limited because of restricted or limited examination by such accountant of any material portion of the records of Project Co and each set of audited financial statements shall be accompanied by an unqualified audit opinion.

6.9 Reports

- (a) Deliver to the Authority on or before the 15th day of a month for the prior month a construction report (the "**Construction Report**") containing the information set forth in Appendix 8C to Schedule 8 of the Design-Build Agreement in form and substance reasonably satisfactory to the Authority and the Authority's Technical Advisor.
- (b) Provide to the Authority promptly upon request such reports, statements, lists of property, accounts, budgets, forecasts and other information concerning Project Co or the Project and at such times as the Authority shall reasonably request.
- (c) Provide to the Authority a copy of the monthly account statements received by Project Co from the Account Bank in respect of the Project Accounts during the Construction Period.

6.10 Permits

Obtain and maintain or cause to be obtained and maintained all Applicable Permits during the Construction Period. Deliver to the Authority copies of each Applicable Permit listed on Exhibit E-1 on a date falling on or before the dates required for delivery thereof as set forth therein, each to be in form and substance satisfactory to the Authority, and the Authority's Technical Advisor, acting reasonably.

6.11 Existence, Conduct of Business, Properties, Etc.

Except as otherwise expressly permitted under this Agreement, (a) maintain and preserve its existence, in the case of Project Co as a British Columbia general partnership, and, in the case of the Partners, as British Columbia corporations, (b) maintain and preserve all material rights, privileges and franchises necessary or desirable in the normal conduct of its business, and (c) engage only in the business contemplated by the Operative Documents.

6.12 Separateness Covenant

Maintain books, financial records and accounts, including without limitation, chequing and other accounts, separate from each other and from their Affiliates including the Sponsors and ensure that the books, records and accounts of Project Co and each Partner are maintained in a manner so that it will not be difficult or costly to segregate, ascertain and otherwise identify the assets and liabilities of each such Person.

6.13 Partner Loans

Ensure that at all times the Partner Loans (either as to principal or interest) are not payable prior to the Service Commencement Date and that no Person providing Partner Loans has any right to demand payment of same prior to such date.

7.0 NEGATIVE COVENANTS OF PROJECT CO

Project Co covenants and agrees that so long as this Agreement is in effect during the Construction Period neither it nor the Partners shall, without the prior written consent of the Authority:

7.1 Contingent Liabilities

Except as provided in this Agreement or the Material Project Documents, become liable as a surety, guarantor, endorser, accommodation endorser or otherwise, for or upon the obligation of any other Person or otherwise create, incur, assume or suffer to exist any contingent obligation; provided, however, that this Section 7.1 shall not be deemed to prohibit (a) the

acquisition of goods, supplies or merchandise in the ordinary course of business on normal trade credit; or (b) the endorsement of negotiable instruments received in the ordinary course of its business; or (c) the replacement of any Material Project Document provided that the entering into of such replacement Material Project Document has been approved as required under the Project Agreement; or (d) Permitted Debt.

7.2 Limitations on Liens

Other than pursuant to the terms of this Agreement or the Project Agreement, create, assume or consent to any Lien on the Proceeds Account, the Insurance Proceeds Account or the Holdback Account (other than as provided under the *Builders Lien Act*), except any Subordinated Sponsor Lien.

7.3 Changes

Change the nature of its business or expand its business beyond the business contemplated in the Operative Documents. Without limiting the generality of the foregoing, none of Project Co nor any of the Partners shall carry on, directly or indirectly, any business or engage in any activity or otherwise purchase or acquire any business other than in respect of the Project.

7.4 Dissolution, Merger, Etc.

- (a) Liquidate, dissolve or wind-up (or take any steps or proceedings in connection therewith) or permit any such liquidation, dissolution or winding-up;
- (b) Sell or lease or otherwise transfer or dispose of all or (except as permitted herein) any substantial part of its property, assets or business whether by way of reconstruction, reorganization, recapitalization, transfer, sale or otherwise; or
- (c) Combine, merge, amalgamate, consolidate or otherwise enter into any form of business combination with any other Person or with or into any other entity.

