

SCHEDULE 25**VARIATION PROCEDURE****1. VARIATIONS****1.1 Definitions**

(a) The following terms shall have the following meanings:

- (i) "Direct Cost" has the meaning given in Appendix A of this Schedule.
- (ii) "Estimate" has the meaning given in Section 1.4(a) of this Schedule.
- (iii) "HC Other Work" has the meaning given in Section 1.7(a) of this Schedule.
- (iv) "Project Co Variation Notice" has the meaning given in Section 2.1(a) of this Schedule.
- (v) "Schedule of Small Works Rates" has the meaning given in Section 3.2(a) of this Schedule.
- (vi) "Variation" means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of any or all of the Service Categories or other Services.
- (vii) "Variation Confirmation" has the meaning given in Section 1.8(a)(ii) of this Schedule.
- (viii) "Variation Directive" means a written instruction which is issued on a form designated as a "Variation Directive Form" and signed by Health Co's Representative directing Project Co to immediately proceed with a Variation, including as to any Variation in a quality standard for infection control or otherwise, pending the finalization and issuance of a Variation Confirmation for that Variation.
- (ix) "Variation Enquiry" has the meaning given in Section 1.3(a) of this Schedule.

1.2 General

- (a) Health Co has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule.
- (b) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule.

1.3 Variation Enquiry

- (a) If Health Co proposes or is obligated pursuant to the terms of this Agreement to initiate a Variation it shall deliver to Project Co a written notice of the proposed Variation (a "Variation Enquiry").
- (b) A Variation Enquiry shall:
 - (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate; and
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether Health Co intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Periodic Service Payments (and if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof.

1.4 Project Co Estimate or Objection

- (a) As soon as practicable and in any event within 21 days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an "Estimate") prepared in accordance with and meeting the requirements of Section 1.6 of this Schedule.
- (b) As soon as practicable and in any event within 5 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall advise Health Co of Project Co's reasonable estimate of the maximum anticipated Direct Costs to be incurred in connection with preparing and finalizing the Estimate, together with a brief description of its estimate and an explanation of how it was derived. Such estimate may be updated by Project Co where the assumptions underlying the original Estimate have changed or where it is required by Health Co to undertake additional work in preparing or finalizing the Estimate which was not reasonably foreseeable at the time the estimate was provided.

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to Health Co's satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), the following:
 - (i) that implementation of the Variation would materially and adversely affect the health and safety of any person; or
 - (ii) that implementation of the Variation would:
 - (A) infringe any Applicable Law;
 - (B) cause to be revoked any existing Permit, Licence or Approval required by Project Co to perform the Project Operations, and such Permit, Licence or Approval is not, using all reasonable efforts, capable of amendment or renewal; or

- (C) require a new Permit, Licence or Approval for Project Co to perform the Project Operations, which Permit, Licence or Approval will not, using all reasonable efforts by Project Co or Health Co, as applicable, be obtainable.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to Health Co a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

1.6 Estimate

- (a) Unless Health Co in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to Health Co's reasonable satisfaction:
 - (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
 - (ii) any impact on the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the Facility and completion of the Works;
 - (iii) any impact on the performance of the Project Operations and any other impact on this Agreement;
 - (iv) any impact on expected usage of utilities, including those identified in Schedule 22 - Utilities, for the current Contract Year and subsequent Contract Years;
 - (v) any amendment required to this Agreement or any Project Document;
 - (vi) any impact on the Direct Costs of Project Co and its Subcontractors, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or Health Co); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
 - (vii) Project Co's confirmation that:
 - (A) the proposed Variation will not affect its financing, or
 - (B) if the proposed Variation increases Project Co's costs, that Project Co's existing financing is adequate or that Project Co requires new or additional financing, and if new or additional financing is required, Project Co's indication as to the availability of financing for the Variation and the cost and terms of such financing;

