

SCHEDULE 4

FUNDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the _____ day of December, 2004

AMONG:

ABBOTSFORD HOSPITAL AND CANCER CENTRE INC., a
company incorporated under the laws of British Columbia

("Health Co")

AND:

BNY TRUST COMPANY OF CANADA, a trust company
incorporated under the laws of Canada, for itself and as agent for
each of the Senior Funders

("Agent")

AND:

ABN AMRO BANK N.V., CANADA BRANCH, as l/c provider

("ABN AMRO")

AND:

AHA ACCESS HEALTH ABBOTSFORD LTD., a company
incorporated under the laws of British Columbia

("Project Co")

WHEREAS:

- A. Health Co and Project Co have entered into the Project Agreement.
- B. Under the Funding Agreements, financing is to be provided to Project Co by the Senior Funders to finance the Project Operations, conditional on Project Co granting the Security to Agent and ABN AMRO.
- C. Each of the Agent and ABN AMRO has agreed to enter into this Agreement with Health Co in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co of the Project Agreement.

NOW THEREFORE in consideration of the mutual promises and agreements of the Parties herein expressed and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. Definitions and Interpretation

In this Agreement unless the context otherwise requires:

- (a) "Affiliate" has the meaning given in the Project Agreement.

- (b) "Agent" has the meaning given on the first page of this Agreement.
- (c) "AHCC" has the meaning given in the Project Agreement.
- (d) "Agreement" means this agreement, as amended, supplemented or replaced from time to time in accordance with the terms hereof.
- (e) "Appointed Representative" means the Representative identified in an Appointed Representative Notice.
- (f) "Appointed Representative Notice" has the meaning given in Section 8(b).
- (g) "Bonus Payment" has the meaning given in the Project Agreement.
- (h) "Business Day" means a day other than a Saturday, Sunday or a statutory holiday in British Columbia.
- (i) "Collateral Agreements" has the meaning given in the Project Agreement.
- (j) "Construction Contract" has the meaning given in the Project Agreement.
- (k) "Constructor" has the meaning given in the Project Agreement.
- (l) "Default Notice" has the meaning given in Section 7(a)(i).
- (m) "Enforcement Action" means any exercise by Agent or ABN AMRO, as the case may be, of the Security.
- (n) "Enforcement Event" means an event of default under the Funding Agreements or the Security Documents or any event which permits an Enforcement Action.
- (o) "Equity Purchase Agreement" means the equity purchase agreement made on or about the date hereof between Project Co and ABN AMRO Bank N.V., Canada Branch.
- (p) "Exercise Date" has the meaning given in Section 12(a).
- (q) "Funding Agreements" has the meaning given in the Project Agreement.
- (r) "Governmental Authority" has the meaning given in the Project Agreement.
- (s) "Health Authority" and "Health Authorities" have the meanings given in the Project Agreement.
- (t) "Health Co" has the meaning given on the first page of this Agreement.
- (u) "Health Co Project Documents" means the Project Agreement and all other documents to which Health Co and Project Co are parties pursuant to the Project Agreement;
- (v) "Indebtedness Notice" has the meaning given in Section 7(a)(ii).
- (w) "Initial Funding Agreements" has the meaning given in the Project Agreement;

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- (x) "L/C Agreement" means the letter of credit agreement made on or about the date hereof between Project Co and ABN AMRO.
- (y) "Lender Representative" has the meaning given in Section 10(d)(iii)(B).
- (z) "Liquid Market" has the meaning given in the Project Agreement;
- (aa) "Notice Period" means the period starting on the date of delivery of a Default Notice and ending 90 days later;
- (bb) "Novation Date" has the meaning given in Section 10(a).
- (cc) "Novation Notice" has the meaning given in Section 10(a).
- (dd) "Party" means Health Co, Project Co, the Agent or ABN AMRO, and "Parties" means Health Co, Project Co, the Agent and ABN AMRO.
- (ee) "Project" has the meaning given in the Project Agreement.
- (ff) "Project Agreement" means that certain agreement entitled "Project Agreement" and made on or about the date hereof between Health Co and Project Co, as amended, supplemented or replaced from time to time in accordance with the terms thereof.
- (gg) "Project Co" has the meaning given on the first page of this Agreement.
- (hh) "Project Co Event of Default" has the meaning given in the Project Agreement.
- (ii) "Project Documents" has the meaning given in the Project Agreement.
- (jj) "Project Operations" has the meaning given in the Project Agreement.
- (kk) "Province" has the meaning given in the Project Agreement.
- (ll) "Refinancing" has the meaning given in the Project Agreement.
- (mm) "Representative" means:
- (i) the Agent, any Senior Funder or any of their Affiliates;
 - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
 - (iii) a person directly or indirectly owned or controlled by the Agent or any of the Senior Funders; or
 - (iv) any other person approved by Health Co (such approval not to be unreasonably withheld or delayed).
- (nn) "Restricted Person" has the meaning given in the Project Agreement.
- (oo) "Scheduled Substantial Completion Date" has the meaning given in the Project Agreement.
- (pp) "Secured Parties" means the Agent and ABN AMRO.