7.5 Amendments, Change Orders

Except as permitted pursuant to the Project Agreement, cause, consent to, or permit, any termination, amendment, modification, variance or waiver of timely compliance with any terms or conditions of any Material Project Document or the Project Schedule, other than any amendments or modifications to cure any defective provisions contained therein or to permit other non-material deviations from the terms thereof so long as a copy of any such amendment, modification or waiver is delivered to the Authority not less than five Business Days prior to the execution thereof.

7.6 Name and Location; Fiscal Year

Change its name or the location of its chief executive office and principal place of business (as such terms are used in the PPSA from time to time) without written notice to the Authority at least 30 days prior to such change, or change its fiscal year without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.

7.7 Assignment

Assign, transfer or otherwise dispose of its rights and interests hereunder except with the written consent of the Authority, which may be given or withheld in its discretion.

7.8 Accounts

Have any bank accounts, securities accounts, future accounts or similar accounts other than the Project Accounts and the Operating Account.

7.9 Distributions

Make or declare any Distributions (which, for greater certainty, shall not include pre-agreed directors' fees, fees in respect of Letters of Credit or any other fees or payments made in the ordinary course of business on commercially reasonable terms) prior to the Service Commencement Date.

8.0 APPLICATION OF FUNDS AND PROJECT ACCOUNTS

8.1 Proceeds Account

- (a) On or prior to the Closing Date, Project Co shall establish at the Account Bank an account entitled "ISL Health (FSJ) General Partnership – Proceeds Account" (the "**Proceeds Account**"). The proceeds of all NHA Funding Instalments made under this Agreement shall be deposited in the Proceeds Account. So long as no Draw Stop has occurred and is continuing or will occur upon giving effect to the application described below, funds in the Proceeds Account shall be applied by disbursement by the Account Bank at the direction of Project Co during the Construction Period:
 - (i) to pay Construction Costs payable to the Design-Builder pursuant to the Design-Build Agreement;
 - (ii) to pay Project Costs and Operating Costs of Project Co as set forth in the Construction Budget and paid in accordance therewith; and

- (iii) to maintain the Operating Account, which shall be funded to a maximum amount of \$500,000, shall be replenished no more than twice in any 12-month period and from which disbursements shall be made only for the purposes set forth in Sections 8.1(a)(i) and 8.1(a)(ii) above.
- (b) At any time there exists a Draw Stop withdrawals from the Proceeds Account shall be subject to the prior approval of the Authority, such approval not to be unreasonably withheld or delayed.

8.2 Application of Insurance Proceeds

On or prior to the Closing Date, Project Co shall establish at the Account Bank an account entitled "ISL Health (FSJ) General Partnership – Insurance Proceeds Account" (the "**Insurance Proceeds Account**"). All amounts and proceeds (including instruments) in respect of the proceeds of any insurance policy required to be maintained by Project Co under the Project Agreement ("**Insurance Proceeds**") and any and all Uninsurable Risk Payments shall be applied as provided in the Project Agreement. All property loss insurance proceeds shall be paid into the Insurance Proceeds Account and all delay in start-up and business interruption insurance proceeds shall be paid into the Proceeds Account.

8.3 Holdback Account

On or prior to the Closing Date, Project Co shall establish at the Account Bank an account entitled "ISL Health (FSJ) General Partnership – Holdback Account" (the "**Holdback Account**"). Project Co shall deposit to the Holdback Account an amount equal to 10% of the amounts payable to the Design-Builder pursuant to the Design-Build Agreement (exclusive of GST, and ignoring payment of any sums previously transferred to the Holdback Account) as certified by the Authority's Technical Advisor. Amounts in the Holdback Account shall be transferred to the Proceeds Account to be applied as provided in Section 8.1 in accordance with the *Builders Lien Act* (British Columbia).