- (viii) Project Co's preliminary indication of the potential increase or decrease, if any, of the Periodic Service Payments, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Variation;
- (ix) any Permits, Licences and Approvals that are required to be obtained or amended, and the estimated time for obtaining or amending same; and
- (x) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of this Agreement,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to Health Co's satisfaction, acting reasonably, that:
 - (i) Project Co has used or has obliged its Subcontractors (or will oblige any subcontractors not yet selected) to use all commercially reasonable efforts, including the use of competitive quotes or tenders if appropriate (including by compliance with Sections 1.6(c) and 1.6(e) of this Schedule), to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) all costs of Project Co and its Subcontractors are limited to Direct Costs;
 - (iii) Project Co, the Constructor and the Service Providers shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of the Constructor or Service Providers are calculated on any other margin of the Constructor or Service Providers), and no other margins or mark-ups;
 - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co (excluding any Direct Costs that are payments to the Constructor or Service Providers), such that Project Co shall not charge any margins on any amounts charged by the Constructor or Service Providers;
 - (v) all costs of providing Project Operations, including Capital Expenditures, reflect:
 - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
 - (B) any and all changes in the Method Statements and Output Specifications arising out of the proposed Variation; and
 - (C) any and all changes in risk allocation;
 - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for

the Variation, have been taken into account and applied in total to reduce the amount of all costs and Periodic Service Payments; and

- (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the schedule for completion of the Works, the performance of the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) Project Co will use all reasonable endeavours to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Health Co, including exercising all commercially reasonable opportunities to mitigate such costs.
- (d) As soon as practicable, and in any event not more than 21 days after Health Co receives an Estimate, Project Co and Health Co shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) If an agreed-upon increase in Capital Expenditure after Substantial Completion is anticipated to exceed \$50,000 (index-linked) or if Health Co or the Health Authorities would be required by Applicable Law, or any policies applicable to Health Co or the Health Authorities, to competitively tender any contract in relation to the proposed Variation, Health Co may require Project Co to seek and evaluate competitive tenders for the proposed Variation.
- (f) Health Co may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 14 days after receipt of such modification, notify Health Co in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with the Dispute Resolution Procedure.

1.7 Health Co's Right to Perform

- (a) After Substantial Completion, Health Co shall have the right to perform the subject matter of a proposed Variation ("HC Other Work") itself or through others contracting directly with Health Co without compensation to Project Co, except as specifically stated herein.
- (b) If Health Co wishes to perform the proposed HC Other Work itself or through others, Health Co shall provide Project Co with details of the proposed HC Other Work. Health Co shall perform or procure performance of the HC Other Work so that it does not interfere materially with the Project Operations.
- (c) Project Co shall review the proposed HC Other Work and, within 15 days of receipt of details thereof, Project Co shall, acting reasonably, advise Health Co of (i) any suggestions to indicate the specific changes to such HC Other Work that Project Co would undertake, acting reasonably, if Project Co itself performed such HC Other Work as a Variation; (ii) any reasonably foreseeable adverse impacts (including with respect to risk of maintenance and/or lifecycle risks) on the Project Operations; (iii) any reasonable

requirements, including assumptions and conditions and the terms of collateral warranties sought by Project Co from the parties carrying out the HC Other Work (including with respect to defects); and (iv) an estimate of the reasonable costs properly incurred by Project Co (including Project Co's and Subcontractors' costs), and the basis for calculation of such costs, of Project Co and in appointing third parties to undertake the review and inspections anticipated by this Section 1.7.