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- (qq) "Security" means the security interests granted by Project Co to Agent and ABN AMRO pursuant to the Security Documents.
- (rr) "Security Documents" means all security granted by Project Co to the Senior Funders (or any trustee or agent thereof) pursuant to or in connection with the Funding Agreements, including but not limited to:
- (i) the security granted under section 5.1 of the Trust Indenture;
 - (ii) the L/C Agreement;
 - (iii) the Security Sharing Agreement made on or about the date hereof between Project Co, the Agent and ABN AMRO Bank N.V., Canada Branch;
 - (iv) general security agreement made on or about the date hereof between Project Co and ABN AMRO Bank N.V., Canada Branch; and
 - (v) assignment of material agreements made on or about the date hereof between Project Co and ABN AMRO Bank N.V., Canada Branch,
- in each case, as amended, supplemented or replaced from time to time.
- (ss) "Senior Funders" has the meaning given in the Project Agreement and includes, for greater certainty, the Agent as indenture trustee under the Trust Indenture and ABN AMRO as l/c provider under the LC Agreement.
- (tt) "Service Contracts" has the meaning given in the Project Agreement.
- (uu) "Service Failure Points" has the meaning given in the Project Agreement.
- (vv) "Service Provider" has the meaning given in the Project Agreement.
- (ww) "Services" has the meaning given in the Project Agreement.
- (xx) "Step-In Date" means the date on which Health Co receives a Step-In Notice from the Agent or ABN AMRO.
- (yy) "Step-In Notice" means the notice given by the Agent or ABN AMRO to Health Co pursuant to Section 8(a) stating that the Agent or ABN AMRO is exercising its step-in rights under this Agreement.
- (zz) "Step-In Period" means the period from the Step-In Date up to and including the earlier of:
- (i) the Step-Out Date;
 - (ii) the Termination Date;
 - (iii) the date that a transfer of Project Co's rights and obligations under the Project Documents to a Suitable Substitute Contractor pursuant to Section 10 becomes effective; and

- (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the later of: A) the last day of the second year after the Scheduled Substantial Completion Date; or B) the date falling two years after the Step-In Date.
- (aaa) "Step-Out Date" means the date falling 30 days after the date on which Health Co receives a Step-Out Notice.
- (bbb) "Step-Out Notice" has the meaning given in Section 9(a).
- (ccc) "Subcontractor" has the meaning given in the Project Agreement.
- (ddd) "Subsequent Indebtedness Notice" has the meaning given in Section 7(b).
- (eee) "Substantial Completion Date" has the meaning given in the Project Agreement.
- (fff) "Suitable Substitute Contractor" means a person, approved in writing by Health Co in accordance with Section 10(c), pursuant to Section 10(b) as:
 - (i) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Project Agreement; and
 - (ii) employing persons having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the Project Agreement.
- (ggg) "Termination Date" has the meaning given in the Project Agreement.
- (hhh) "Trust Indenture" means the trust indenture made on or about the date hereof between the Agent, Project Co and ABN AMRO, as bond manager, as amended, supplemented or replaced from time to time.
- (iii) "Warning Notices" has the meaning given in the Project Agreement.
- (jjj) "Works" has the meaning given in the Project Agreement.

2. Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Agreement are for convenience of reference only, shall not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Agreement.
- (b) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

- (c) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (d) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (e) The words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
- (f) References containing terms such as:
 - (i) "hereof," "herein," "hereto," "hereinafter," and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall in all cases be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (g) In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (h) Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (i) Where this Agreement states that an obligation shall be performed "on" a stipulated date the latest time for performance shall be 5:00 p.m. on that day, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Whenever the terms "will" or "shall" are used in this Agreement they shall be construed and interpreted as synonymous and to read "shall".
- (k) Any reference to time of day or date means the local time or date in Abbotsford, British Columbia.

3. Conflict in Documents

In the event of ambiguities, conflicts or inconsistencies between or among this Agreement, the Project Agreement and the Construction Contract, this Agreement shall prevail.

4. Term

- (a) This Agreement shall terminate automatically on the earliest to occur of:
- (i) the date on which all obligations which may be or become owing by Project Co to the Senior Funders under the Funding Agreements have been satisfied in full; provided that on the date on which all obligations which may be or become owing by Project Co to ABN AMRO under the L/C Agreement have been satisfied in full, ABN AMRO, in its capacity as Senior Funder under such L/C Agreement, shall have no further rights and obligations hereunder;
 - (ii) the Termination Date (other than in the circumstances contemplated in Section 7(c)(ii), provided that Health Co complies with its obligations under this Agreement relating to Health Co not exercising any right it may have to terminate the Project Agreement); and
 - (iii) the date that any transfer of Project Co's rights and obligations under the Project Agreement to a Suitable Substitute Contractor pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(d)(iii) are executed and delivered by the parties thereto.
- (b) Agent or ABN AMRO, as the case may be, shall provide notice to Health Co of the date referred to in Section 4(a)(i) with respect to the Funding Agreement to which it is a party, within 30 days following its occurrence.

5. Agreements and Security

- (a) Project Co, the Agent and ABN AMRO shall not amend or modify the Funding Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.
- (b) Project Co and Health Co shall not amend or modify the Project Agreement or any other agreement to which Project Co and Health Co are a party (other than in accordance with the terms of those agreements) without the prior written consent of the Agent and ABN AMRO, not to be unreasonably withheld, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially and adversely affect the ability of the Senior Funders to exercise their rights under the Security or materially and adversely affect the value of the Security or (ii) increase the liability of the Senior Funders or Project Co under the relevant agreement, whether actual or potential. Agent and ABN AMRO shall respond promptly to any request for consent under this Section.
- (c) Project Co acknowledges and consents to the arrangements set out in this Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Agreement.
- (d) Each of the Agent and ABN AMRO acknowledges having received a copy of the Project Agreement.
- (e) Health Co acknowledges having received a copy of the Initial Funding Agreements.
- (f) Health Co acknowledges and consents to the Security.

- (g) ABN AMRO acknowledges and agrees that it shall be a precondition to its right to exercise its rights hereunder at any particular point in time that it shall not, at such point in time, be in default under the Equity Purchase Agreement.

6. Enforcement of Security by Agent

- (a) The Agent and ABN AMRO shall promptly notify Health Co of any Enforcement Event, any Enforcement Action, any notice from the Senior Funders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Senior Funders under the Funding Agreements or any notice from the Senior Funders to Project Co to demand repayment thereof.
- (b) The Agent and ABN AMRO shall not exercise any right it may have pursuant to the Security Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents:
 - (i) to the extent the exercise of such rights would constitute a Refinancing and Agent has failed to comply with the provisions of Schedule 31 - Refinancing of the Project Agreement; or
 - (ii) where the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities are inconsistent with the AHCC's role as a hospital and cancer centre and the mandate of the Health Authorities so as to potentially compromise the reputation or integrity of the AHCC, Health Co or any Health Authority or are inconsistent with the nature of the Province's health care system so as to potentially affect public confidence in that system.