9.0 DRAW STOPS

The occurrence of any of the following events shall constitute a draw stop (individually, a "**Draw Stop**", and collectively, "**Draw Stops**") hereunder:

9.1 Judgments

A final non-appealable judgment or judgments shall be entered against Project Co or a Partner in the aggregate amount of \$2,000,000 or more (net of any insurance proceeds Project Co reasonably expects to receive and can so demonstrate to the reasonable satisfaction of the Authority) other than (a) a judgment which is fully covered by insurance or satisfied in full or

paid, bonded or discharged within 60 days after its entry, or (b) a judgment, the execution of which is effectively stayed within 60 days after its entry (but only until such stay is terminated or expires), provided such judgment could not reasonably be expected to materially impair or inhibit Project Co's performance of its obligations under the Project Agreement.

9.2 Equity Contribution

A failure by a Partner or Sponsor to make its Equity Contribution pursuant to the Equity Contribution Agreement which is not remedied:

- (a) within the applicable period after the date such Equity Contribution was to have been made pursuant to the Equity Contribution Agreement, or
- (b) by the Authority drawing on the relevant Letters of Credit delivered pursuant to the Project Agreement.

9.3 Bankruptcy; Insolvency

If in respect of any of Project Co, any Partner, the Design-Builder or a **DELETED** **DELETED** **DELETED** **DELETED** (each a "Subject Person") the following shall occur:

- (a) a decree or order of a court of competent jurisdiction is entered adjudging a Subject Person a bankrupt or insolvent or approving as properly filed a petition seeking the winding-up of a Subject Person under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-Up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any substantial part of the assets of a Subject Person or ordering the winding up or liquidation of its affairs; or
- (b) any Subject Person becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy,

insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition; or

- (c) any proceeding or filing is instituted or made against any Subject Person seeking to have an order for relief entered against such Subject Person as debtor or to adjudicate it bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition under any law relating to bankruptcy, insolvency, reorganization or relief of debtors (including, without limitation, the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and the *Winding-Up and Restructuring Act* (Canada)), or seeking appointment of a receiver, trustee, custodian or other similar official for such Subject Person or for any substantial part of its properties or assets, unless the same is being contested actively and diligently in good faith by appropriate and timely proceedings and is dismissed, vacated or permanently stayed within 45 days of institution,

provided that the occurrence of any of the events in Sections 9.3(a), (b) and (c) with respect to either member of the **DELETED DELETED DELETED** shall not constitute a Draw Stop until the Authority determines, in its reasonable opinion, that the remaining Design-Builder and/or Parent Guarantor with respect to whom an event as described above has not occurred and which are not otherwise in default under the Design-Build Agreement **DELETED DELETED DELETED**, as the case may be (the "Non-Defaulting DB Entities"), are either not financially or technically capable of fulfilling the Design-Builder's obligation under the Design-Build Agreement, and if the Authority makes such a determination in respect of the Non-Defaulting DB Entities, Project Co fails, within 60 days **DELETED DELETED DELETED DELETED DELETED DELETED DELETED DELETED DELETED DELETED** after such determination, to diligently pursue and replace the Design-Build Agreement **DELETED DELETED** as the case may be) with an Additional Project Document approved by the Authority, such approval not to be unreasonably withheld or delayed.

9.4 Representations and Warranties

Any representation or warranty made or deemed made by or on behalf of Project Co or a Partner in or in connection with this Agreement or any other Funding Document or any amendment or modification thereof or waiver thereunder shall prove to have been untrue, incorrect or misleading in any material respect when made or deemed to be made; provided that if the incorrect nature of such representation or warranty can reasonably be expected to be cured within 30 days, there shall be no Draw Stop if such incorrect representation or warranty is remedied within 30 days after notice thereof from the Authority to Project Co.

