

**SCHEDULE 31****REFINANCING****1. Definitions**

1.1 The following terms shall have the following meanings:

(a) "Distribution" means:

(i) whether in cash or in kind, any:

- (1) dividend or other distribution in respect of share capital;
- (2) reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;
- (3) payments under the Subordinated Funding Agreements (whether of principal, interest, breakage costs or otherwise);
- (4) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after the date of this Agreement and was neither in the ordinary course of business nor on reasonable commercial terms;
- (5) the receipt or payment of any other benefit which is neither made in the ordinary course of business nor on reasonable commercial terms;
- (6) any other payment to any Relevant Person howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect of any class of the share capital or other securities of Project Co if, in any such case, such payment would not have been made or would not have been made were it not for the occurrence of any Refinancing,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated, provided however that the Distribution shall exclude any commitment fee payable as of the date of this Agreement in respect of the Deferred Equity Contribution.

(b) "Equity IRR" means the projected internal rate of return to all Relevant Persons over the full term of this Agreement, taking into account the aggregate of all their investments and of all Distributions made and projected to be made.

(c) "Exempt Refinancing" means:

- (i) any Refinancing that was fully taken into account in the calculation of the Periodic Service Payments and included in the output from the Financial

- Model as of the date of the Agreement and attached hereto as Schedule 7 - Financial Model Extracts;
- (ii) a change in taxation or change in accounting treatment pursuant to changes in Applicable Law or applicable Canadian generally accepted accounting principles;
  - (iii) waivers, consents and similar actions in respect of the Funding Agreements that do not provide for a financial benefit to Project Co under those agreements;
  - (iv) any sale of shares in Project Co by the Shareholders or securitization of the existing rights or interests attaching to shares in Project Co, other than to the extent any such sale or securitization involves increasing the Senior Debt Amount on terms more favourable to Project Co than contained in the Funding Agreements;
  - (v) any sale or transfer of the Subordinated Funders' rights or interests under the Subordinated Funding Agreements or securitization of the Subordinated Funders' rights or interests under the Subordinated Funding Agreements;
  - (vi) any Qualifying Bank Transaction;
  - (vii) any Rescue Refinancing;
  - (viii) any Refinancing that occurs during the first six months following the date of this Agreement on terms previously approved by Health Co; or
  - (ix) any amendment, variation or supplement of any agreement (other than any Subordinated Funding Agreement) approved by Health Co as part of any Variation under this Agreement.
- (d) "Pre-Refinancing Equity IRR" means the Equity IRR calculated immediately prior to the Refinancing, but without taking into account the effect of the Refinancing.
- (e) "Qualifying Bank" means a lending institution that is a bank listed Schedule I, II or III of the *Bank Act* (Canada) or a bank, life insurance company, pension fund or professional fund manager that controls funds in excess of \$500,000,000.00 (five hundred million), provided such institution is not 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.
- (f) "Qualifying Bank Transaction" means:
- (i) the disposition by a Senior Funder of any of its rights or interests in the Senior Funders Agreements to a Qualifying Bank;

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- (ii) the grant by a Senior Funder to a Qualifying Bank of any rights of participation in respect of the Senior Funders Agreements; or
  - (iii) the disposition or grant by a Senior Funder to a Qualifying Bank of any other form of benefit or interest in either the Senior Funders Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (g) “Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (h) “Refinancing” means:
- (i) any amendment, variation, novation, supplement or replacement of any Funding Agreement (other than any Subordinated Funding Agreement);
  - (ii) the exercise of any right, or the grant of any waiver or consent, under any Funding Agreement (other than any Subordinated Funding Agreement);
  - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Funding Agreements (other than the Subordinated Funding Agreements) or the creation or granting of any other form of benefit or interest in either the Funding Agreements (other than the Subordinated Funding Agreements) or the contracts, revenues or assets of Project Co whether by way of security or otherwise (other than the Subordinated Funding Agreements); or
  - (iv) any other arrangement put in place by Project Co or another person (other than the Subordinated Funding Agreements) which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co’s ability to carry out any of the foregoing provisions of this definition.
- (i) “Refinancing Financial Model” means a comprehensive and detailed financial model satisfactory to Health Co, acting reasonably, prepared for the purpose of Section 2 of this Schedule 31, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule, and take into account:
- (i) cash flows for the entire Project Term;
  - (ii) any changes in structure and funding since the date of this Agreement;
  - (iii) the performance of the Project Operations to the date of the Refinancing;
  - (iv) macroeconomic assumptions; and
  - (v) all other relevant factors.
- (j) “Refinancing Gain” means an amount equal to the greater of zero and  $[(A - B) - C]$ , where:

A = the net present value, discounting at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Refinancing Financial Model) to be made to all Relevant Persons over the remaining term of this Agreement following the Refinancing.

B = the net present value, discounting at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and with using the Refinancing Financial Model) to be made to all Relevant Persons over the remaining term of this Agreement following the Refinancing.

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Base Case Equity IRR.

- (k) "Relevant Person" means a Shareholder and any of its Affiliates.
- (l) "Rescue Refinancing" means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Senior Funders Agreements, or any of them, which does not increase any liability of Health Co, whether actual or potential.

## **2. Refinancing**

- 2.1 Project Co shall not carry out any Qualifying Refinancing unless Project Co has obtained the prior written consent of Health Co, which consent shall not be withheld if at the time the Qualifying Refinancing is contemplated and effected the Qualifying Refinancing shall not materially and adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Agreement or have the effect of increasing any liability of Health Co, whether actual or contingent, present or future, known or unknown.
- 2.2 Health Co shall be entitled to receive a 50 per cent share of any Refinancing Gain arising from a Qualifying Refinancing.
- 2.3 Health Co shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater than 50 per cent share of the Refinancing Gain.
- 2.4 In determining whether to give its consent to any Qualifying Refinancing, Health Co shall act expeditiously and in good faith. Notwithstanding the foregoing, Health Co may withhold its consent, in its sole discretion, where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person.
- 2.5 Project Co shall promptly provide Health Co with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it and the basis for the assumptions used in the proposed financial model. Health Co shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether or not that Refinancing is actually determined to be a Qualifying Refinancing). Project Co shall

promptly, and in any event, within five Business Days of receiving a request in writing from Health Co, provide any information in relation to a proposed Refinancing as Health Co may reasonably require. Project Co shall act reasonably to keep Health Co informed as to any changes to the material terms of the Refinancing required by Project Co, the Funders or other third parties involved in the same.

- 2.6 Subject to Section 2.7, Health Co shall have the right to elect to receive its share of any Refinancing Gain as:
- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
  - (b) a reduction in the Periodic Service Payments over the remaining term of this Agreement; or
  - (c) a combination of either of the foregoing,

such that the total net present value, discounting at a discount rate equal to the Base Case Equity IRR, of the foregoing calculated at the time immediately prior to the Refinancing shall equal Health Co's share of the Refinancing Gain.

- 2.7 Health Co and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of Health Co's share of the Refinancing Gain (taking into account how Health Co has elected to receive its share of the Refinancing Gain under Section 2.6 and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of Health Co's share, the Dispute shall be determined in accordance with Schedule 30 - Dispute Resolution Procedure. If the Parties fail to agree upon the basis of payment, the method will be that which best reflects the manner in which the Refinancing Gain has arisen to Project Co.
- 2.8 The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by Health Co will be paid to Health Co by Project Co within 28 days of any Qualifying Refinancing.