

PROJECT AGREEMENT

for the Burnaby Hospital Redevelopment Project - Phase One

FRASER HEALTH AUTHORITY

and

ELLISDON INFRASTRUCTURE BHRP INC.

Dated: June 29, 2021

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PROJECT AGREEMENT

THIS AGREEMENT dated as of June 29, 2021 is entered into:

BETWEEN:

FRASER HEALTH AUTHORITY
(the “**Authority**”)

AND:

ELLISDON INFRASTRUCTURE BHRP INC.
(“**Project Co**”)

WHEREAS:

- A. pursuant to the Request for Proposals and the competitive selection process provided for therein, the Authority has selected Project Co to design, build and partially finance the Facilities; and
- B. the rights and obligations between the parties will be governed by the terms and conditions set out in this Agreement.

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

1. INTERPRETATION

1.1 Definitions

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

1.2 Interpretation

This Agreement will be interpreted and construed in accordance with the provisions set out in Schedule 1 [Definitions and Interpretation].

1.3 Schedules

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

2. GENERAL PROJECT TERMS

2.1 Term and Termination

The term of this Agreement (the "**Term**") will commence on the Effective Date and will continue to the Expiry Date unless earlier terminated:

- (a) by the Authority at any time in its discretion, and at the convenience of the Authority, by notice stating that termination is for convenience pursuant to this Section 2.1(a);
- (b) by the Authority pursuant to Section 6.6 (Authority Election Not to Reinstatement) if the Authority elects not to reinstate the Project after receipt of a Reinstatement Plan;
- (c) by either party pursuant to Section 6.7 (Insufficient Insurance) in connection with insufficient insurance;
- (d) by either party pursuant to Section 6.8 (Uncollectible Insurance Receivables) in connection with uncollectible Insurance Receivables;
- (e) by the Authority pursuant to Section 6.14(a) or 6.14(c)(2) (Consequences of Risks Becoming Uninsurable) in connection with a Principal Insured Risk becoming Uninsurable;
- (f) by either party pursuant to Section 8.4(c) or 8.4(e) (Project Co's Entitlements Upon Occurrence of a Relief Event) in connection with a Relief Event;
- (g) by either party pursuant to Section 8.5(c) or 8.5(d) (Parties' Entitlements Upon Occurrence of a Force Majeure Event) in connection with a Force Majeure Event;
- (h) by the Authority pursuant to Section 12.4 (Authority Termination Right) in connection with a Project Co Event of Default; or
- (i) by Project Co pursuant to Section 13.3 (Project Co's Options) in connection with an Authority Event of Default.

Unless otherwise specified, the Termination Date for such earlier terminations will be the date notice of termination is given by one party to the other party in accordance with this Agreement. Except as referred to in this Section 2.1, neither party will have the right to terminate this Agreement.

2.2 Document Deliveries

Concurrently with the execution and delivery of this Agreement:

- (a) the Authority will deliver to Project Co the documents described in Section 3 (Documents to be Delivered by the Authority) of Schedule 18 [Completion Documents]; and
- (b) Project Co will deliver to the Authority the documents described in Section 2 (Documents to be Delivered by Project Co) of Schedule 18 [Completion Documents].

- (c) The Authority and Project Co acknowledge that notwithstanding Section 2.2(a) of this Agreement, the Authority insurance deliverables referred to in Section 3(n) of Schedule 18 to this Agreement (the “**Authority Insurance Deliverables**”) were not fully provided concurrent with execution and delivery of the Project Agreement. The Authority acknowledges that the construction related insurance requirements required to be taken out by the Authority as set out in Sections 2.1 and 2.2 of Schedule 5 (“**Authority Insurance**”) in accordance with this Agreement are required for certain elements of the Design and Construction to commence. The Authority and Project Co agreed to proceed with the Effective Date on the basis that the Authority shall, in lieu of providing the Authority Insurance Deliverables provide, as soon as practicable and in any event not more than 10 Business Days following the Effective Date, confirmation from the relevant insurers that the coverage in respect of all Authority Insurance has been bound (the “**Post-Closing Deliverable**”), in each case in form and substance satisfactory to the Senior Lenders’ insurance advisor. The Authority shall provide final insurance policies as soon as practicable thereafter. In the event that the Authority fails to provide the Post-Closing Deliverable as and when required pursuant to this Section 2.2(c) and, as a result, there is any delay in any element of the Design or Construction or Project Co incurs any incremental costs in performing the Design or Construction, it shall constitute a Compensation Event and Project Co shall be entitled to relief and compensation in accordance with Section 8.3 of this Agreement.

2.3 Assumption of Risk

- (a) Except to the extent expressly allocated to the Authority or otherwise provided for under this Agreement, all risks, costs and expenses in relation to the performance by Project Co of its obligations under this Agreement are allocated to, and accepted by, Project Co as its entire and exclusive responsibility.
- (b) Project Co acknowledges and agrees that all Design and Construction completed by the Design-Builder under the Early Works Agreement shall be treated as if performed by Project Co under this Agreement and Project Co accepts and assumes full responsibility and liability for such Design and Construction in accordance with the terms of this Agreement.

2.4 Opportunities

Except as expressly provided in this Agreement, or as may be specifically agreed in writing between the Authority and Project Co during the Term, the Authority reserves the right to all commercial and other opportunities for, or related to, the Project and the Lands.

2.5 General Duty of Project Co to Mitigate

In all cases where Project Co is entitled to receive from the Authority any compensation in addition to the payments described in Section 3.1(a) (Payments), costs, damages or extensions of time, Project Co will use all reasonable efforts to mitigate such amount required to be paid by the Authority to Project Co under this Agreement, or the length of the extension of time. Upon request from the Authority, Project Co will promptly submit a detailed description, supported by all such documentation as the Authority may

reasonably require, of the measures and steps taken by Project Co to mitigate and meet its obligations under this Section 2.5.

2.6 General Duty of Authority to Mitigate

In all cases where the Authority is entitled to receive from Project Co any compensation, costs or damages, but not in any other case, the Authority will use all reasonable efforts to mitigate such amount required to be paid by Project Co to the Authority under this Agreement, provided that such obligation will not require the Authority to:

- (a) take any action which is contrary to the public interest, as determined by the Authority in its discretion;
- (b) undertake any mitigation measure that might be available arising out of its status as a public body, but which measure would not normally be available to a private commercial party; or
- (c) alter the amount of any Deductions it is entitled to make in accordance with this Agreement.

The Authority will have no obligation to mitigate, implied or otherwise, except as set out in this Section 2.6 or as otherwise expressly set out in this Agreement. Upon request from Project Co, the Authority will promptly submit a detailed description, supported by all such documentation as Project Co may reasonably require, of the measures and steps taken by the Authority to mitigate and meet its obligations under this Section 2.6.

2.7 Representatives

Project Co and the Authority will each have a Representative appointed in accordance with and with the rights and responsibilities set out in Schedule 2 [Design and Construction Protocols]. From time to time, the Authority may by notice in writing to Project Co change the signing authority of the Authority Representative and appoint or remove one or more other individuals having signing authority.

2.8 Key Individuals

- (a) Attached as Schedule 17 [Key Individuals] is a list of individuals (the “**Key Individuals**”) that Project Co will utilize in undertaking the Design and the Construction, as described in that Schedule. Unless agreed by the Authority, no individual will hold more than one position set out in Schedule 17 [Key Individuals].
- (b) With respect to each of the Key Individuals:
 - (1) Project Co will use all reasonable efforts to retain the Key Individuals to perform the duties for the period described in Schedule 17 [Key Individuals];
 - (2) if for any reason a Key Individual is unavailable (whether through resignation or otherwise) to perform the duties required of the role described in Schedule 17 [Key Individuals], then Project Co will use all reasonable efforts to retain a

replacement with similar expertise and experience to the unavailable Key Individual, satisfactory to the Authority, acting reasonably, and Project Co will not replace such Key Individual without the Authority's consent, acting reasonably; and

- (3) references in this Section 2.8 to unavailability of a Key Individual will not include vacation or other reasonable temporary absences, provided there is reasonable coverage of the Key Individual's responsibilities during vacation or other reasonable temporary absences.
- (c) Within 10 days of Project Co Having Knowledge that a Key Individual is or will be unavailable, Project Co will:
- (1) notify the Authority; and
 - (2) immediately commence the process to retain a replacement prior to the unavailability of such Key Individual or promptly thereafter and will replace the Key Individual no later than 20 Business Days after the unavailability of such Key Individual.
- (d) If either the Authority or Project Co reasonably considers that a replacement will not reasonably be retained within such 20 Business Days (and the Authority will notify Project Co of its opinion within five Business Days of receipt of the notice from Project Co), Project Co will, on or prior to the 10th Business Day after the unavailability of such Key Individual, deliver to the Authority a reasonable program (set out, if appropriate, in stages) for retaining the replacement. The program will specify in reasonable detail the manner in, and the latest date by, which the replacement will be retained.
- (e) The Authority will have 10 Business Days from receipt of the program within which to notify Project Co that the Authority, acting reasonably, does not accept the program, failing which the Authority will be deemed to have accepted the program. If the Authority notifies Project Co that it does not accept the program as being reasonable, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such five Business Days, the question of whether the program (as it may have been amended by agreement) will result in the retention of a replacement in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with the Dispute Resolution Procedure.
- (f) Project Co acknowledges that the success of the Project to both Project Co and the Authority is dependent on the retention at all times of the Key Individuals, and that if any of the Key Individuals are unavailable and are not replaced as required by this Agreement, the Authority:
- (1) will not be obtaining the Design and the Construction at the quality and level assumed to be included in the payments to be made to Project Co hereunder;