9.5 Breach of Material Project Documents

- (a) Project Co or a Partner shall breach or default in the performance of any obligation under any Material Project Document that, if not remedied, would allow the other party to suspend performance of its obligations under such Material Project Document or terminate same and such breach or default shall continue unremedied for a period of time equal to the applicable cure period afforded to Project Co under such Material Project Document.
- (b) Any Major Project Participant shall breach or default in the performance of any obligation under any Material Project Document which breach or default could reasonably be expected to have a Material Adverse Effect and such breach or default shall continue unremedied for a period of time equal to the applicable cure period under such Material Project Document, unless, upon the expiry of such cure period, the Authority, acting reasonably, determines that such breach or default is capable of remedy by replacing such Material Project Document or otherwise and Project Co diligently pursues and replaces, within 45 days of the expiry of such cure period, the Material Project Document to which such Major Project Participant is a party with an Additional Project Document approved by the Authority, such approval not to be unreasonably withheld or delayed or otherwise cures the breach or default within such period.

9.6 Breach of Terms of Agreement

- (a) Project Co shall fail to perform or observe any of the covenants set forth in Section 6.1 (except as the result of an administrative error that is cured within three Business Days after the occurrence thereof) and Sections 6.11, 7.2, 7.3 and 7.4.
- (b) Project Co shall fail to perform or observe the covenant set forth in Section 6.4 and such failure:
 - (i) could reasonably be expected to have a Material Adverse Effect; and
 - (ii) shall continue unremedied for a period of 30 days after Project Co becomes aware thereof or receives written notice thereof from the Authority; and
 - (iii) if there is a Dispute with regard to such failure, the Dispute has been finally resolved pursuant to the Dispute Resolution Procedure set forth in the Project Agreement.
- (c) Project Co, a Partner or any Major Project Participant shall fail to perform or observe any other covenant to be performed or observed by it hereunder or under any Funding

Document and not otherwise specifically provided for elsewhere in this Section 9.0, and such failure shall continue unremedied for a period of 30 days after Project Co becomes aware thereof or receives written notice thereof from the Authority and, in the case of a breach or default by a Major Project Participant, such breach or default could reasonably be expected to have a Material Adverse Effect.

9.7 Security

Any of the Collateral Documents, once executed and delivered, shall, except as the result solely of the acts or omissions of the Authority, cease to provide the Authority the first ranking Liens intended to be created thereby pursuant to the Project Agreement or cease to be in full force and effect, or the validity thereof shall be disaffirmed by or on behalf of Project Co or any other party thereto.

9.8 Documents Unenforceable

If any Material Project Document, or a material provision thereof, becomes wholly or partly void, voidable, unenforceable or illegal and, in the case of a Material Project Document becoming only partly void, voidable, unenforceable or illegal, same could reasonably be expected to have a Material Adverse Effect, provided that in the case of such Material Project Document becoming wholly or partly void, voidable, unenforceable or illegal it will not constitute a Draw Stop if Project Co diligently pursues and replaces such Material Project Document with an Additional Project Document approved by the Authority, such approval not to be unreasonably withheld or delayed.

9.9 Execution

There shall be issued or levied against all or any part of the property of Project Co, a writ, execution or attachment or similar process in connection with any judgment against Project Co for an amount in excess of \$2,000,000, if the same is not discharged, bonded, released, cash collateralized or stayed to the satisfaction of the Authority before the earlier of (a) 60 days of issuance or levy and (b) the date which is five Business Days prior to that upon which a judgment creditor is entitled to enforce such writ, execution, attachment or similar process, and does not remain so until fully terminated or discharged by Project Co.

9.10 Project Co Event of Default

The occurrence of a Project Co Event of Default under the Project Agreement.

9.11 Service Commencement

Failure by Project Co to achieve the Service Commencement Date on or before the Longstop Date.

9.12 Abandonment

If the Project, or any material part thereof, is abandoned, cancelled or terminated (and for this purpose abandonment shall mean no work has been performed on the Project for a continuous period of 45 days between the Closing Date and the Service Commencement Date), other than where due to a Supervening Event.

9.13 Funding Shortfall

If the Authority determines, based on advice from the Authority's Technical Advisor (acting reasonably) and after consultation with Project Co, that the Available Construction Funds are insufficient to achieve Service Commencement under the Project Agreement, and such insufficiency shall have remained unremedied for a period of 30 days.