- (d) Project Co may, but is not obliged to, inspect or witness the performance of the HC Other Work during its performance, and shall immediately notify Health Co of any remedial work that Project Co may discover during such inspection that is required to remedy the HC Other Work.
- (e) Health Co shall notify Project Co when the HC Other Work is complete, and Project Co shall inspect the HC Other Work and immediately notify Health Co of any remedial work required to remedy the HC Other Work. Upon the completion of the HC Other Work and any remedial work, Project Co shall certify to Health Co that the HC Other Work has been completed as required and thereafter, provided Health Co incorporated the reasonable suggestions of Project Co referred to in Section 1.7(c) of this Schedule into the HC Other Work and makes available any collateral warranty identified by Project Co in accordance with Section 1.7(c) above, Project Co shall assume risk and responsibility for the HC Other Work as if Project Co itself performed such HC Other Work as a Variation. Project Co shall not assume risk and responsibility for adverse impacts, other than (i) those set out in Section 1.7(c)(ii) above if Health Co agrees to compensate Project Co for a reasonable contingency for such impacts through a Variation, and (ii) those which are made assumptions or conditions under Section 1.7(c)(iii) above.
- (f) Health Co shall reimburse to Project Co the reasonable costs properly incurred by Project Co and its Subcontractors, including in appointing third parties to undertake the review and inspections anticipated by this Section 1.7 promptly on receipt of evidence such costs have been incurred by Project Co on the basis set out in the estimate provided pursuant to Section 1.7(c) above, together with the applicable margins on such costs as set out in Appendix B hereto.

1.8 Variation Confirmation

- (a) As soon as practicable, and in any event within 20 days after the later of the date the Estimate was delivered or agreed to, Health Co shall:
 - (i) withdraw the Variation Enquiry by written notice to Project Co; or
 - (ii) issue a written confirmation (the "Variation Confirmation") of the Estimate, including any agreed modifications thereto, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.
- (b) If Health Co does not issue a Variation Confirmation within such 20 days, then the Variation Enquiry shall be deemed to have been withdrawn and Health Co shall promptly reimburse Project Co for its costs incurred in respect thereof in accordance with Section 1.12(a).
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9:

-
- (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
 - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(i), all provisions of this Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed; and
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
- (i) Project Co obtains such financing acceptable to Health Co in Health Co's sole discretion; or
 - (ii) Health Co in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at Health Co's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined by the Dispute Resolution Procedure; and
 - (ii) Health Co may at any time withdraw a Variation Enquiry and, subject only to payment of Project Co's estimated costs pursuant to Section 1.12, Health Co shall not be obligated to Project Co in respect of a Variation until such time as Health Co in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by Health Co or Health Co has waived such requirement,

provided that Health Co may not withdraw a Variation Enquiry in circumstances where Health Co is obligated pursuant to the terms of this Agreement to proceed with a Variation. In such circumstances the Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule.

1.9 Financing

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if Health Co requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event Project Co shall use all reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Senior Funders and Health Co.

- (b) In particular, Project Co shall use all reasonable efforts to utilize, in accordance with their terms, any available stand-by facility or “head room” in any loan facilities, however described, which is or becomes available to finance Variations during the period up to the Substantial Completion Date, insofar as such stand-by facility or “head room” is not committed or reserved to fund cost overruns on the Works or otherwise.
- (c) If Project Co has used all reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and Health Co within 60 days of the date that Health Co issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Health Co in its sole discretion waives the requirement for financing or unless Health Co is obligated to proceed with the Variation pursuant to the terms of this Agreement.
- (d) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide Health Co with details of such financing, and Health Co shall at its option determine whether Project Co should proceed with such financing. If Health Co determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Health Co in its sole discretion waives the requirement for financing or unless Health Co is obligated to proceed with the Variation pursuant to the terms of this Agreement.
- (e) Health Co may at any time withdraw the requirement for Project Co to use all reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Health Co in its sole discretion waives the requirement for financing unless Health Co is obligated to proceed with the Variation pursuant to the terms of this Agreement.
- (f) If Health Co waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(c), 1.9(d) or 1.9(e), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and Health Co shall pay for the Variation as provided for in Section 1.10.

1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by Health Co, price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
 - (i) the Periodic Service Payments shall be adjusted as set out in the Variation Confirmation; and
 - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be adjusted as follows:
 - (A) Health Co shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by Health Co and Project Co,

acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by Health Co; and

- (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out,

and such payment schedule to be determined in accordance with the Dispute Resolution Procedure in the event Health Co and Project Co fail to agree as to the terms of the payment schedule.