- (2) may suffer losses and damages during the Construction Period that are difficult to quantify in advance and that are reflected in the Deductions set out in Section 2.8(g)(1);
 - (3) may incur internal administrative and personnel costs and out-of-pocket costs reflected in Section 2.8(g)(2); and
 - (4) may alternatively deem a Change as reflected in Section 2.8(g)(3).
- (g) If either (i) the position of any Key Individual remains unfilled for more than 25 Business Days after the applicable Key Individual ceased to hold the position or ceased to perform the functions of that position, or (ii) the Authority has accepted a program under Section 2.8(e) and Project Co at any time fails to comply with any part of the program:
- (1) for each such Key Individual position, the Authority will be entitled to make a Deduction of \$2,500 for each week or part thereof until such Key Individual position is filled commencing on the day after the 25th Business Day set out in (i) above or the day after the Authority has notified Project Co under (ii) above of its failure to comply with any part of such program, as applicable;
 - (2) in addition to the remedy under Section 2.8(g)(1), Project Co will pay the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs related to any measures the Authority considers are reasonably incurred in relation to the position being unfilled, including the costs to ensure that Project Co meets its requirements for Design and Construction and for the Authority to review and consider any replacement under this Section 2.8, provided that the maximum liability of Project Co under this Section 2.8(g)(2) will be \$2,500 per week or part thereof; and
 - (3) the Authority at its election may at any time deem the vacancy in the position of the Key Individual to be a Change (other than the requirements to comply with this Section 2.8) and upon such election, the further liability of Project Co under Sections 2.8(g)(1) and 2.8(g)(2) will cease and the Authority will be credited with the amount of the cost (wages, benefits, fees and other costs) that would have been incurred by Project Co, the Design-Builder, and Sub-Contractors in respect of the Key Individual plus a mark-up as set out in Section 2.11 (Mark-Up on Changes) of Schedule 6 [Changes].
- (h) Project Co acknowledges that the Authority incurs costs and expenses in reviewing and considering any replacement under this Section 2.8, and agrees that in addition to the provisions of Section 2.8(g), if in any rolling two year period there are two or more replacements of Key Individuals (other than for circumstances of illness, death, a temporary replacement of a Key Individual when a desired permanent Key Individual is not immediately available (and when the temporary replacement individual and the use of a temporary replacement is opposed by the Authority), or for cause or to otherwise remedy material performance issues of the Key Individual), Project Co will pay the Authority's reasonable internal administrative and personnel costs and all reasonable out-

of-pocket costs related to the costs to review and consider any replacement under this Section 2.8. Within 10 days of Project Co Having Knowledge that the second or subsequent Key Individual within such period is or will be unavailable, Project Co will make a payment to the Authority in the amount of \$15,000 against its obligations under this Section 2.8(h) (and if applicable Section 2.8(g)). If the Authority accepts or rejects the replacement, the Authority will either refund any overpayment or invoice Project Co for any additional amounts owing under either this Section 2.8(h) or Section 2.8(g), and Project Co will promptly pay such amount to the Authority.

- (i) On the replacement of any Key Individual pursuant to this Section 2.8, any replacement individual will, unless the Authority otherwise agrees, be subject to a 90-day probationary period, at any time during which the Authority, acting reasonably, may reject that individual and require replacement by another individual, and the replacement process set forth in this Section 2.8 will apply to such subsequent replacement.
- (j) Any Deduction the Authority is entitled to make pursuant to Section 2.8(g)(1) will be made from the next payment payable to Project Co pursuant to Schedule 8 [Payments].

2.9 Naming

The Authority will have the exclusive right to name the Facilities and any parts thereof.

2.10 Signs

Subject to Section 6.22 (Signage) of Schedule 2 [Design and Construction Protocols], Project Co will not erect or maintain any signs on the Lands or in the Facilities without the written consent of the Authority.

3. AUTHORITY'S GENERAL OBLIGATIONS

3.1 Payments

Subject to Project Co meeting the requirements for payment set out in this Agreement, the Authority will pay Project Co amounts expressly provided for herein, including:

- (a) the Contract Price, including Construction Payments and the Substantial Completion Payment set out in Schedule 8 [Payments];
- (b) the Termination Payments as set out in Schedule 9 [Compensation on Termination];
- (c) amounts owing under Section 6 (Insurance, Damage and Destruction);
- (d) amounts owing under Section 7 (Changes);
- (e) amounts owing under Section 8 (Supervening Events);
- (f) amounts owing under Section 9 (Indemnities and Limits on Liabilities and Remedies); and

- (g) amounts owing under Section 15 (Dispute Resolution);

in accordance with the provisions of this Agreement.

3.2 Limitation on Payments

Other than the payments expressly provided for herein, Project Co will have no right to any further payment from the Authority in connection with the Design, the Construction or otherwise in connection with the Project.

3.3 Provision of Lands

The Authority will make the Lands available for the Project in accordance with Schedule 7 [Lands] and the parties' rights and obligations in respect of the Lands are set out in such Schedule.

3.4 Representations and Warranties

The Authority represents and warrants to Project Co, as of the Effective Date, that:

- (a) the Authority is a regional health board under the *Health Authorities Act* (British Columbia) and the Authority has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained in this Agreement and all other documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Agreement;
- (b) the execution and delivery of this Agreement and all documents, instruments and agreements required to be executed and delivered by the Authority pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of the Authority, and this Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable in accordance with its terms, subject to limitations by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws of general application affecting the enforceability of remedies and rights of creditors and subject to availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (c) all required third party consents to the execution by the Authority of, and performance of its obligations under, this Agreement have been received;
- (d) the Authority has the rights and interest in and to the Lands, in each case free and clear of all encumbrances, restrictions or limitations except the Encumbrances and any encumbrances which do not adversely affect, financially or otherwise, the Licence and the ability of Project Co to conduct the Design or the Construction as contemplated by this Agreement;
- (e) the parcels or interests comprising the Lands permit the grant of the Licence by the Authority and the conduct by Project Co of the Design and the Construction as contemplated by this Agreement; and

- (f) to the extent the Authority's chief project officer for the Project Has Knowledge, there are no facts or information relating to the Project or Disclosed Data which the Authority has intentionally not disclosed to Project Co and which, if learned by Project Co, would reasonably be expected to materially affect Project Co's evaluation of the risks Project Co is assuming pursuant to this Agreement.

4. PROJECT CO'S GENERAL OBLIGATIONS

4.1 General Project Obligations

Subject to and in accordance with the provisions of this Agreement, Project Co will carry out the Design and the Construction.

4.2 Records and Reports

Project Co will, at its own cost and expense, retain and maintain the records and reports referred to in Schedule 14 [Records and Reports] in accordance with such Schedule and in a form that is capable of audit by the Authority. Project Co will:

- (a) make all such records available to the Authority for inspection and copying (at the Authority's expense) during normal business hours upon reasonable notice; and
- (b) upon request from the Authority provide the Authority with electronic copies of any such records as soon as reasonably practicable.

4.3 No Other Business

Project Co will not engage in any business or activity other than the business or activities conducted for the purpose of the Project or otherwise expressly permitted hereunder.

4.4 Project Co Persons

Project Co will, as between itself and the Authority, be responsible for, and not relieved of its obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence and wilful misconduct of each Project Co Person and all references in this Agreement to any act, omission, breach, default, non-compliance, negligence or wilful misconduct of Project Co will be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence or wilful misconduct committed by a Project Co Person.

4.5 Use of Sub-Contractors

Without limiting Section 4.4 (Project Co Persons), the Authority acknowledges that Project Co may carry out the Design and the Construction by contracting such obligations to the Design-Builder, who in turn may contract all or part of its obligations under the Design-Build Agreement to one or more Sub-Contractors. In respect of the Project, Project Co will not contract with, or allow the Design-Builder or any Sub-Contractors to contract with, any Person that is a Restricted Person. Notwithstanding the use of the Design-Builder or Sub-Contractors, Project Co:

- (a) will not be relieved or excused from any of its obligations or liabilities under this Agreement; and
- (b) will remain principally liable to the Authority for the due observance and performance of all the covenants, obligations, agreements and conditions of this Agreement that are to be observed and performed by Project Co.

4.6 Material Contracts

Project Co will not:

- (a) terminate, or agree to or permit the termination of, all or any material part of any Material Contract, except:
 - (1) as required to do so by the Authority pursuant to the provisions of this Agreement; or
 - (2) if there is an event of default under the Design-Build Agreement and Project Co terminates it in order to prevent or cure a Project Co Event of Default;
- (b) make, or agree to or permit the making of:
 - (1) any material amendment of any Material Contract, other than amendments (whether made by change order or otherwise) that are the direct and reasonable consequence of a Change; or
 - (2) any departure by any party from any material provision of any Material Contract;
- (c) permit any Material Contract Party to assign or transfer to any Person any of such Material Contract Party's rights or obligations under a Material Contract other than by way of a Sub-Contract that is not a subcontract of all or substantially all of the obligations under the Material Contract or by way of assignment by way of security by a Material Contract Party; or
- (d) enter into, or permit the entering into of, any Material Contract other than those entered into on or before the Effective Date,

unless Project Co has, at its earliest practicable opportunity, submitted to the Authority notice of the proposed course of action (and any relevant documentation) and the Authority has consented to such course of action, such consent not to be unreasonably withheld or delayed. The Authority will give or deny such consent within: (i) 10 Business Days of receipt of such notice and all relevant documentation if Project Co is seeking to terminate a Material Contract and such Material Contract may, in accordance with its terms, be terminated immediately; and (ii) 30 Business Days of receipt of such notice and all relevant documentation in all other cases, and if the Authority fails to give or deny its consent within such time periods it will be deemed to have given its consent. In determining whether to provide such consent and without limiting the Authority's discretion, it will be reasonable for the Authority to refuse its consent to the proposed course of action if:

- (e) the proposed assignee, transferee or party entering into any Material Contract, or any of its Affiliates as provided in paragraph (h) of the definition of Restricted Person, is a Restricted Person; or
- (f) the proposed course of action could, in the reasonable opinion of the Authority, have a material adverse effect on the Authority or the Project.

4.7 Costs of Request for Consent

If Project Co requests consent to a proposed course of action pursuant to Section 4.6 (Material Contracts), Project Co will pay, without duplication, the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Project Co will make a payment to the Authority in the amount of \$15,000 against its obligations under this Section 4.7. After the Authority renders its decision, the Authority will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 4.7 and Project Co will promptly pay such amount to the Authority.

4.8 Replacement Material Contract

If any Material Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiry or otherwise), unless the goods, services or rights which were the subject matter of such Material Contract are no longer reasonably required for the Project:

- (a) Project Co will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and
- (b) if the Authority and the relevant Material Contract Party had entered into a Material Contract Party Collateral Agreement with respect to the replaced Material Contract, Project Co will forthwith enter into, or cause the replacement Material Contract Party to enter into, a Material Contract Party Collateral Agreement.