7. Termination of Project Agreement by Health Co

- (a) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(c)), Health Co shall not exercise any right it may have to terminate the Project Agreement for a Project Co Event of Default unless:
 - (i) Health Co promptly delivers written notice (a "Default Notice") to the Agent and ABN AMRO setting out the Project Co Event of Default in reasonable detail, and including if applicable, any notices Health Co has given to Project Co of termination of the Project Agreement for a Project Co Event of Default. With respect to Sections 45.1 and 45.2 of the Project Agreement, Health Co shall deliver the Default Notice to the Agent and ABN AMRO contemporaneously with the notice of default of Project Co as contemplated in Sections 45.1 and 45.2 of the Project Agreement;
 - (ii) not later than 30 days after the date of a Default Notice Health Co delivers written notice (an "Indebtedness Notice") to Agent and ABN AMRO setting out:
 - (A) all amounts owed by Project Co to Health Co and any other liabilities and obligations of Project Co to Health Co of which Health Co is aware (having made reasonable enquiry), in each

- case, as of the date on which Health Co sent the Default Notice;
and
- (B) all amounts which will become owing from Project Co to Health Co and any other liabilities and obligations of Project Co to Health Co of which Health Co is aware (having made reasonable enquiry) which will become due, in each case, on or before the end of the Notice Period; and
- (iii) the Notice Period has expired and the Agent or ABN AMRO has not delivered a Step-In Notice.
- (b) At any time after Health Co sends an Indebtedness Notice but before Health Co receives a Step-In Notice, if Health Co discovers amounts that have become owing by Project Co to Health Co or any other liabilities or obligations of Project Co to Health Co that have come due but which were not included in the Indebtedness Notice, Health Co may deliver a notice (a "Subsequent Indebtedness Notice") to the Agent and ABN AMRO setting out those amounts, liabilities or obligations.
- (c) During the Step-In Period, Health Co shall not exercise any right it may have to terminate the Project Agreement:
- (i) if, in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has been cured by or on behalf of the Appointed Representative or Project Co, as the case may be, or the Appointed Representative or Project Co, as the case may be, is diligently proceeding to cure the breach in accordance with Section 45.4 of the Project Agreement (and where appropriate, Health Co and the Appointed Representative may agree to amend the applicable time periods set out in Section 45.4 of the Project Agreement) until so cured; or
- (ii) if, in the case of a Project Co Event of Default which is not capable of being cured, the Agent or ABN AMRO, as the case may be, enters (on behalf of certain Fundere a new contract with Health Co on the same terms as the Project Agreement for a term expiring on the Expiry Date (as defined in the Project Agreement); or
- (iii) unless, where the Project Co Event of Default relates to the Works, the Substantial Completion Date does not occur on or before the date twelve months after the Longstop Date (as defined in Section 45.1(a)(ii) of the Project Agreement).

8. Step-In Rights

- (a) Subject to Section 8(b) and without prejudice to the Agent's or ABN AMRO's rights to enforce the Security, the Agent or ABN AMRO may give Health Co a Step-In Notice at any time:
- (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
- (ii) during the Notice Period; or
- (iii) during which an Enforcement Event is subsisting.

- (b) At least 7 days before Agent or ABN AMRO delivers a Step-In Notice, Agent or ABN AMRO, as the case may be, shall deliver notice (an "Appointed Representative Notice") to Health Co and the other Secured Party of:
- (i) its intention to deliver a Step-In Notice; and
 - (ii) the identity of its proposed Appointed Representative,
- and Agent or ABN AMRO, as the case may be, may request copies of all notices of default given by Health Co to Project Co under the Project Agreement relating to the Project Co Event of Default giving rise to the Default Notice, and Health Co will provide copies of such notices promptly thereafter.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume jointly with Project Co all of Project Co's rights and obligations under the Project Agreement.
- (d) During the Step-In Period, Health Co shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the Project Agreement. Project Co agrees to be bound by all such dealings between Health Co and the Appointed Representative to the same extent as if they had been between Health Co and Project Co.
- (e) Health Co will deal with the Appointed Representative named in the Step-In Notice first delivered to Health Co after the issuance of a Default Notice, to the exclusion of the other Secured Party (except for any rights the other Secured Party may have under Section 7(c)(ii) for the duration of the resulting Step-In Period.