- (b) Payments by Health Co in respect of a Variation shall be subject to applicable holdback provisions of the *Builders Lien Act* (British Columbia), to the extent such Act applies to the subject matter of the Variation.
- (c) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.

1.11 Valuation and Payments for Reductions

- (a) If a Variation involves any reductions in Project Operations resulting in savings in Direct Costs to Project Co for performing Project Operations, then the value of all such savings shall result in applicable reductions in the compensation hereunder to the same extent (including all applicable margins for overhead and profit set out in Appendix B hereto) as if such savings in Direct Costs were instead an addition or additional incurred cost, and Project Co shall compensate Health Co either by way of a lump sum payment or by a reduction in the Periodic Service Payments in the same manner as if such Variation resulted in additional compensation to Health Co. Notwithstanding the foregoing, if there is a reduction in Plant Services or Utility Management Services, the total margin applicable in the circumstances when JCLP would have been entitled to **[*DELETION]** as set out in Appendix B of this Schedule will instead be a total of **[*DELETION]**. Project Co shall, however, use reasonable efforts to decrease management personnel and, in such circumstances, any reductions in Direct Costs and the applicable margin as aforesaid resulting from such decreases shall further reduce the Periodic Service Payments.
- (b) Project Co will not be entitled to claim any losses, costs or damages for overhead or profit with respect to Project Operations which are reduced, deleted or removed, but Health Co shall pay the Direct Costs reasonably and properly incurred by Project Co in connection with preparing the related Estimate.
- (c) Notwithstanding Section 1.11 of this Schedule, if a Variation removes all or substantially all of a Market Tested Service from the scope of the Project Operations, then Health Co shall reimburse Project Co for the amount reasonably and properly payable by Project Co to the relevant Service Provider for the amount of any reasonable commercial breakage fee resulting from such removal.

1.12 Reimbursement if Variation Enquiry Withdrawn

- (a) If a Variation Confirmation is not issued for any Variation Enquiry, and if Project Co has used all reasonable efforts to produce a fair and accurate Estimate, Health Co shall pay the Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate, to the maximum amount of the estimate provided by Project Co (and, if applicable, updated) pursuant to Section 1.4(b).

1.13 Variation Directive

- (a) At any time and from time to time, if Health Co wishes to proceed with a proposed Variation (including as to any Variation in a quality standard for infection control or otherwise) or wishes Project Co to comply with any direction of Health Co or to proceed with any change prior to the determination of whether such direction or change is a Variation, Health Co may issue a Variation Directive to Project Co, signed by Health Co's Representative, directing Project Co to proceed with such Variation, direction or change in which case the following shall apply:
- (i) Project Co shall proceed with the Variation, direction or change and the determination of whether there is a Variation and the valuation and the time extensions and payment of any adjustments, if any, therefor shall be made as soon as reasonably possible after commencement of the implementation thereof in the same manner and to the same extent as a Variation for which a Variation Enquiry, Estimate and Variation Confirmation would be issued hereunder;
 - (ii) if Project Co has not previously done so, Project Co shall within 30 days after the issuance of the Variation Directive provide an Estimate in accordance with the requirements of this Schedule for an Estimate; and
 - (iii) pending a final determination of whether any such direction or change is a Variation or as to any time extensions or valuation and payment of any adjustments for a Variation, the Independent Certifier (if such Variation is in respect of matters prior to Substantial Completion or the completion of Minor Deficiencies) or Health Co's Representative (acting reasonably), as applicable, shall determine the method of valuation and payment, with any Disputes to be determined pursuant to the Dispute Resolution Procedure.
- (b) The decision to issue any Variation Directive shall be a matter for Health Co's sole discretion (including whether or not Health Co has made a Variation Enquiry, or Project Co fails to provide an Estimate, or an Estimate or Variation Confirmation is not promptly agreed upon by the Parties, or there is a Dispute in relation thereto (including as to whether there is a Variation) or in relation to a Variation Enquiry) unless Health Co is obligated to proceed with the Variation pursuant to the terms of the Agreement.