10.0 REMEDIES

10.1 Exercise of Remedies

Upon the occurrence and during the continuation of a Draw Stop, the Authority may, by written notice to Project Co refuse, and the Authority shall not be obligated, to make any additional Instalments of NHA Funding. The parties shall without delay work together diligently and in good faith to resolve any Draw Stop and shall use all reasonable endeavours to reach a mutually satisfactory solution as quickly as is practicable to enable further Instalments to be made.

11.0 THE AUTHORITY

11.1 Reliance by the Authority

The Authority shall be entitled to rely upon any certificate, notice or other document (including any telecopy) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Authority.

12.0 AUTHORITY'S TECHNICAL ADVISOR

12.1 Removal and Fees

The Authority may remove from time to time the Authority's Technical Advisor and appoint a replacement, subject to Project Co's approval of the replacement, which is not to be unreasonably withheld or delayed. Notice of any replacement of the Authority's Technical Advisor shall be given by the Authority to Project Co and to the Authority's Technical Advisor being replaced. All fees and expenses of the Authority's Technical Advisor (whether the original or replacements) shall be paid by the Authority.

12.2 Duties

The Authority's Technical Advisor shall be contractually obligated to the Authority to carry out the activities required of it in this Agreement and as otherwise requested by the Authority and shall be responsible solely to the Authority. Project Co acknowledges that it will not have any cause of action or claim against the Authority's Technical Advisor resulting from any decision made or not made, any action taken or not taken or any advice given by the Authority's Technical Advisor in the due performance in good faith of its duties to the Authority hereunder other than as a result of the gross negligence or wilful misconduct of the Authority's Technical Advisor.

12.3 Certification of Dates

Project Co shall provide the Authority's Technical Advisor with reasonable notice of the expected occurrence of any such dates or events that would require certificates of the Authority's Technical Advisor to be issued hereunder.

13.0 MISCELLANEOUS

13.1 Addresses

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

- (a) If to the Authority:

9636 – 100th Avenue
Fort St. John, British Columbia V1J 1Y3

Attention: Tom Sparrow, Project Director
Facsimile: (250) 262-5994
E-mail: tom.sparrow@northernhealth.ca

(b) If to Project Co:

ISL Health (FSJ) General Partnership
c/o Health Care Projects (Canada) Ltd.
3 Robert Speck Parkway
Suite 100
Mississauga, Ontario L4Z 2G5

Attention: Gareth Hurlbut, General Manager
Facsimile: (905) 896-0391
E-mail: hurlbut@hcpcanada.com

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by facsimile, confirmed by telephone or (e) if sent by e-mail. Notwithstanding the foregoing, any notice hereunder sent by e-mail shall be solely for the distribution of (i) routine communications such as financial statements and (ii) documents and signature pages for execution by the parties hereto, and for no other purpose. Notice so given shall be effective upon receipt by the addressee, except that any communication or notice so transmitted by facsimile shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Business Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within Canada by giving five Business Days' written notice to the other parties in the manner set forth herein above.

13.2 Delay and Waiver

No delay or omission to exercise any right, power or remedy accruing to the Authority upon the occurrence of any Draw Stop or any breach or default of Project Co under this Agreement or any other Funding Document shall impair any such right, power or remedy of the Authority, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any other breach or default thereafter occurring (whether or not similar), nor shall any waiver of any single Draw Stop or other breach or default be deemed a waiver of any other Draw Stop or other breach or default theretofore or thereafter occurring. Any waiver, indulgence, permit, consent or approval of any kind or character on the part of the Authority of any Draw Stop or other breach or default under this Agreement or any other Funding Document, or any waiver on the part of the Authority of any provision or condition of this Agreement or any other Funding Document, must be in writing expressly referencing this

Agreement and signed on behalf of the Authority and shall be effective only to the extent in such writing specifically set forth.

13.3 Entire Agreement

This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail. Notwithstanding the foregoing, nothing in this Agreement shall prejudice, impair or otherwise affect any remedies either party may have under the Project Agreement for any failure of the other party to comply with the Project Agreement or for any other event or circumstance. This Agreement and the other Funding Documents may only be amended or modified by an instrument in writing signed by Project Co and the Authority and in accordance with the terms of this Agreement.

