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**SCHEDULE 27****EXPIRY TRANSITION PROCEDURE****1. Independent Inspector**

- 1.1 Not less than 42 months prior to the Expiry Date, the Parties shall agree upon and engage an independent and suitably qualified and experienced person (the "Independent Inspector") to carry out inspections of the Facility pursuant to this Schedule.
- 1.2 Project Co and Health Co shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 14 days of the termination of the last Independent Inspector's engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 of this Schedule by the specified deadline, then the Independent Inspector shall be selected as follows:
- (a) each Party shall within 14 days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide notice thereof to the other Party; and
  - (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
  - (c) if the Parties have not selected a common person, then the Independent Inspector shall be determined by the British Columbia International Commercial Arbitration Centre, with the costs of such determination to be shared equally by Project Co and Health Co.

**2. Condition of Facilities on Expiry Date**

- 2.1 On the Expiry Date, the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2) shall be in a condition which:
- (a) is consistent with the Method Statements and the ongoing achievement of the Service Standards and other performance indicators and quality measures in the FM Output Specifications;
  - (b) exhibits no more than fair wear and tear; and
  - (c) throughout the first five years after the Expiry Date and at the end of such five year period, shall not require repair or replacement, in excess of **[\*DELETION]** (index-linked) in aggregate over such five years, of those components of the Facility that Project Co is, at the date of this Agreement, responsible under this

Agreement to repair or replace if such component requires repair or replacement during the Operational Term, provided however that the cost of repair or replacement of the following shall not be included in such aggregate amount:

- (i) non-replacement maintenance, including repair parts, under \$2,000 (index-linked) per item maintained unless such item is one of a grouping of the same or reasonably similar type of items; and
- (ii) those items that are obsolete where such items are projected to remain fully functional and operable for such five year period,

(collectively, the “Expiry Transition Requirements”).

2.2 This Schedule shall not apply to the Category A Equipment, the Category B1 Equipment to be maintained by Health Co, the Category B2 Equipment, the Category C Equipment, the Category D Equipment, the Category E Equipment and any other equipment at the Facility to be maintained by Health Co.

### **3. Facility Inspections**

3.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and to produce and deliver to each of the Parties a written report (a “Facility Condition Report”) not less than 36 months prior to the Expiry Date that:

- (a) identifies the condition of the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2) in relation to the Expiry Transition Requirements;
- (b) identifies any works required to ensure the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2) will meet the Expiry Transition Requirements on the Expiry Date (the “Expiry Transition Works”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
- (c) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Expiry Transition Works (the “Expiry Transition Works Costs”); and
- (d) details how the amount in Section 3.1(c) was calculated.

3.2 The Parties shall cause the Independent Inspector to re-perform an inspection of the Facility and produce and deliver to each of the Parties an updated Facility Condition Report (the “Revised Facility Condition Report”) not less than 12 months prior to the Expiry Date.

3.3 The Scheduled Maintenance Plan and the 5 Year Maintenance Plan shall be amended and updated, as applicable, to include all Expiry Transition Works identified in either the Facility Condition Report or the Revised Facility Condition Report not already included in the then current Scheduled Maintenance Plan or 5 Year Maintenance Plan.

3.4 Either Party may dispute the Facility Condition Report or the Revised Facility Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with the Dispute Resolution Procedure. In the event that a final determination in accordance with the Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the Facility Condition Report or the Revised Facility Condition Report, then either the Facility Condition Report or the Revised Facility Condition Report, as the case may be, shall be deemed to be amended accordingly, and the Scheduled Maintenance Plan and 5 Year Maintenance Plan, as amended pursuant to Section 3.3, and all deductions and payments permitted or required by Section 4, shall be adjusted accordingly.

#### **4. Payments To and From Escrow Account**

4.1 Following the date for delivery of the Facility Condition Report, for the purposes of Section 4.2 the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to its lifecycle costs schedule in Schedule 23 – Payment Mechanism (the “Expiry Lifecycle Costs”). Where the Expiry Transition Works Costs are greater than the Expiry Lifecycle Costs, the difference between the Expiry Transition Works Costs and the Expiry Lifecycle Costs shall be apportioned equally over the Payment Periods from the date of the Facility Condition Report is to be delivered hereunder to the Expiry Date (each instalment being the “Periodic ETW Excess”). If the Facility Condition Report is delivered after the date for delivery hereunder, then the first instalment to be paid shall also include the amounts to be paid under the instalments that would have been payable prior to the date the Facility Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.2 or 3.4, the Parties agree that the Periodic ETW Excess shall be adjusted accordingly.