2. PROJECT CO VARIATIONS

2.1 General

- (a) Project Co shall deliver to Health Co a written notice (a "Project Co Variation Notice") for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
- (i) set out details of the proposed Variation in sufficient detail to enable Health Co to evaluate it in full;
 - (ii) specify Project Co's reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to Health Co or the Health Authorities, and whether an adjustment to the Periodic Service Payments is required; and
 - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If Health Co at its discretion elects to consider the Variation proposed by Project Co, Health Co may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 of this Schedule will apply, save and except that Project Co shall not be entitled to any reimbursement under Section 1.12 if such Variation Enquiry is withdrawn or if a Variation Confirmation is never issued.

3. SMALL WORKS**3.1 General**

- (a) After the Substantial Completion Date, Project Co shall carry out all Small Works requested by Health Co.
- (b) If Small Works are requested by Health Co, in each instance prior to carrying out Small Works Project Co shall, within 14 days of each such request, provide Health Co with a stipulated lump sum price for carrying out the Small Works, and if accepted by Health Co in its sole discretion, Project Co shall carry out such Small Works for such stipulated lump sum price.
- (c) Health Co may at any time in its discretion, including if Health Co does not accept the stipulated lump sum proposed pursuant to Section 3.1(b):
- (i) require that the procedure set out in Section 3.2 of this Schedule apply to any Small Works; or
 - (ii) issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule, other than this Section 3, shall apply.

3.2 Schedule of Small Works Rates

- (a) Not later than 30 days prior to the commencement of each Contract Year, Project Co shall propose a schedule of labour rates (the "Schedule Of Small Works Rates") for that Contract Year applicable to all Small Works for the purposes of the same being agreed

to by Health Co. The value of any payment for such Small Works shall be calculated as follows:

- (i) the labour element shall be calculated in accordance with the Schedule Of Small Works Rates or, where such rates are not applicable, in accordance with analogous rates, failing which rates which are fair and reasonable; and
 - (ii) the materials element shall be charged at the Direct Cost set out in Section 1.2(i) of Appendix A of this Schedule of the materials to Project Co or to the Subcontractor carrying out the work (net of all discounts) plus the applicable margins for overheads and profit as set out in Appendix B hereto.
- (b) In the event of failure to agree in advance of any Contract Year upon the Schedule Of Small Works Rates, Project Co shall only be entitled to its Direct Costs and the margins for overhead and profit provided in Appendix B hereto.

3.3 Project Co to Minimize Inconvenience

- (a) Project Co shall notify Health Co of the estimated duration of any Small Works so that Health Co and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to Health Co and the Health Authorities. Project Co shall take all reasonable efforts to minimize the duration of any Small Works.

Appendix A**1. DIRECT COSTS**

1.1 Subject to Section 1.2 of this Appendix A, the term "Direct Cost" means the cumulative total of only the following amounts, at direct cost as paid or incurred by Project Co or its Subcontractors, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred, and without duplication:

- (i) wages and benefits paid for labour in the direct employ of Project Co or its Subcontractors while performing that part of the Project Operations on Site;
- (ii) salaries, wages and benefits of Project Co's or its Subcontractors' personnel when stationed at the Site office in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of Project Co's or its Subcontractors' office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) travel and subsistence expenses of Project Co's or its Subcontractors' officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
- (vi) the cost of materials, products, supplies and equipment, including transportation thereof;
- (vii) the cost of materials, products, supplies, equipment, temporary services and facilities, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (viii) rental costs of all tools, machinery, and equipment, exclusive of hand tools, used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (ix) the cost of all equipment and services required for the Subcontractors' field office;
- (x) deposits lost;
- (xi) the amount of all Subcontracts with Subcontractors;