4.9 Delivery of Amended Material Contracts

If at any time any amendment is made to any Material Contract, or a replacement Material Contract (or any agreement which materially affects the interpretation or application of any Material Contract) is entered into, Project Co will deliver to the Authority a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

4.10 Project Co's Representations and Warranties

Project Co represents and warrants to the Authority that:

- (a) Project Co is a duly incorporated and validly existing corporation under the *Business Corporations Act* (Ontario) and extra-provincially registered under the laws of the Province of British Columbia, and has full power and capacity to enter into, carry out the transactions contemplated by and duly observe and perform all its obligations contained

in this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement;

- (b) the information set out in Schedule 12 [Project Co's Ownership Information] is true and correct and, except as set out in Schedule 12 [Project Co's Ownership Information], there is as at the date of this Agreement no outstanding offer, agreement or other arrangement pursuant to which:
 - (1) any Person is obligated to subscribe for or take by means of transfer or by conversion any form of investment, security or voting rights in Project Co; or
 - (2) steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
- (c) none of Project Co, the Persons who control Project Co, the Design-Builder nor any Sub-Contractor, is a Restricted Person or has an Affiliate that is a Restricted Person as provided in paragraph (h) of the definition of Restricted Person;
- (d) the execution and delivery of this Agreement and all other documents, instruments and agreements required to be executed and delivered by Project Co pursuant to this Agreement, and the completion of the transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of Project Co, and this Agreement has been duly executed and delivered by Project Co and constitutes a legal, valid and binding obligation of Project Co enforceable in accordance with its terms, subject to limitations by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar Laws of general application affecting the enforceability of remedies and rights of creditors and subject to availability of equitable remedies such as specific performance and injunction that are in the discretion of a court;
- (e) all required third party consents to the execution by Project Co of, and performance of its obligations under, this Agreement have been received, other than the Permits and other approvals contemplated herein to be obtained after the Effective Date in connection with the Project; and
- (f) it has carefully reviewed the whole of this Agreement, including the Design and Construction Protocols and the Design and Construction Specifications, and all applicable Laws, and has taken all steps it considers necessary to satisfy itself that nothing contained herein inhibits or prevents Project Co from performing and completing the Design and the Construction in accordance with this Agreement in a good and safe manner in accordance with Good Industry Practice so that Project Co achieves and satisfies the requirements of this Agreement.

The representation and warranty of Project Co in Section 4.10(f) is included only for the purpose of allowing the Authority to rely on it for the purpose of defending or contesting any action brought against the Authority pursuant to this Agreement or any claim by Project Co for damages, extensions of time,

additional compensation or any other relief arising pursuant to this Agreement and the Authority may not rely on such representation and warranty for the purpose of bringing any action against Project Co or for the purposes of terminating this Agreement.

4.11 Disclosed Data

- (a) Except as otherwise expressly provided in any other provision of this Agreement or as a result of any breach of any express obligation of the Authority under this Agreement, the Authority shall not have any liability to Project Co (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Authority or any Authority Person) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.
- (b) The Authority does not give, has not given, nor will the Authority be deemed to have given, any representation, warranty or undertaking that the Disclosed Data represents or includes all of the information in its possession or control (either during the procurement process for the Project or at or after the date of execution of this Agreement) relevant or material to the Project, the Facilities, the Lands, or the obligations undertaken by Project Co under this Agreement. Without limiting the generality of the foregoing, the Authority will not have any liability to Project Co (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligent act or negligent omission on the part of the Authority or any Authority Person) in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to Project Co any information, documents or data, any failure to keep the Disclosed Data up to date, or any failure to inform Project Co (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.
- (c) It is Project Co's responsibility to have conducted its own analysis and review of the Project and, before the execution of this Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project. Subject to Section (e) of the definition of Compensation Event and the Authority's obligations set out in Schedule 7 [Lands], Project Co will not be entitled to and will not make (and will ensure that neither the Design-Builder nor any Sub-Contractor makes) any claim against the Authority or any Authority Indemnified Persons, whether in contract, tort or otherwise including any claim in damages, for extensions of time or for additional payments under this Agreement on the grounds:
 - (1) of any misunderstanding or misapprehension in respect of the Disclosed Data;
 - (2) that the Disclosed Data was incorrect or insufficient; or
 - (3) that incorrect or insufficient information relating to the Disclosed Data was given to it by any Person other than the Authority,

nor will Project Co be relieved from any obligation imposed on or undertaken by it under this Agreement on any such ground.

4.12 Responses to the Authority Inquiries

Unless otherwise specified in this Agreement, Project Co will respond in writing to all written inquiries received from the Authority as soon as reasonably practicable and in any event within 10 Business Days of receipt of such inquiry or such longer period as the circumstances and content of the inquiry may reasonably require.

4.13 Sourcing of Materials

Project Co will ensure that all systems, equipment, products, incorporated into the Facilities are sourced and procured:

- (a) solely through the applicable manufacturer's authorized distribution channels for the Province of British Columbia; or
- (b) directly from the applicable manufacturer.

If there are only limited authorized distribution channels for the Province of British Columbia for a particular item, Project Co may request consent from the Authority to source and procure the item from another province in Canada. The Authority will not unreasonably withhold its consent to this request. Without limiting the Authority's decision, it will be reasonable for the Authority to withhold its consent where the warranty provided by the supplier would be reduced or where the Authority would incur additional costs to enforce the warranty.

4.14 Compliance with Laws and Permits

Project Co will, in the performance of the Design and the Construction and its other obligations under this Agreement, comply, and cause all Project Co Persons to comply, with all applicable Laws and Permits.

4.15 Interface with Construction Management Agreement

Project Co acknowledges that the Project forms part of a wider Redevelopment and that the Authority is entering into the Construction Management Agreement with the Design-Builder. During the Construction Period Project Co will:

- (a) ensure that the Design and the Construction under this Agreement are coordinated with the Services and Work under the Construction Management Agreement and in particular ensure that:
 - (1) except as set out in Section 4.15(a)(2), the Design submittals set out in Section 5.3 of Schedule 2 [Design and Construction Protocols] up to and including the 50% Design and Construction Documents are submitted at the same time as the equivalent submittals under the Construction Management Agreement; and

- (2) any Design submittals for the Emergency Department Zones 1 and 5 are submitted at the same time as for the Emergency Department Zone 2 under the Construction Management Agreement and for the Operating Rooms are submitted at the same time as for the Preparation/Recovery Bays under the Construction Management Agreement, in each case up to and including the 100% Design and Construction Documents;
- (b) work cooperatively with, and require the Design-Builder to work cooperatively with, the Construction Manager to identify and address any interaction and/or conflict between the Design and the Construction under this Agreement and the Services and Work under the Construction Management Agreement;
- (c) resolve any disputes between the Design-Builder and the Construction Manager so that the Design and the Construction under this Agreement and the Services and Work under the Construction Management Agreement are not delayed or disrupted;
- (d) where required under this Agreement, the Construction Management Agreement or by Good Industry Practice, ensure that the Project Schedule and all plans are prepared on the basis of both the Design and the Construction under this Agreement and the Services and Work under the Construction Management Agreement, so that the Authority can properly review the interface between the two agreements;
- (e) develop a protocol under which Design-Builder and the Construction Manager will resolve any matters that arise if the Construction Manager alleges that there are Defects that impact the Services and Work under the Construction Management Agreement, without recourse to the Authority;
- (f) provide such assistance and information as is reasonably requested by the Construction Manager to allow the Construction Manager to obtain any permits, licences and approvals under the Construction Management Agreement; and
- (g) if the Authority requests a Change under this Agreement and the Construction Management Agreement impacts both Agreements, ensure that a coordinated Change Report is provided under each Agreement that addresses any inter-related impacts of the Changes.

After the Substantial Completion Date, the provisions of this Section will continue to apply to the extent that Project Co or the Design-Builder is rectifying Deficiencies or complying with its warranty obligations under this Agreement.

5. FINANCING OF THE PROJECT

5.1 Compliance with Senior Financing Agreements

Project Co will keep the Senior Financing Agreements in good standing and will ensure that none of the terms and conditions of the Senior Financing Agreements will prevent Project Co from performing its obligations under this Agreement. If at any time Project Co receives a notice that an "event of default",

any event entitling the Senior Lenders to enforce any security, or any other similar event has occurred under the Senior Financing Agreements, Project Co will forthwith deliver to the Authority a copy of such notice.

5.2 Changes to Senior Financing Agreements

Project Co will not, without the written consent of the Authority, not to be unreasonably withheld or delayed, terminate, amend, assign or otherwise modify the Senior Financing Agreements, or waive or exercise any of its rights under the Senior Financing Agreements, or enter into any replacement Senior Financing Agreement or any agreement which affects the interpretation or application of any Senior Financing Agreements, if such action would:

- (a) adversely affect Project Co's ability to perform its obligations under this Agreement; or
- (b) have the effect of increasing any liability or potential liability of the Authority other than as contemplated in the Financial Model.

If at any time any amendment is made to any Senior Financing Agreement or Project Co enters into any replacement Senior Financing Agreement (or any agreement which affects the interpretation or application of any Senior Financing Agreement), Project Co will deliver to the Authority a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of Project Co.

5.3 Consent Required for Refinancing

Except for an Exempt Refinancing, Project Co will not enter into any Refinancing without the consent of the Authority, not to be unreasonably withheld or delayed.

Without limitation, it will be reasonable for the Authority to withhold consent if such Refinancing has a material adverse effect on Project Co's ability to perform its obligations under this Agreement, increases any liability or potential liability of the Authority (unless the Authority is specifically compensated for such liability or potential liability), or is with a Restricted Person.

5.4 Refinancing Process

If Project Co intends to undertake a Qualifying Refinancing, Project Co will notify the Authority of such intention at least 120 days (or such later date agreed by the Authority, acting reasonably) before the anticipated completion date of such Refinancing and will include with such notice all applicable information then available to Project Co (including any of the information set out below in this Section 5.4 if and to the extent available to Project Co at that time). Project Co will keep the Authority informed of the progress of the proposed Refinancing, will provide the Authority with additional information as it is available, and will consult with, and reasonably take into account the views of, the Authority during the Refinancing process. Without limiting the foregoing, as soon as reasonably available, and in any event no later than 30 days (or such later date agreed by the Authority, acting reasonably) before the anticipated completion date of such Refinancing, Project Co will provide to the Authority (not necessarily all at the same time):

- (a) all proposed revisions to the Senior Financing Agreements;
- (b) a copy of the proposed updated Financial Model both before and after the Refinancing;
- (c) the basis for the assumptions and calculations used in the proposed updated Financial Model;
- (d) particulars of:
 - (1) any change in the principal amount of all funding for the Project committed under the Senior Financing Agreements that will result from the proposed Refinancing;
 - (2) the nature (and estimated amount if reasonably capable of being calculated or estimated) of any change in any liability or potential liability of the Authority, including on early termination of this Agreement, that would be reasonably likely to arise from the proposed Refinancing;
 - (3) any effect on Project Co's ability to perform its obligations under this Agreement;
 - (4) the terms of the proposed Refinancing;
 - (5) the lenders and other parties proposed to be involved in the proposed Refinancing; and
 - (6) the financing instruments to be used to carry out the proposed Refinancing and their key attributes (especially as to those attributes that would or could affect the liability of the Authority on any early termination of this Agreement);
- (e) a statement setting out Project Co's estimate of the resulting Refinancing Gain, including the Authority's share thereof; and
- (f) a schedule for implementation of the proposed Refinancing, including the principal milestones and proposed dates for the achievement of such milestones (including the estimated date for closing of the proposed Refinancing).