9. Step-Out Rights

- (a) The Appointed Representative may at any time during the Step-In Period deliver to Health Co a notice (a "Step-Out Notice") to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
- (i) the rights and obligations of the Appointed Representative in relation to Health Co under the Project Agreement arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
 - (ii) Health Co will no longer deal with the Appointed Representative and will deal with Project Co in connection with the Project Agreement; and
 - (iii) the Appointed Representative and Health Co shall be and hereby are released from all obligations and liabilities to one another under the Project Agreement.
- (c) There will not be more than one Step-In Period following the issuance by Health Co of any one Default Notice. If the Appointed Representative named in the first Step-In Notice delivers a Step-Out Notice before the expiry of the period described in Section 1(zz)(iv), the other Secured Party may deliver a Step-In Notice but the step-in period for such Secured Party will be limited to the period

remaining in the Step-In Period of the Secured Party which first stepped-in had such Secured Party which first stepped-in not delivered a Step-Out Notice.

10. Novation to Suitable Substitute Contractor

- (a) Subject to Section 10(b), at any time:
- (i) after an Enforcement Event has occurred; or
 - (ii) during the Step-In Period,

Agent or ABN AMRO may deliver a notice to Health Co and any Appointed Representative (a "Novation Notice") together with all information reasonably necessary for Health Co to decide whether the proposed transferee is a Suitable Substitute Contractor. The Novation Notice shall specify a Business Day not less than 30 days from the date on which Health Co receives the Novation Notice ("Novation Date") for the transfer of Project Co's rights and obligations under the Health Co Project Documents to a Suitable Substitute Contractor in accordance with the provisions of Section 10(d).

- (b) Health Co shall promptly notify Agent or ABN AMRO, as the case may be, of any additional information it reasonably requires in order to assess whether the proposed transferee is a Suitable Substitute Contractor. Health Co shall notify Agent and ABN AMRO as to whether any person to whom Agent or ABN AMRO, as the case may be, proposes to transfer Project Co's rights and liabilities under the Health Co Project Documents is a Suitable Substitute Contractor, on or before the date falling 30 days after the later of the date of receipt from Agent or ABN AMRO, as the case may be, of the Novation Notice or the date of receipt from the Agent or ABN AMRO, as the case may be, of any additional information properly requested by Health Co. If Health Co fails to respond within such period, Health Co will be deemed to have approved the proposed Suitable Substitute Contractor and the proposed transfer.
- (c) Health Co shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute Contractor, but it shall, without limitation, be reasonable for Health Co to withhold its approval if:
- (i) there are unremedied breaches under the Project Agreement and there is no rectification plan reasonably acceptable to Health Co in respect of the breaches which are capable of being remedied by the Appointed Representative or the Suitable Substitute Contractor;
 - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Subcontractor pursuant to the Project Agreement; or
 - (iii) the proposed security interests to be granted by the Suitable Substitute Contractor to the Agent and/or ABN AMRO pursuant to the Security Documents are materially different from the Security, materially and adversely affect the ability of the Suitable Substitute Contractor to perform under the Project Documents or the Project Agreement or have the effect of increasing any liability of Health Co, whether actual or potential.

In the case of irremediable breaches, Health Co may not withhold its consent on the basis of the existence of such breaches.

- (d) On the Novation Date:
 - (i) Project Co and Health Co will be released from their obligations under the Project Agreement to each other, and the Suitable Substitute Contractor and Health Co will assume those same obligations towards each other;
 - (ii) each of the rights of Project Co against Health Co under the Project Agreement and the rights of Health Co against Project Co under the Project Agreement will be cancelled, and the Suitable Substitute Contractor and Health Co will acquire those same rights against each other (including, for greater certainty, the right for the Suitable Substitute Contractor to rely upon the Payment Guarantee);
 - (iii) the Parties will enter into, and Agent or ABN AMRO, as the case may be, shall cause the Suitable Substitute Contractor and the Lender Representative to enter into, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including without limitation:
 - (A) an agreement between Health Co and the Suitable Substitute Contractor, on substantially the same terms as the Project Agreement; and
 - (B) an agreement among Health Co, the Suitable Substitute Contractor and a representative (the "Lender Representative") acting as agent to all of the lenders lending to the Suitable Substitute Contractor on substantially the same terms as this Agreement;
 - (iv) any accrued entitlement to, or prior performance by either or both of Project Co and any Appointed Representative which could merit, a Bonus Payment shall be eliminated;
 - (v) any Service Failure Points and Warning Notices that arose prior to the Novation Date shall be cancelled, however, where Health Co was entitled to make deductions under Schedule 23 – Payment Mechanism arising from such Service Failure Points and Warning Notices and those deductions have not yet been made against any payments to Project Co preceding the Novation Date, those outstanding deductions shall still apply; and
 - (vi) any subsisting ground for termination by Health Co of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11. Transfers