- (xii) the cost of quality assurance such as independent inspection and testing services;
- (xiii) charges levied by Governmental Authorities, but excluding fines or penalties;
- (xiv) premiums for all bonds other security and insurance for which Project Co or its Subcontractors are required to purchase and maintain;
- (xv) the cost of *Subguard* insurance, when provided in place of bonding for Subcontractors;
- (xvi) subject to Section 1.1(iv) and without limiting the obligation of Health Co to pay GST under this Agreement, Taxes, but excluding:
 - (A) GST;
 - (B) taxes imposed on Project Co or a Project Co Party based on or measured by income or profit or otherwise imposed under the Income Tax Act (Canada), the Income Tax Act (British Columbia) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of Project Co or a Project Co Party;
 - (D) taxes relating to withholdings on any payments by Project Co or a Project Co Party;
 - (E) property taxes for which Project Co is responsible pursuant to Section 35.1(b) of the Agreement; and
 - (F) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xvii) charges for long distance telephone and facsimile communications, courier services, expressage and photocopying;
- (xviii) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under the Agreement;
- (xix) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xx) legal costs incurred in the performance of the Variation provided that the Variation is performed in accordance with this Agreement;

- (xxi) the cost of financing working capital;
- (xxii) the cost of third party auditing when requested by Health Co; and
- (xxiii) in respect of the Works, computer time and usage.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits which relate to the Direct Cost incurred, provided however that with respect to Sodexo, discounts and rebates through national or regional purchasing arrangements based solely on Sodexo's total corporate purchases (and which cannot reasonably be allocated to the Direct Costs hereunder) shall not reduce the Direct Cost hereunder;
- (ii) in settling the amount of compensation for a Variation pursuant to an Estimate, unless otherwise agreed, with respect to that part of the Variation performed by a Subcontractor, the lesser of the amount which Project Co would be entitled to receive pursuant to Section 1.1 if performed by Project Co's own forces and the amount charged by the Subcontractor, provided however that this Section 1.2(ii) shall not apply to the Works;
- (iii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iv) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be exclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (v) the amount paid for machinery and equipment rental costs shall not exceed:
 - (A) for equipment or machinery including operator, the applicable rates set out in the current edition of the document entitled "Equipment Rental Rate Guide" reference H-75 published jointly by the Province of B.C., B.C. Hydro and B.C. Rail Ltd., or similar publication thereto;
 - (B) for equipment or machinery without operator, the applicable rates set out in the current edition of the document entitled "Equipment Rental Rate Guide (Without Operator)" reference H-75A published by the Ministry of Transportation for B.C., or similar publication thereto; or
 - (C) if the equipment or machinery is not set out in either of the aforesaid documents, the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the Lower Mainland Area, but in all cases rental costs for equipment and machinery shall only be

charged while such equipment or machinery is actively and efficiently engaged in the proper performance of the Project Operations and shall exclude standby time except where the equipment and machinery is specifically ordered in writing by Health Co to be kept on standby, in which case the rate for standby will be as specified in the above publications or as agreed by Health Co and Project Co, or failing agreement at the lowest prevailing commercial rate for standby for similar equipment and machinery on construction projects in the Lower Mainland Area; and

- (vi) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Project Operations.

Appendix B

Overhead and Profit Margins	% of Direct Cost
<i>Project Co's Direct Costs:</i>	
Overhead	[*DELETION]
Profit	[*DELETION]
Total Overhead and Profit %	[*DELETION]
<i>Constructor's Direct Costs</i>	
Overhead	[*DELETION]
Profit	[*DELETION]
Total Overhead and Profit %	[*DELETION]
<i>JCLP's Direct Costs</i> [*DELETION]	
Overhead	[*DELETION]
Profit	[*DELETION]
Total Overhead and Profit %	[*DELETION]
<i>JCLP's Direct Costs</i> [*DELETION]:	
Overhead	[*DELETION]
Profit	[*DELETION]
Total Overhead and Profit %	[*DELETION]
<i>JCLP's Direct Costs</i> [*DELETION]:	
Overhead	[*DELETION]
Profit	[*DELETION]
Total Overhead and Profit %	[*DELETION]
<i>Service Provider's (Other than JCLP) Direct Costs</i>	
Overhead	[*DELETION]
Profit	[*DELETION]

Overhead and Profit Margins	% of Direct Cost
Total Overhead and Profit %	[*DELETION]

Note:

[*DELETION]