Project Co will promptly provide all other documents and information related to the proposed Refinancing as the Authority may reasonably request. If any change is proposed to the information provided to the Authority pursuant to the above, including information referred to in Sections 5.4(a) to 5.4(f), Project Co will promptly (and in any event not less than five Business Days before the completion date of the proposed Refinancing) provide the Authority with full details of the change. Project Co will only proceed with a Qualifying Refinancing in accordance with the information provided to the Authority in accordance with this Section 5.4 and in compliance with the other applicable provisions of this Section 5.

5.5 The Authority's Share of Refinancing Gain

The Authority will be entitled to receive a 50% share of any Refinancing Gain arising from a Qualifying Refinancing. The Authority's share will be calculated as at the time of each Qualifying Refinancing.

5.6 Payment to the Authority

The Authority will receive its share of any Refinancing Gain as a reduction in the amount of the Substantial Completion Payment.

5.7 Calculation of Refinancing Gain

The Authority and Project Co will negotiate in good faith the basis and method of calculation of the Refinancing Gain. The Refinancing Gain will be calculated after taking into account the reasonable and proper professional costs that Project Co directly incurs in relation to the Refinancing and, if applicable, the Authority's costs that Project Co pays pursuant to Section 5.8 (The Authority's Expenses). If the Authority and Project Co are unable to agree on the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the Dispute will be determined in accordance with the Dispute Resolution Procedure.

5.8 The Authority's Expenses

Project Co will pay the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with a consent under Section 5.2 (Changes to Senior Financing Agreements) or 5.3 (Consent Required for Refinancing). At the time of the request for such consent, Project Co will make a payment to the Authority in the amount of \$50,000 against its obligations under this Section 5.8. After the Authority renders its decision, the Authority will either refund any overpayment or invoice Project Co for any additional amounts owing under this Section 5.8 and Project Co will promptly pay such amount to the Authority. The amounts payable under this Section 5 (Financing of the Project) are payable even if the Refinancing Gain is determined to be zero.

5.9 Audit Rights

The Authority will have unrestricted rights of audit at any time (whether before or after the applicable event) over any proposed Financial Model, books, records and other documentation (including any aspect of the calculation of any Refinancing Gain) used in connection with any Refinancing or any other matter for which Project Co requires consent from the Authority under this Section 5 (Financing of the Project).

5.10 Changes Not to Increase Authority's Liability

Notwithstanding any other provision of this Agreement and without prejudice to the rights of the Authority under the other provisions of this Section 5:

- (a) no action referred to in Section 5.2, whether or not consented to or permitted under any of Sections 5.2 and 5.3; and
- (b) no amendment, waiver or exercise of a right under any Senior Financing Agreements,

shall in any such case, have the effect of increasing any liability of the Authority arising from early termination of this Agreement, unless Project Co has obtained, in addition to any other consent or approval and any other requirements under this Section 5, the prior written consent of the Authority expressly consenting, for the purposes of this Section 5.10, to the increase in the liability of the Authority

that would arise from any early termination of this Agreement, which consent the Authority may withhold or grant in its discretion.

5.11 Restricted Persons Prohibited

Notwithstanding any other provision of this Agreement, Project Co shall not carry out or permit any action referred to in this Section 5 and no such action shall be carried out or permitted, if it would, or might reasonably be expected to, be undertaken with a counterparty who is either:

- (a) a Person who is a Restricted Person; or
- (b) a Person any of whose Affiliates is a Restricted Person for any reason other than by reason of paragraph (d) of the definition of Restricted Person.

6. INSURANCE, DAMAGE AND DESTRUCTION

6.1 Insurance Coverage

Subject to Section 6.14(b) (Consequences of Risks Becoming Uninsurable), each of Project Co and the Authority will take out, maintain in force, pay for and renew, or cause to be taken out, maintained in force, paid for and renewed, insurance for the Project as set out in Schedule 5 [Insurance Requirements].

6.2 Agreement Not Affected by Damage or Destruction

Except as otherwise expressly provided, the partial destruction or damage or complete destruction by fire or other casualty of the Facilities will not permit either party to terminate this Agreement or entitle Project Co to surrender possession of the Facilities or to demand any increase in any amounts payable to Project Co under this Agreement and all of the provisions of this Agreement, including Section 8 (Supervening Events) will continue to apply.

6.3 Project Co's Obligations - Damage or Destruction

Subject to Section 6.4 (Project Co's Obligations - Material Damage or Destruction), and without prejudice to Section 8 (Supervening Events), if all or any part of the CPPS is damaged or destroyed before the CPPS Substantial Completion Date, or if any part of the SFB Expansion is damaged or destroyed on or before the SFB Expansion Substantial Completion Date, or if all or any part of the New Tower or the Energy Centre is damaged or destroyed on or before the New Tower Substantial Completion Date, Project Co will repair, replace or restore the part of the Facilities so damaged or destroyed in accordance with the Design and Construction Specifications subject only to:

- (a) applicable Laws; and
- (b) the Authority agreeing to pay to Project Co:
 - (1) the amount, if any, by which the cost of such repair, replacement or restoration exceeds the maximum amount of insurance coverage required under this Agreement for such risk; or

- (2) if no insurance coverage is required under this Agreement for such risk, an amount equal to the total costs of such repair, replacement or restoration,

and if the Authority agrees, the Authority will pay such amounts promptly upon receipt of one or more invoices from Project Co indicating that such amounts are due and payable by Project Co in connection with such repair, replacement or restoration.

For the purposes of this Section 6.3, the maximum amount of insurance coverage is (1) in respect of insurance required to be obtained by Project Co, the full amount of coverage required under this Agreement for such risk prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements] or (2) in respect of insurance required to be obtained by the Authority, the full amount of applicable Insurance Proceeds and applicable Insurance Receivables plus any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements].

6.4 Project Co's Obligations - Material Damage or Destruction

If the CPPS suffers damage or destruction on or before the CPPS Substantial Completion Date, or if the SFB Expansion suffers damage or destruction on or before the SFB Expansion Substantial Completion Date, or if the New Tower or the Energy Centre suffers damage or destruction on or before the New Tower Substantial Completion Date, that, in any such case (or if such damage or destruction occurs concurrently to any of the Facilities, in the aggregate), is likely to cost more than \$5,000,000 to repair, replace and restore:

- (a) Project Co will, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Facilities), provide the Authority with a draft plan (the "**Draft Reinstatement Plan**") for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, replace and restore the damaged or destroyed portions of the Facilities and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under Section 6.4(d);
- (b) as soon as reasonably practicable and in any event within 21 days after the delivery of the Draft Reinstatement Plan, the Authority:
- (1) will provide Project Co with any comments it may have on the Draft Reinstatement Plan; and
 - (2) if it has decided that the Energy Centre and/or the SFB Expansion and/or the New Tower is or are not required to be reinstated in the same form as prior to the damage or destruction, will issue a Preliminary Change Instruction to that effect;
- (c) as soon as reasonably practicable and in any event within 14 days after receipt of the Authority's comments pursuant to Section 6.4(b)(1), Project Co will deliver to the Authority a revised plan (the "**Reinstatement Plan**") amending the Draft Reinstatement Plan to reasonably take into account the comments received from the Authority and those changes to the Draft Reinstatement Plan necessary to reflect the contractual terms

agreed (as negotiated and finalised) with the Person effecting the Reinstatement Works;
and

- (d) the Reinstatement Plan will set out in as much detail as is reasonable in the circumstances:
- (1) the identity of the Person, or (if Project Co is seeking competitive tenders) Persons intended, to effect the Reinstatement Works;
 - (2) the terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected;
 - (3) the impact that implementation of the Reinstatement Plan will have on the revenues of Project Co under this Agreement and on the payment obligations of Project Co under the Design-Build Agreement;
 - (4) the total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works; and
 - (5) the impact of any Change requested by the Authority as part of the reinstatement.

Thereafter, unless a party elects to terminate this Agreement (in accordance with the provisions of Section 6.6 (Authority Election Not to Reinstatement), 6.7 (Insufficient Insurance), or 6.8 (Uncollectible Insurance Receivables) or otherwise), Project Co will repair, replace or restore the Energy Centre and/or the SFB Expansion and/or the New Tower, subject to applicable Laws.

6.5 Financial Model Update

Upon delivery of the Reinstatement Plan, Project Co will amend the Financial Model based on the following assumptions:

- (a) that the Reinstatement Plan will be effected in accordance with its terms;
- (b) that the payments under the Senior Financing Agreements (including any amendments agreed between Project Co and the Senior Lenders in connection with the Reinstatement Plan in respect of which a consent request has been submitted to the Authority) to be paid during the period of the Reinstatement Plan will be met without any rescheduling; and
- (c) that payments in respect of any Change comprised in the Reinstatement Plan will be determined in accordance with Schedule 6 [Changes],

and will deliver the updated Financial Model to the Authority for its approval, not to be unreasonably withheld or delayed.

6.6 Authority Election Not to Reinstate

The Authority may, by notice to Project Co within 30 days after receipt of the Reinstatement Plan, terminate this Agreement and pay compensation to Project Co in accordance with Section 2 (Termination for Authority Event of Default or at Authority's Option) of Schedule 9 [Compensation on Termination].