Health Co shall at Project Co's expense, take whatever action Agent, ABN AMRO, the Appointed Representative or a Suitable Substitute Contractor may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, Agent, ABN AMRO Appointed Representative or Suitable Substitute Contractor reasonably requires.

12. Collateral Agreements

Notwithstanding any provision in the Collateral Agreements, Health Co hereby undertakes that it will not, and it will require that none of its permitted successors or assigns of it will exercise any rights it may have under or arising out of any of the Collateral Agreements, except as provided in Section 12(a) to Section 12(c) inclusive:

- (a) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Agreement) in accordance with this Agreement, Health Co shall from such date (the "Exercise Date") be entitled to exercise its rights under the Collateral Agreements to step in and/or novate the Construction Contract(s), and/or the Services Contracts in accordance with the Collateral Agreements.
- (b) Until the date described in Section 4(a)(i) of this Agreement, but following the Exercise Date, Health Co shall not do anything to prejudice the rights which are not transferred to it pursuant to the Collateral Agreements.
- (c) Where all amounts which may be or become owing by Project Co to the Senior Funders under the Funding Agreements have been paid in full or where Agent or ABN AMRO, as the case may be, determines not to enforce its Security, Agent or ABN AMRO, as the case may be, shall promptly release and discharge all Security in respect of any Construction Contract or Service Contract assumed or novated by Health Co pursuant to a Collateral Agreement. Notwithstanding the terms of the Collateral Agreements and any other provisions of this Section 12, each of the Constructor and the Service Providers (and any guarantors thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Construction Contract(s) and/or the Services Contracts in respect of the period prior to the Exercise Date in relation to which the Agent or ABN AMRO acting on behalf of Project Co or the Senior Funders shall retain the benefit of all any rights to all such costs, claims, damage, losses and liabilities.

13. Assignment

- (a) Project Co may assign or otherwise dispose of the benefit of the whole or part of this Agreement to any person to whom Project Co may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.1 of the Project Agreement, and shall provide written notice to Health Co, Agent and ABN AMRO of such assignment or disposition. Such assignee shall assume the obligations and acquire the rights of Project Co under this Agreement. Health Co, Agent and ABN AMRO shall, at the sole cost of Project Co, do all things and execute all further documents as may be necessary in connection therewith.
- (b) Health Co may assign or otherwise dispose of the benefit of the whole or part of this Agreement to any person to whom Health Co may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement, and shall provide written notice to Project Co and Agent and ABN AMRO of such assignment or disposition. Such assignee shall assume the obligations and acquire the rights of Health Co under this Agreement. Project Co and Agent and ABN AMRO shall, at the sole cost of Health Co, do all things and execute all further documents as may be necessary in connection therewith.
- (c) Agent or ABN AMRO may only assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Agreement as

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- (b) A Party may at any time and from time to time change its nominated address or facsimile number by prior notice to the other Parties, and such change shall be effective on the day that next follows the recipient Parties' receipt of such notice.
- (c) Notices given by mail shall be effective upon the earlier of (i) actual receipt, and (ii) 7 days after mailing if mailed within Canada, and 21 days after mailing if mailed outside of Canada. Notices delivered personally shall be effective upon delivery (provide that such notice is delivered to the contact person noted above or a person authorized on their behalf). Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- (i) within 2 hours after sending, if sent on a Business Day between the hours of 9am and 5:00pm; or
- (ii) by 11am on the next following Business Day, if sent after 5:00pm on a Business Day but before 9am on that next following Business Day.
- (d) If the Party giving the notice or communication knows or ought reasonably to know of difficulties or disruption with the postal system which might affect the delivery of mail:
- (i) any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission; and
- (ii) where such difficulties or disruption arise after mailing but before the date of receipt as provided in this Section 14 the party giving such notice shall make or give such notice by personal delivery or by facsimile transmission.
- (e) To be effective, notices and all formal communications under this Agreement shall be in writing and delivered as provided in this Section 14, and shall be signed by an authorized representative of the Party giving the notice. E-mails shall not be used for and shall not constitute notices under this Agreement.
- (f) Oral communications shall not constitute formal communication under this Agreement and no Party has any obligation to act on any oral communication, instruction or assurance unless and until it is confirmed in writing. Any action taken by a Party based on oral communications, instructions or assurances shall be at that Party's sole risk and shall be without liability to or recourse against the other Parties.