13.4 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein, without prejudice to or limitation of any other rights or remedies available to the Authority (but not Project Co or Partners) under the laws of any jurisdiction where property or assets of Project Co or Partners may be found.

13.5 Severability

- (a) In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.
- (b) If any provision of this Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction, it shall not affect the validity, legality or enforceability of such provision in any other jurisdiction or the validity, legality or enforceability of any other provision of this Agreement.

13.6 Headings

Section headings and a table of contents have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such section headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

13.7 Accounting Terms

All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by Project Co to the Authority, and (unless otherwise indicated) all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

13.8 Limitation on Liability

No claim shall be made by any party hereto or any of its affiliates, directors, employees, attorneys or agents against any other party hereto or any of its affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort, duty imposed by law or otherwise), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Funding Documents or any act or omission or event occurring in connection therewith; and each party hereby waives, releases and agrees not to sue upon any such claim for any such special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favour.

13.9 Attornment

For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of British Columbia and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

13.10 Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Project Co may not assign or otherwise transfer any of its rights under this Agreement.

13.11 Confidentiality

The Authority agrees to maintain the confidential nature of, and shall not use or disclose Project Co's or any Partner's financial information or confidential information identified in writing by Project Co or a Partner as such without first obtaining Project Co's or such Partner's prior written consent; provided, that nothing in this Section 13.11 shall require the Authority to obtain any consent of Project Co in connection with (and Project Co hereby authorizes the Authority to disclose any financial information or confidential information with respect to Project Co, the Project, any Material Project Document or any Funding Document or the parties thereto without any consent of Project Co to the extent reasonably necessary in connection with):

- (a) exercising any of its rights under the Funding Documents, including those exercisable upon the occurrence of a Draw Stop;
- (b) any situation in which the Authority is required by law or required by any Governmental Authority to disclose information but then only to the extent so requested;
- (c) providing information to the Province or the respective counsel to the Authority or the Province in connection with the transactions contemplated by any of the Funding Documents;
- (d) providing information to the Authority's Technical Advisor or any other consultants retained by the Authority in accordance with this Agreement;
- (e) any information that is in or becomes part of the public domain otherwise than through a wrongful act of the Authority or any employees or agents thereof;
- (f) any information that is in the possession of the Authority prior to receipt thereof from Project Co or any other Person known to the Authority to be acting on behalf of Project Co;
- (g) any information that is independently developed by the Authority; and
- (h) any information that is disclosed to the Authority by a third party that has no obligation of confidentiality with respect to the information disclosed.

13.12 Counterparts

This Agreement may be executed in one or more duplicate counterparts and by facsimile, portable document format (pdf) or similar electronic means and when signed by all of the parties listed below shall constitute a single binding agreement.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their officers thereunto duly authorized as of the day and year first above written.

NORTHERN HEALTH AUTHORITY

Per: *Cathy Clark*
Authorized Signatory

Per: _____
Authorized Signatory

**ISL HEALTH (FSJ) GENERAL PARTNERSHIP
by its partners INNISFREE ISL HEALTH (FSJ) GPCO LTD.
and ACCIONA FSJ GP LTD.**

INNISFREE ISL HEALTH (FSJ) GPCO LTD.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

ACCIONA FSJ GP LTD.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their officers thereunto duly authorized as of the day and year first above written.


NORTHERN HEALTH AUTHORITY

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**ISL HEALTH (FSJ) GENERAL PARTNERSHIP
by its partners INNISFREE ISL HEALTH (FSJ) GPCO LTD.
and ACCIONA FSJ GP LTD.**

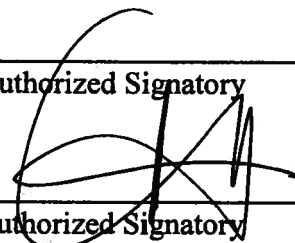
INNISFREE ISL HEALTH (FSJ) GPCO LTD.


Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

ACCIONA FSJ GP LTD.

Per: _____
Authorized Signatory


Per: _____
Authorized Signatory