6.7 Insufficient Insurance

If:

- (a) the Energy Centre and/or the SFB Expansion and/or the New Tower is or are completely or substantially destroyed as contemplated by Section 6.4 (Project Co's Obligations - Material Damage or Destruction);
- (b) the cost to repair, replace or restore the Energy Centre and/or the SFB Expansion and/or the New Tower exceeds the maximum amount of insurance coverage required under this Agreement for the risk that caused the destruction; and
- (c) neither the Authority nor Project Co has agreed to pay the amount by which the cost to repair, replace or restore the Energy Centre and/or the SFB Expansion and/or the New Tower exceeds the Insurance Proceeds and Insurance Receivables with respect to such destruction,

then, at any time on or after 30 days after delivery of the Reinstatement Plan to the Authority, either party may, by notice to the other party, terminate this Agreement, in which case:

- (d) if:
 - (1) the Authority has failed to obtain insurance coverage in accordance with Schedule 5 [Insurance Requirements] and Sections 6.13 (Risks Becoming Uninsurable) and 6.14 (Consequences of Risks Becoming Uninsurable) do not apply;
 - (2) the Authority has not deposited an amount equal to the insurance proceeds that would have been payable in the Insurance Account in accordance with Section 6.7(g)(2); and
 - (3) the amount of such insurance proceeds would have been sufficient to repair, replace or restore the Energy Centre and/or the SFB Expansion and/or the New Tower,

the Authority will pay compensation to Project Co in accordance with Section 2 (Termination for Authority Event of Default or at Authority's Option) of Schedule 9 [Compensation on Termination];

- (e) in any other case:

- (1) the Authority will pay compensation to Project Co in accordance with Section 4 (No Fault Termination) of Schedule 9 [Compensation on Termination]; and
- (2) if the Authority is required to obtain insurance coverage in accordance with Schedule 5 [Insurance Requirements] and the Authority has failed to obtain such insurance and Sections 6.13 (Risks Becoming Uninsurable) and 6.14 (Consequences of Risks Becoming Uninsurable) do not apply, the Authority will also, but without duplicating payment of any item payable in accordance with Section 4 (No Fault Termination) of Schedule 9 [Compensation on Termination], pay Project Co an amount equal to the insurance proceeds that would have been payable under the relevant policies in respect of such insurance had such insurance been obtained.

For the purpose of Section 6.7(b), the reference to the maximum amount of insurance coverage is:

- (f) in respect of insurance required to be obtained by Project Co, the full amount of coverage prior to any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements]; and
- (g) in respect of insurance required to be obtained by the Authority,
 - (1) the full amount of applicable Insurance Proceeds and applicable Insurance Receivables plus any deductibles for which Project Co is responsible pursuant to Schedule 5 [Insurance Requirements], plus
 - (2) in the event and to the extent that the Authority has failed to obtain such insurance in accordance with Schedule 5 [Insurance Requirements] and Sections 6.13 (Risks Becoming Uninsurable) and 6.14 (Consequences of Risks Becoming Uninsurable) do not apply, an amount equal to the insurance proceeds that would have been payable under the relevant policies in respect of such insurance had such insurance been obtained in accordance with Schedule 5 [Insurance Requirements], provided the Authority deposits to the Insurance Account an amount equal to such insurance proceeds for application of such amount for the same purposes as the insurance.

6.8 Uncollectible Insurance Receivables

If at any time while Project Co is relieved of its obligations under Sections 6.3 (Project Co's Obligations - Damage or Destruction) or 6.4 (Project Co's Obligations - Material Damage or Destruction) by reason of the Relief Event described in Section (f) of the definition of Relief Event in Schedule 1 [Definitions and Interpretation]:

- (a) Project Co has complied with its obligations hereunder with respect to such Relief Event; and
- (b) notwithstanding such compliance by Project Co, collection of the applicable Insurance Receivables is not possible using all reasonable efforts,

then either party may, by notice to the other party, terminate this Agreement, in which case the Authority will pay compensation to Project Co in accordance with Section 4 (No Fault Termination) of Schedule 9 [Compensation on Termination].

6.9 Application of Insurance Proceeds If No Termination

Unless a party has terminated this Agreement (including pursuant to Section 6.6 (Authority Election Not to Reinstate), 6.7 (Insufficient Insurance) or 6.8 (Uncollectible Insurance Receivables)), the Authority and Project Co will cause all:

- (a) applicable Insurance Proceeds which either has received;
- (b) applicable Insurance Proceeds which either is entitled to receive;
- (c) amounts which the Authority has agreed to pay as contemplated in Section 6.3(b) (Project Co's Obligations - Damage or Destruction); and
- (d) amounts which the Authority or Project Co has agreed to pay to cover the amount by which the cost to repair, replace or restore the Facilities exceeds the Insurance Proceeds and Insurance Receivables with respect to complete or substantial destruction,

to be applied to the reinstatement of the Facilities in accordance with the terms of this Agreement.

6.10 Application of Insurance Proceeds In Case of Termination

If a party has terminated this Agreement pursuant to Section 6.6 (Authority Election Not to Reinstate) or 6.7 (Insufficient Insurance):

- (a) any Insurance Proceeds received prior to the Termination Payment Date by either Project Co or the Authority in respect of damage to the Facilities and not already applied to the repair of such damage will first be applied towards the Termination Payment and any Insurance Proceeds remaining after such application will be paid to the Authority; and
- (b) on the Termination Payment Date, Project Co will assign to the Authority the benefit of all Insurance Receivables which have been taken into account in calculating the Termination Payment.

6.11 Standards of Replacement, Repair or Reconstruction

Any replacement, repair, or reconstruction of the Facilities or any part thereof pursuant to the provisions of Sections 6.3 (Project Co's Obligations - Damage or Destruction) or 6.4 (Project Co's Obligations - Material Damage or Destruction) will be made or done in compliance with the Design and Construction Protocols and the Design and Construction Specifications, subject to any agreement made between the Authority and Project Co to revise the Design and Construction Protocols or the Design and Construction Specifications as they pertain to any replacement, repaired or reconstructed Facilities.

6.12 Mitigation

Project Co and the Authority will take all reasonable steps to mitigate the effects of any risks or claims covered by this Section 6 (Insurance, Damage and Destruction) (including minimizing the amount of any costs and expenses which might result).

6.13 Risks Becoming Uninsurable

Each party will, forthwith upon Having Knowledge, notify the other if a Principal Insured Risk becomes or is expected to become Uninsurable. If both parties agree or it is determined in accordance with the Dispute Resolution Procedure that the relevant Principal Insured Risk is or is about to become Uninsurable and that the Principal Insured Risk being Uninsurable is not and will not be caused by the actions or omissions of Project Co or any Project Co Person or the Authority or any Authority Person contrary to Section 3.10 (Compliance) of Schedule 5 [Insurance Requirements], then the parties together with their respective insurance advisors will meet to discuss the means by which such Principal Insured Risk should be managed (including considering the feasibility of self-insurance by either or all parties).

6.14 Consequences of Risks Becoming Uninsurable

If the requirements of Section 6.13 (Risks Becoming Uninsurable) are satisfied but the parties cannot agree within 20 Business Days on how to manage a Principal Insured Risk that becomes Uninsurable (the "**Uninsurable Risk**"):

- (a) if the Uninsurable Risk is third party liability, if and for so long as the Uninsurable Risk is Uninsurable, then the Authority may by notice to Project Co terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 4 (No Fault Termination) of Schedule 9 [Compensation on Termination];
- (b) if the Uninsurable Risk is not third party liability or if (and for as long as) the Authority has not terminated this Agreement under Section 6.14(a), then this Agreement will continue, but neither Project Co nor the Authority will be obligated by this Agreement to maintain insurance in respect of the Uninsurable Risk and references in this Agreement to the insurance required by this Section 6 (Insurance, Damage and Destruction) or Schedule 5 [Insurance Requirements] will be construed accordingly. In such event the parties will agree upon an appropriate adjustment to the payments otherwise made by the Authority to Project Co by agreement of the parties acting reasonably or, failing such agreement, by the Dispute Resolution Procedure, from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in Project Co's insurance cost as a result of Project Co not having to insure against the Uninsurable Risk; and
- (c) subject to Section 6.15 (Third Party Liability Insurance as an Uninsurable Risk), on the occurrence of the Uninsurable Risk the Authority will either:
 - (1) pay to Project Co an amount equal to the insurance proceeds that would have been payable directly to Project Co or the Design-Builder under the relevant policies in respect of the Uninsurable Risk had the relevant insurance continued to be available and in effect, and this Agreement will continue; or

- (2) by notice to Project Co, terminate this Agreement whereupon Project Co will be entitled to compensation on termination as provided in Section 4 (No Fault Termination) of Schedule 9 [Compensation on Termination],

except that the Authority may not in any such case terminate this Agreement pursuant to Section 6.14(c)(2) if Project Co releases the Authority from all obligations under Section 6.14(c)(1) and deposits to the Insurance Account an amount equal, in the reasonable opinion of the Authority, to the insurance proceeds, and all amounts in respect of deductibles and waiting periods that would have been the responsibility of Project Co under Section 4.7 (Project Co Deductibles) of Schedule 5 [Insurance Requirements], that would have been payable in respect of the Uninsurable Risk that occurred had the relevant insurance continued to be available and in effect.

6.15 Third Party Liability Insurance as an Uninsurable Risk

If this Agreement is terminated pursuant to Section 6.14(c)(2) (Consequences of Risks Becoming Uninsurable) and at the date of such termination third party liability is an Uninsurable Risk, and if:

- (a) there is an outstanding third party claim against Project Co or a Project Co Person at the Termination Date; or
- (b) following the Termination Date a third party claim is subsequently made against Project Co or a Project Co Person in respect of an event or circumstance that occurred before the Termination Date,

which in either case would have been covered by the third party liability insurance that either the Authority or Project Co would have been required to carry had that risk not been an Uninsurable Risk, then the Authority will pay to Project Co or Project Co Person the amount for which Project Co or such Project Co Person becomes liable in respect of such claim in addition to the compensation payable pursuant to Section 6.14(c)(2) (Consequences of Risks Becoming Uninsurable).

6.16 Subrogation

If the Authority makes any payment to Project Co pursuant to Section 6.14(c)(1) (Consequences of Risks Becoming Uninsurable) or Section 6.15 (Third Party Liability Insurance as an Uninsurable Risk), then the Authority, to the extent of the amount paid, will be subrogated to Project Co's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

6.17 Continuing Attempts to Insure Uninsurable Risks

When there is an Uninsurable Risk for which Project Co or the Authority, as applicable is responsible to obtain insurance under Schedule 5 [Insurance Requirements], Project Co or the Authority, as applicable, will approach the insurance market on a regular basis and in any event at regular intervals of no longer than six months to establish whether the Uninsurable Risks remain Uninsurable.

6.18 Uninsurable Risks Becoming Insurable

Where a risk that was previously an Uninsurable Risk ceases to be so and either party becomes aware or is informed by the other party that this is the case, the party responsible for obtaining the insurance under Schedule 5 [Insurance Requirements] will forthwith take out, maintain and pay for, or cause to be taken out, maintained and paid for, insurance in accordance with the requirements of this Agreement in respect of the risk, and in any case:

- (a) Sections 6.13 (Risks Becoming Uninsurable), 6.14 (Consequences of Risks Becoming Uninsurable), 6.15 (Third Party Liability Insurance as an Uninsurable Risk) and 6.17 (Continuing Attempts to Insure Uninsurable Risks) will no longer apply to the risk so long as it is not an Uninsurable Risk; and
- (b) any adjustment to the payments otherwise made by the Authority to Project Co made pursuant to Section 6.14(b) will cease to apply.