4.2 Subject to Section 4.4, Health Co may deduct the Periodic ETW Excess from each Periodic Service Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the “Escrow Account”), the Periodic ETW Excess. If in any Payment Period, the Periodic ETW Excess is greater than the relevant Periodic Service Payment, Health Co may deduct the difference between the Periodic ETW Excess and the Periodic Service Payment from the next Periodic Service Payment or from such other Payment Period as otherwise agreed between the Parties.

4.3 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. Health Co shall consider such request within 10 days and if the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then Health Co shall pay the excess to Project Co from the Escrow Account within 10 days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by Health Co to evaluate such request.

4.4 Following the date of the Revised Facility Condition Report, if the amount in the Escrow Account (being the deductions of the Periodic ETW Excess made since the Facility Condition Report) together with the deductions to be made from the remaining Periodic Service Payments is less than the value (based on the Expiry Transition Works Costs) of the remaining Expiry Transition Works (as amended) yet to be performed, then Health

Co may deduct such shortfall, as determined by Health Co, from each remaining Periodic Service Payment until the Expiry Date, and pay each instalment into the Escrow Account and Section 4.3 shall continue to apply until the Expiry Date.

- 4.5 As an alternative to the deductions permitted by Sections 4.2 and 4.4 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4, Project Co may, and in any event if at any time the amounts which Health Co is permitted to deduct pursuant to Sections 4.2 or 4.4 is greater than the portion of the anticipated remaining Periodic Service Payments reasonably estimated to exceed Project Co's cost of providing the Services, Project Co shall within 7 days of a written request from Health Co, provide a bond or letter of credit (the "Expiry Transition Security") in favour of Health Co in an amount equal to the amounts which Health Co is permitted to deduct pursuant to Sections 4.2 and 4.4, in a form and from a surety or bank, as applicable, acceptable to Health Co.

## **5. Fair Wear and Tear**

- 5.1 For the purposes of this Schedule, "fair wear and tear" means wear and tear that is reasonable given the use and age of the Facility (notwithstanding that any furniture, decorative fittings, finishes (including paintwork, fabric and special finishes), floor coverings and soft furnishings would be obsolete on the Expiry Date, but is still functional and operable), and consistent with wear and tear that could reasonably be expected to exist at a facility similar to the Facility, operating in a similar environment and similar circumstances and of a similar age, but does not include any degradation in the functionality or operability of the Facility, including furniture, decorative fittings, finishes (including paintwork, fabric and special finishes), floor coverings and soft furnishings (even if obsolete on the Expiry Date) so that the Facility or any element of the Facility (subject to the exceptions specified in Section 2.2) fails to meet the Output Specifications, or fails to comply with Applicable Laws.

## **6. Project Co Not Relieved of Obligations**

- 6.1 Notwithstanding:

- (a) any agreement of Health Co to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of Health Co in any inspection under this Schedule; and
- (c) the complete or partial carrying out of the Expiry Transition Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Agreement, including without limitation the Output Specifications.

## **7. Final Facility Condition Report**

- 7.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and to produce and deliver to each of the Parties a Facility Condition Report within 45 days after the Expiry Date (the "Final Facility Condition Report") that documents whether the Facility met the Expiry Transition Requirements on the Expiry

Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.

- 7.2 If the Final Facility Condition Report identifies any Expiry Transition Works, Project Co shall pay to Health Co an amount equal to the Expiry Transition Works Costs not later than 30 days after the Parties agree on the Expiry Transition Works Costs or the amount is determined in accordance with the Dispute Resolution Procedure (and following such payment, Project Co shall have no further liability with respect to such Expiry Transition Works). Upon such payment being received by Health Co, Health Co shall pay the Escrow Account funds (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co. If no such payment is made by Project Co, then Health Co may withdraw from the Escrow Account or call upon the Expiry Transition Security, an amount equivalent to such Expiry Transition Works Costs (and following such withdrawal or call, provided the Escrow Account and Expiry Transition Security is adequate to meet Project Co's payment obligations in respect of the Expiry Transition Works, Project Co shall have no further liability with respect to such Expiry Transition Works) and Health Co shall pay the remaining funds in the Escrow Account (including any interest accrued) to Project Co and return the remaining Expiry Transition Security to Project Co.
- 7.3 If no Expiry Transition Works are identified in the Final Facility Condition Report, Health Co shall pay the Escrow Account funds (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co forthwith unless Health Co disputes the Final Facility Condition Report, in which case the Escrow Account and Expiry Transition Security shall be dealt with as determined in accordance with the Dispute Resolution Procedure.