15. Amendments

No oral or written amendment or modification of this Agreement, either before or after execution and delivery of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized officer of each Party to be bound thereby.

16. Waiver

- (a) No waiver of any rights under this Agreement shall be binding or effective unless the waiver is in writing and signed by an authorized representative of the Party giving such waiver.
- (b) Any Party's waiver of any of its rights under this Agreement or of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of this Agreement at any time shall not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade notwithstanding.

17. Time is of the Essence

Time is of the essence of this Agreement and each provision herein.

18. Independent Contractor

The Parties are independent contractors. This Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or except as provided in this Agreement, of principal and agent. None of Project Co, Agent, ABN AMRO or any of its or their representatives are or shall be deemed to be an employee of Health Co.

19. Entire Agreement

Except where provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

20. Severability

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement shall be invalid, unenforceable or illegal, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.

21. Enurement

This Agreement shall enure to the benefit of and be binding on each of the Parties and their respective successors and permitted transferees and assigns.

22. Governing Law and Jurisdiction

- (a) This Agreement shall be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein and shall be treated in all respects as a contract in the Province of British Columbia, without regard to conflict of laws principles.

- (b) The Parties agree that the courts of British Columbia shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and hereby irrevocably attorn to the jurisdiction of those courts.

23. Dispute Resolution Procedure

The Parties agree that the Dispute Resolution Procedure (as such term is defined in the Project Agreement) provided for in the Project Agreement, shall not apply (save as otherwise provided herein) to any dispute under this Agreement, provided however that the determination of Disputes (as such term is defined the Project Agreement) under the Project Agreement shall be determined pursuant to the Dispute Resolution Procedure to the extent provided for under the Project Agreement.

24. Further Assurance

Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

25. Language of Agreement

Each Party acknowledges having requested and being satisfied that this document and its accessories be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

26. Proof of Authority

Health Co reserves the right to require any person executing this Agreement on behalf of Project Co and Agent or ABN AMRO to provide proof, in a form acceptable to Health Co, that they have the requisite authority to execute this Agreement on behalf of and to bind Project Co, Agent and the Funders and ABN AMRO.

27. Confidentiality

Each of Agent and ABN AMRO shall comply with the obligations on the part of Project Co contained in Section 52 of the Project Agreement.

28. Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall, upon any other Party's request, promptly forward to such Party an original signed copy of this Agreement which was so faxed.

29. Reliance on Facsimile

The Agent may rely on, and act upon, any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission.

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

EXECUTED AND DELIVERED by
**ABBOTSFORD HOSPITAL AND
CANCER CENTRE INC.** acting by

Authorized Signatory

Full Name

Witness (Signature)

Witness (Full Name)

Authorized Signatory

Full Name

Witness (Signature)

Witness (Full Name)

EXECUTED AND DELIVERED by **BNY
TRUST COMPANY OF CANADA** acting by

Authorized Signatory

Full Name

Witness (Signature)

Witness (Full Name)

Authorized Signatory

Full Name

Witness (Signature)

Witness (Full Name)

EXECUTED AND DELIVERED by **ABN
AMRO BANK, N.V., CANADA BRANCH**
acting by

Authorized Signatory

Full Name

Witness (Signature)

Witness (Full Name)

Authorized Signatory

Full Name

Witness (Signature)

Witness (Full Name)

EXECUTED AND DELIVERED by **AHA**)
ACCESS HEALTH ABBOTSFORD LTD.)
acting by)
)

Authorized Signatory)

Full Name)

Authorized Signatory)

Full Name)

Witness (Signature)

Witness (Full Name)

Witness (Signature)

Witness (Full Name)