7. CHANGES

7.1 Changes Required by the Authority

The Authority may require Changes in accordance with Schedule 6 [Changes].

8. SUPERVENING EVENTS

8.1 Supervening Events

If:

- (a) a Compensation Event or Relief Event occurs, Project Co may; or
- (b) a Force Majeure Event or Eligible Change in Law Event occurs, either party may,

apply for relief from its obligations, extensions of time, claim compensation or claim a termination right under this Agreement to the extent provided in this Section 8 (Supervening Events). The “**Applicant**” means the party making such application.

8.2 Procedures Upon the Occurrence of a Supervening Event

The following procedure will apply if a Supervening Event occurs:

- (a) as soon as practicable, and in any event within five Business Days after the Applicant Has Knowledge that the Supervening Event has caused, or is reasonably likely to cause, an entitlement under this Section 8 (Supervening Events), the Applicant will give to the other party a notice (“**Supervening Event Notice**”) identifying the particular Supervening Event and summarizing, to the extent the Applicant Has Knowledge, the consequences and the nature of the Applicant’s claim;

- (b) within 10 Business Days after delivery by the Applicant of a Supervening Event Notice, to the extent the Applicant Has Knowledge, the Applicant will give to the other party:
 - (1) additional details, including available supporting documentation, in support of its claim; and
 - (2) if applicable, a detailed breakdown of all Direct Losses incurred or which will be incurred or other compensation or relief sought by Project Co, if it is the Applicant, as a result of the Supervening Event;
- (c) from time to time thereafter, the Applicant will notify the other party if at any time it receives or becomes aware of any further information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading. In particular, a party claiming relief as a result of a Force Majeure Event will notify the other as soon as the Force Majeure Event has ceased and of the time when performance of its affected obligations can be resumed;
- (d) a party may make multiple but not duplicative claims in respect of a Supervening Event and both parties may make claims in respect of the same Supervening Event;
- (e) where the Authority is claiming the benefit of an Eligible Change in Law Event, Project Co will provide the Authority information reasonably requested in order to make its claim;
- (f) the Applicant must demonstrate:
 - (1) it could not have avoided such occurrence or the consequences of the Supervening Event by steps which it might reasonably be expected to have taken provided that, in the case of the Authority, the Authority is not required to take any steps that are referred to in Sections 2.6(a), 2.6(b) or 2.6(c) (General Duty of Authority to Mitigate);
 - (2) if applicable, the Supervening Event caused or will cause the Applicant to incur a Direct Loss, a delay in the Project Schedule, or the need for relief from other obligations under this Agreement; and
 - (3) in the case of Project Co, it has complied with its mitigation obligations pursuant to Section 2.5 (General Duty of Project Co to Mitigate), and in the case of the Authority, it has complied with its mitigation obligations pursuant to Section 2.6 (General Duty of Authority to Mitigate);
- (g) the Applicant will advise whether, in the Applicant's opinion, any amendments should be considered to this Agreement, any Material Contract or any Senior Financing Agreement as a result of the Supervening Event; and
- (h) the parties will meet within 15 Business Days of delivery of the Supervening Event Notice to consult and seek to agree to the effect of the Supervening Event and if the parties,

within 10 Business Days following the meeting, have not agreed to the occurrence or the effect of the Supervening Event, either party may refer the question of whether a Supervening Event has occurred, whether the conditions in Section 8.2(f) have been satisfied, or the extent of relief or compensation to which the affected party is entitled, for resolution in accordance with the Dispute Resolution Procedure.

8.3 Project Co's Entitlements Upon Occurrence of a Compensation Event

Subject to Section 8.11 (Delay in Notification), if at any time a Compensation Event has occurred and Project Co has given the Authority a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by the Authority) under this Agreement arising from any delay or failure in performing any of its obligations under or in connection with this Agreement;
- (b) the Authority will pay to Project Co compensation in respect of a Compensation Event calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had a Compensation Event not occurred and taking into consideration the following (without duplication):
 - (1) any Direct Losses (including the amount of any applicable insurance deductibles and calculated without netting out Insurance Receivables) resulting from the Compensation Event; and
 - (2) any net increase or decrease in the costs of Project Co performing its obligations under this Agreement resulting from the Compensation Event,

except that:

- (3) Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Compensation Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom;
- (4) no Indirect Losses will be taken into consideration; and
- (5) the Design-Builder, but not Project Co, will be entitled to any mark-ups for overhead, profit or otherwise;
- (c) concurrent with the first payment of any compensation by the Authority under Section 8.3(b), Project Co will assign to the Authority its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim); and
- (d) if the Compensation Event occurs prior to the Substantial Completion Date, the Project Schedule will be amended and the Target CPPS Substantial Completion Date and/or the Target SFB Expansion Substantial Completion Date and/or the Target New Tower Substantial Completion Date, the Longstop Date and the relevant dates for move-in as

set out in the Facility Move-in Schedules will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Compensation Event.

8.4 Project Co's Entitlements Upon Occurrence of a Relief Event

Subject to Section 8.11 (Delay in Notification), if at any time a Relief Event has occurred and Project Co has given the Authority a Supervening Event Notice related thereto:

- (a) Project Co is relieved from any liability or consequence (including termination by the Authority, except as provided for in this Section 8.4) under this Agreement arising from any delay or failure in performing any of its obligations under this Agreement;
- (b) if the Relief Event occurs prior to the Substantial Completion Date:
 - (1) the Project Schedule will be amended and the Target CPPS Substantial Completion Date and/or the Target SFB Expansion Substantial Completion Date and/or the Target New Tower Substantial Completion Date, the Longstop Date and the relevant dates for move-in as set out in the Facility Move-in Schedules will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Relief Event;
 - (2) for the period that the Substantial Completion Date is delayed to a date after the later of the Target New Tower Substantial Completion Date and the Target SFB Expansion Substantial Completion Date (as such dates were prior to having been postponed pursuant to Section 8.4(b)(1)) as a result of one or more of the Relief Events described in paragraphs (b), (c), (h), (j) or (k) of the definition of Relief Event, then the Authority will pay to Project Co an amount equal to the Senior Debt Interest Amount for such period less applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered as a result of the Relief Event if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement; and
 - (3) concurrent with the first payment of any amount by the Authority pursuant to Section 8.4(b)(2), Project Co will assign to the Authority its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim);
- (c) if a Relief Event, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice related thereto is delivered by Project Co, either party may at any time so long as such Relief Event is, or such effect is, continuing, terminate this Agreement by notice to the other party;
- (d) if the Authority gives notice to Project Co under Section 8.4(c) terminating this Agreement, Project Co will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue, in which case Project Co's

rights to relief under this Section 8.4 in respect of the Relief Event will cease and the Authority's termination notice will be deemed null and void;

- (e) if Project Co gives notice to the Authority under Section 8.4(c) terminating this Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue. If the Authority gives Project Co such response then:
- (1) Project Co's termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
 - (2) the Relief Event will be deemed to constitute a Compensation Event occurring as of the date on which the Relief Event first occurred;
 - (3) at any time so long as the Compensation Event referred to in Section 8.4(e)(2) is continuing, the Authority may terminate this Agreement by notice to Project Co; and
 - (4) Project Co may at any time so long as the Compensation Event referred to in Section 8.4(e)(2) is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 8.4(c), terminate this Agreement by notice to the Authority; and
- (f) if this Agreement is terminated pursuant to this Section 8.4, Project Co will be entitled to compensation on such termination in accordance with Section 4 (No Fault Termination) of Schedule 9 [Compensation on Termination].

8.5 Parties' Entitlements Upon Occurrence of a Force Majeure Event

Subject to Section 8.11 (Delay in Notification), if at any time a Force Majeure Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto:

- (a) the Applicant is relieved from any liability or consequence (including termination by the Authority except as provided for in this Section 8.5) under this Agreement arising from any delay or failure in performing any of its obligations under this Agreement;
- (b) if the Applicant is Project Co and the Force Majeure Event occurs prior to the Substantial Completion Date, the Project Schedule will be amended and the Target CPPS Substantial Completion Date and/or the Target SFB Expansion Substantial Completion Date and/or the Target New Tower Substantial Completion Date, the Longstop Date and the relevant dates for move-in as set out in the Facility Move-in Schedules will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Force Majeure Event;

- (c) if a Force Majeure Event occurs and it, or its effects, persists or is likely to persist for more than 180 days after the date a Supervening Event Notice related thereto is delivered by the Applicant, either party may at any time so long as such Force Majeure Event is, or such effect is, continuing, terminate this Agreement by notice to the other party;
- (d) if Project Co gives notice to the Authority under Section 8.5(c) terminating this Agreement, the Authority will have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of receipt of such notice stating that it requires this Agreement to continue. If the Authority gives Project Co such response then:
 - (1) Project Co's termination notice will be deemed null and void and Project Co, insofar as it is able to do so, will continue to perform its obligations in accordance with the provisions of this Agreement;
 - (2) the Force Majeure Event will be deemed to constitute a Compensation Event occurring as of the date the Force Majeure Event first occurred;
 - (3) at any time so long as the Compensation Event referred to in Section 8.5(d)(2) is continuing, the Authority may terminate this Agreement by notice to Project Co; and
 - (4) Project Co may at any time so long as the Compensation Event referred to in Section 8.5(d)(2) is continuing after a further period of 180 days after the date on which Project Co delivered the termination notice pursuant to Section 8.5(c), terminate this Agreement by notice to the Authority; and
- (e) if this Agreement is terminated pursuant to Section 8.5(c) or Sections 8.5(d)(3) or 8.5(d)(4), Project Co will be entitled to compensation on such termination in accordance with Section 4 (No Fault Termination) of Schedule 9 [Compensation on Termination].

8.6 Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event

Subject to Section 8.11 (Delay in Notification), if at any time an Eligible Change in Law Event has occurred and the Applicant has given the other party a Supervening Event Notice related thereto:

- (a) subject to Section 8.6(d), in the case of a Relevant Change in Law, Project Co will be entitled to compensation for Direct Losses;
- (b) subject to Section 8.6(d), in the case of a Discriminatory Change in Tax Law Project Co or the Authority will be entitled to compensation for any revenue loss or revenue gain for Project Co;
- (c) subject to Section 8.6(d), in the case of a COVID-19 Change in Law or Epidemic Change in Law Project Co or the Authority will be entitled to compensation for any increase or decrease in the costs to Project Co to carry out the Design and the Construction;

(d) subject to Section 8.6(e), any compensation payable in respect of an Eligible Change in Law Event will be calculated on the basis that Project Co will be placed in no better or worse position than it would have been in had such Eligible Change in Law Event not occurred and taking into consideration the following (without duplication):

(1) any Direct Losses (calculated without netting out Insurance Receivables) resulting from the Eligible Change in Law Event,

except that:

(2) Avoidable Costs and applicable Insurance Proceeds and insurance proceeds which Project Co would have recovered if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement will be deducted therefrom;

(3) no Indirect Losses will be taken into consideration other than as set out in Section 8.6(b); and

(4) the Design-Builder, but not Project Co, will be entitled to any mark-ups for overhead, profit or otherwise,

and concurrent with the payment of any compensation by the Authority under this Section 8.6(d), Project Co will assign to the Authority its rights to all applicable Insurance Receivables (whether or not Project Co has made a claim);

(e) in the case of an Input Tax Recoverability Change in Law:

(1) the Authority will pay Project Co, and Project Co will be entitled to, any Additional Irrecoverable Tax resulting from the Input Tax Recoverability Change in Law; and

(2) Project Co will pay the Authority, and the Authority will be entitled to, any Additional Recoverable Tax resulting from the Input Tax Recoverability Change in Law,

but in each case only to the extent necessary to leave Project Co in no better or worse position than before the Input Tax Recoverability Change in Law, provided however that Section 8.6(d) will not apply to an Input Tax Recoverability Change in Law.

8.7 Parties' Entitlements Upon Occurrence of a Change in Law

Without limiting Section 8.4 (Project Co's Entitlements Upon Occurrence of a Relief Event) or Section 8.6 (Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event):

(a) if compliance by Project Co with a Change in Law is outside the scope of, or inconsistent with, Project Co's obligations under this Agreement, or would mean a change in Project Co's obligations under this Agreement or a change in the scope or manner of carrying out the Project, such Change in Law will be deemed to constitute a Change having effect from the time that such Change in Law takes effect, except that Project Co will not be

entitled to any payment or other compensation other than as set out in Section 8.4 (Project Co's Entitlements Upon Occurrence of a Relief Event) and Section 8.6 (Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event);

- (b) except as otherwise provided in this Agreement, including in Section 8.4 (Project Co's Entitlements Upon Occurrence of a Relief Event) or Section 8.6 (Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event), Project Co will not be entitled to any other payment or compensation or relief in respect of any Change in Law or the consequences thereof; and
- (c) nothing in Section 8.4 (Project Co's Entitlements Upon Occurrence of a Relief Event) or Section 8.6 (Parties' Entitlements Upon Occurrence of an Eligible Change in Law Event) will be interpreted as relieving Project Co of its obligation, following any and all Changes in Law, to perform its obligations under this Agreement in compliance with all Laws.

8.8 Labour Disputes

If Project Co Has Knowledge of an actual or potential labour dispute that may affect any of the Design or the Construction, Project Co will promptly:

- (a) give notice thereof to the Authority, including all relevant information related to the labour dispute of which Project Co Has Knowledge; and
- (b) take all reasonable steps to mitigate the effects of such labour dispute on the performance of any of the Design or the Construction including by applying for relief to appropriate tribunals or courts.

Project Co acknowledges that if the labour dispute involves workers of the Design-Builder or a Sub-Contractor, or of anyone employed by or through them, the Authority will not be required to provide any facilities, space or assistance in the Facilities or on the Lands for the purposes of such workers or any applicable union.

8.9 Payments in Respect of Supervening Events

Payments between the parties in respect of Supervening Events will be made in accordance with Section 10 (Lump Sum Payments).

8.10 Supervening Events Mitigated by Change

Nothing in this Agreement will limit the right of the Authority to perform or mitigate its obligations in respect of Supervening Events or the consequences of a Supervening Event by requiring a Change or Changes.

8.11 Delay in Notification

If the Supervening Event Notice or any required information is provided by an Applicant to the other party after the dates referred to in Section 8.2 (Procedures Upon the Occurrence of a Supervening Event), then without prejudice to any other rights or remedies of the other party under this Agreement:

- (a) the Applicant will not be entitled to any compensation, extension of time or relief from its obligations under this Agreement to the extent that the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such notice or information; and
- (b) if the period of delay is six months or more, the rights of the Applicant with respect to the applicable Supervening Event will be of no further force or effect.

8.12 Equivalent Project Relief

The parties acknowledge that, in accordance with the Design-Build Agreement, Project Co will share with the Design-Builder, who will in turn share with its Sub-Contractors, certain benefits to Project Co derived from the rights of Project Co under, and subject to the obligations and limitations under, this Agreement including rights of Project Co under Section 8 (Supervening Events) (such rights, as qualified by such obligations and limitations, are collectively "**Project Co's Rights**"). Accordingly:

- (a) any circumstance affecting the Design-Builder or a Sub-Contractor which, if such circumstance had affected Project Co directly would have given rise to a claim by Project Co pursuant to Project Co's Rights will, for the purpose of this Agreement, be deemed to be a circumstance affecting Project Co in respect of which Project Co may claim under and subject to Project Co's Rights; and
- (b) amounts claimed by the Design-Builder or a Sub-Contractor against Project Co in respect of any circumstance referred to in Section 8.12(a) may be claimed by Project Co against the Authority under and subject to Project Co's Rights, but whether or not the Authority is liable for such amounts will be determined under this Agreement as if the circumstance had affected Project Co directly,

provided that:

- (c) all such claims will be made and administered by Project Co, and neither the Design-Builder nor any Sub-Contractor will have any rights against the Authority, including under this Section 8.12;
- (d) in no event will the liability of the Authority under this Section 8.12 be greater than it would have been if Project Co had been directly affected by the circumstance referred to in Section 8.12(a); and
- (e) in no event will the Authority be liable under this Section 8.12 for any Direct Losses or other compensation that the Authority would not have been liable for if Project Co had been directly affected by the circumstance referred to in Section 8.12(a).

9. INDEMNITIES AND LIMITS ON LIABILITIES AND REMEDIES

9.1 Project Co's Obligation to Indemnify

Project Co will indemnify and keep the Authority and each Authority Indemnified Person indemnified at all times from and against all Direct Losses that any such Person may sustain in connection with:

- (a) any loss of or physical damage to property or assets of the Authority or any Authority Indemnified Person, or any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any Person, including any Authority Indemnified Person, arising by reason of any:
 - (1) negligent act or omission of Project Co;
 - (2) wilful misconduct of Project Co; or
 - (3) non-compliance by Project Co with any of the provisions of this Agreement or any document, instrument or agreement delivered to the Authority as required under this Agreement;
- (b) breach of any representation or warranty by Project Co under this Agreement;
- (c) any Project Co Hazardous Substances;
- (d) breach by Project Co of, or non-compliance by Project Co with, Permits or Laws, or the failure of Project Co to obtain all necessary Permits in accordance with this Agreement; or
- (e) any infringement or misappropriation of Intellectual Property rights of any Person by Project Co,

except to the extent caused, or contributed to, by non-compliance by the Authority with any provision of this Agreement or any document, instrument or agreement delivered to Project Co as required under this Agreement or any negligent act or omission, or any wilful misconduct, of the Authority or any Authority Indemnified Person. For greater certainty, Section 4.4 (Project Co Persons) applies to this Section 9.1. This Section 9.1 may be relied upon by the Authority Indemnified Persons and may be enforced directly by any of them against Project Co in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and Project Co.

9.2 Conduct of Third Person Claims

This Section 9.2 will apply to the conduct of claims made by a third Person against a party having or claiming to have with respect to such third Person claim, the benefit of an indemnity or a right to compensation under this Agreement. The party having, or claiming to have, the benefit of the indemnity or right to compensation is referred to as the "**Beneficiary**" and the party from whom the indemnity or compensation is sought is referred to as the "**Indemnifier**". Accordingly, subject to the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement:

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the

Beneficiary will give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof;

- (b) the Indemnifier will be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary will give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (c) in defending any claim described in Section 9.2(b) in which there is a conflict of interest between the Indemnifier and the Beneficiary, the Beneficiary may appoint independent legal counsel in respect of such claim and, if it is determined that the Beneficiary is entitled to indemnification by or compensation from the Indemnifier, all reasonable costs and expenses incurred by the Beneficiary in so doing will be included in the indemnity or compensation from the Indemnifier;
- (d) with respect to any claim conducted by the Indemnifier pursuant to Section 9.2(b), the Indemnifier will:
 - (1) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (2) demonstrate to the Beneficiary, at the reasonable request of the Beneficiary, that the Indemnifier has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and
 - (3) not pay or settle such claims without the consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- (e) the Beneficiary may take conduct of any defence, dispute, compromise or appeal of the claim and of any incidental negotiations if:
 - (1) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 9.2(b); or
 - (2) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 9.2(a) or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (3) the Indemnifier fails to comply in any material respect with Section 9.2(d).

In the case of Section 9.2(e)(3), the Beneficiary may pay or settle any claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Agreement. Otherwise, the Beneficiary will not pay or settle such claims without the consent of the Indemnifier, such consent not to be unreasonably withheld or delayed;

- (f) the Beneficiary may at any time give notice to the Indemnifier that it is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 9.2(b) applies. On receipt of such notice, the Indemnifier will promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and will provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 9.2(f) (for the sake of clarity, for reasons other than as provided in Sections 9.2(e)(2) or 9.2(e)(3)), then the Indemnifier will be released from any liability under its indemnity under Section 9.1 (Project Co's Obligation to Indemnify) or its obligation to provide compensation, as the case may be; and
- (g) in response to any claim of infringement or misappropriation or alleged infringement or misappropriation of the Intellectual Property rights of any Person, Project Co may replace such infringing or allegedly infringing item, provided that:
- (1) the replacement is performed without additional cost to Authority; and
 - (2) the replacement has at least equal quality performance capabilities when used in conjunction with the Facilities, the Hospital, and the BH Campus, as applicable.

9.3 General Obligation to Pursue Third Person Recovery

If a party (the "**Paying Party**") has paid to the other party (the "**Receiving Party**") an amount in respect of any indemnity, Supervening Event or other liability hereunder (a "**Liability Payment**"), and the Receiving Party has a *bona fide* claim for recovery of any such Liability Payment from a third Person or under any insurance required pursuant to this Agreement, the Receiving Party will:

- (a) as directed by the Paying Party either:
- (1) promptly make all reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Paying Party; or
 - (2) assign to the Paying Party the right to pursue and recover such claim and, at the Paying Party's cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and
- (b) if it subsequently recovers, or the Paying Party makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Paying Party an amount equal to the lesser of:
- (1) an amount equal to the sum recovered (or of the value of the recovery whether by discount, credit, saving, relief or otherwise) less any out of pocket costs and expenses properly incurred by the Receiving Party in recovering such sum; and

(2) the Liability Payment,

provided that the Paying Party will be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the Receiving Party in respect of the fact, matter or circumstance giving rise to the Liability Payment.

For greater certainty, the above reference to a “third Person” will not include, in the case where the Authority is the Paying Party, Project Co and Project Co Persons and their respective employees, directors, officers and agents and will not include, in the case where Project Co is the Paying Party, the Authority and the Authority Indemnified Persons.

9.4 Waiver of Remedies

No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

9.5 Remedies Cumulative

Subject to Sections 9.6 (Limitation on Authority’s Remedies), 9.7 (Limitation on Project Co’s Remedies) and 9.8 (Limits on Monetary Compensation):

- (a) the rights and remedies of the parties under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at Law or in equity or otherwise;
- (b) a party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter; and
- (c) no single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.6 Limitation on Authority’s Remedies

The Authority’s remedies in respect of any failure by Project Co to achieve CPPS Substantial Completion by the Target CPPS Substantial Completion Date, SFB Expansion Substantial Completion by the Target SFB Expansion Substantial Completion Date, or New Tower Substantial Completion by the Target New Tower Substantial Completion Date, or both SFB Expansion Substantial Completion and New Tower Substantial Completion by the Longstop Date will be limited to the Authority’s rights pursuant to Section 12.4 (Authority Termination Right) and Section 11.2 (Delay Liquidated Damages) and 11.3 (Delay Costs) of Schedule 2 [Design and Construction Protocols], provided that nothing in this Section 9.6 will limit the Authority’s right to:

- (a) claim, on or after a termination of this Agreement, costs, losses, damages and expenses suffered or incurred by the Authority as a result of rectifying or mitigating the effects of any breach of this Agreement by Project Co except to the extent recovered by the

Authority under this Agreement or taken into account to reduce any compensation payable by the Authority pursuant to Schedule 9 [Compensation on Termination];

- (b) make a claim for indemnification pursuant to Section 9.1 (Project Co's Obligation to Indemnify);
- (c) deliver to Project Co a Dispute Notice or a notice of default or termination pursuant to Section 12 (Project Co Events of Default) and pursue all remedies in respect thereof; or
- (d) pursue any other express remedy available to the Authority under this Agreement or any equitable remedy, including injunctive relief and specific performance.

9.7 Limitation on Project Co's Remedies

To the extent Project Co has claimed or is entitled to claim for relief or compensation for a Supervening Event, pursuant to Section 8 (Supervening Events), Project Co may not make any further claim against the Authority for costs, losses, damages or expenses incurred by Project Co, or for any other relief, in respect of any such events provided that nothing in this Section 9.7 (Limitation on Project Co's Remedies) will limit Project Co's right to:

- (a) deliver to the Authority a Dispute Notice or a notice of default or termination pursuant to Section 13 (Authority Events of Default) and pursue all remedies in respect thereof; or
- (b) pursue any other express remedy available to Project Co under this Agreement or any equitable remedy, including injunctive relief and specific performance.

9.8 Limits on Monetary Compensation

Every right to claim compensation or indemnification or reimbursement under this Agreement will be construed so that recovery is without duplication to any other amount recoverable under this Agreement. Neither party will be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Agreement.

9.9 No Liability for Indirect Losses

Unless specifically allowed in this Agreement, neither party to this Agreement will be liable to the other party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other party.

9.10 Authority's Right of Set Off

The Authority may set off any amounts owing by Project Co to the Authority under this Agreement against payments due by the Authority to Project Co under this Agreement, provided that in respect of Termination Payments payable under Section 2 (Termination for Authority Event of Default or at Authority's Option) or Section 4 (No Fault Termination) of Schedule 9 [Compensation on Termination], such set off will be only to the extent that after any such amount has been set off, such Termination Payment made would be an amount not less than the Senior Debt Termination Amount.

9.11 Project Co's Right of Set Off

Project Co may set off any amounts owing by the Authority to Project Co under this Agreement against any payments due by Project Co to the Authority under this Agreement.

9.12 Undisputed Amounts and Interest on Disputed Amounts

A party will pay any undisputed portion of any disputed amount payable to the other party in accordance with this Agreement but any disputed portion or amount will not be payable until the Dispute is resolved in accordance with the Dispute Resolution Procedure.

If payment of any amount payable under this Agreement is delayed while the matter is in Dispute, upon resolution of the Dispute, interest will be payable on any amount determined payable pursuant to the Dispute Resolution Procedure and will be calculated at the Prime Rate compounded monthly from the time such amount became payable under this Agreement until paid.

9.13 Interest on Overdue Amounts

If payment of any amount payable under this Agreement is not made when due (including Termination Payments payable pursuant to Schedule 9 [Compensation on Termination]), interest will be payable on such amount at the Default Rate and will be calculated from the date due under this Agreement until paid, compounded monthly. The party to whom payment is owed and overdue will notify the other party at least monthly of the overdue amount and the accrued interest on that amount.

9.14 Performance Guarantee of Construction Guarantor

At all times during the Term and, in respect of the provisions described in Section 17.11 (Survival), following the Term, Project Co will ensure that a valid and binding Performance Guarantee of Construction Guarantor in favour of the Authority from the Construction Guarantor (or a party of comparable financial strength, capacity and stability, as determined by the Authority acting in its sole discretion) and in the form of guarantee attached as Schedule 15 [Performance Guarantee of Construction Guarantor], is in place and enforceable by the Authority.

10. LUMP SUM PAYMENTS

10.1 Payments

To the extent a party:

- (a) is entitled to payment from the other party under this Agreement, including in respect of a Change under Section 7 (Changes), a Supervening Event under Section 8 (Supervening Events) or an indemnification claim under Section 9 (Indemnities and Limits on Liabilities and Remedies); or
- (b) is entitled to share in a benefit and to receive payment from the other party under this Agreement, including in respect of a Refinancing Gain under Section 5 (Financing of the Project) or Eligible Change in Law Event under Section 8 (Supervening Events),

the affected or entitled party may make written demand for such payments from time to time after being entitled to payment, and in respect of any Direct Losses, after such Direct Losses have been incurred and in respect of any shared benefit, after receipt by the other party of the shared benefit, and payment will be made in accordance with this Section 10 (Lump Sum Payments), except to the extent payment arrangements are otherwise set forth in this Agreement.

If the Authority is obligated to compensate, reimburse or otherwise pay Project Co, the Authority may in its discretion make such payment by lump sum payment or by payments that reasonably match the cash outlays of Project Co.

If Project Co is obligated to compensate, reimburse or otherwise pay the Authority, the Authority may in its discretion, require Project Co to make such payment:

- (c) by a lump sum payment, up to a maximum lump sum payment of \$1,000,000 without the consent of Project Co, and any greater amount with the consent of Project Co, acting reasonably; or
- (d) by payments that reasonably match the cash inflows to Project Co or the averted cash outlays.

Lump sum payments and payments that reasonably match cash inflows, cash outlays or averted cash outlays will be due and payable within 30 days of delivery of written demand supported by all relevant information.

The parties may agree to any other basis for payment.

11. AUTHORITY'S STEP-IN RIGHTS

11.1 Authority's Step-in Rights

If:

- (a) the Authority reasonably considers that a breach by Project Co of any obligation under this Agreement:
 - (1) is likely to create an immediate and serious threat to the health or safety of any Authority Person, any property, the environment or the reputation, integrity of, or public confidence in, the Facilities or any operations related to the Facilities, including the Hospital; or
 - (2) is prejudicial to the ability to carry on the Intended Uses to a material degree where the Authority is occupying any part of the Facilities,

then the Authority, acting reasonably may either:

- (b) if it considers that there is sufficient time and that it is likely that Project Co will be willing and able to provide assistance, require Project Co by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs including, if applicable

due to breach of the Design-Build Agreement or any Sub-Contract, suspension of the Design-Builder or such Sub-Contractor, and Project Co will use all reasonable efforts to comply with the Authority's requirements as soon as reasonably practicable; or

- (c) if it considers there is not sufficient time, or that Project Co is not likely to be willing and able to take the necessary steps, take such steps as it considers are appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs to the standards required by this Agreement (or as close as possible to those standards as the circumstances permit). The Authority will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with Project Co's performance of its obligations under this Agreement.

Project Co will ensure that the provisions contained in the Design-Build Agreement and all applicable Sub-Contracts will not prevent or inhibit the Authority from exercising its rights under this Section 11 (Authority's Step-In Rights).

11.2 Authority's Rectification Rights

If the Authority gives notice to Project Co under Section 11.1(b) (Authority's Step-In Rights) and Project Co either:

- (a) does not, within five Business Days of such notice, or such shorter period as is appropriate in the case of an emergency, confirm that it is willing to take such steps as are required in such notice, or present an alternative plan to the Authority to mitigate, rectify and protect against such circumstances that the Authority may, within a further five Business Days, accept or reject, acting reasonably; or
- (b) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set out in such notice or accepted alternate plan or within such time as the Authority, acting reasonably, will stipulate,

then the Authority may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps.

11.3 Notice of Change

The Authority will notify Project Co of any Change which the Authority intends to make pursuant to the exercise of the Authority's rights under Section 11.1(c) (Authority's Step-In Rights) or Section 11.2 (Authority's Rectification Rights) and provide Project Co a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Change. In making such Change, the Authority will reasonably consider comments received in a timely manner from Project Co on the proposed Change.

11.4 No Effect on Project Co's Design and Construction Responsibility

The exercise by the Authority of any of its rights under this Section 11 (Authority's Step-In Rights) will not reduce or affect in any way Project Co's responsibility under Section 4.1 (Design/Build Responsibility) of Schedule 2 [Design and Construction Protocols].

11.5 Allocation of Costs for Authority Actions

To the extent that any of the circumstances set out in Section 11.1 (Authority's Step-In Rights) arise as a result of any breach by Project Co of its obligations under this Agreement, then Project Co will pay the Authority the amount of all direct costs and expenses reasonably incurred by the Authority in exercising its rights under Section 11.1 (Authority's Step-In Rights) or Section 11.2 (Authority's Rectification Rights) and an additional mark-up of 20% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, any actions of the Authority under Sections 11.1 (Authority's Step-In Rights) and 11.2 (Authority's Rectification Rights) will constitute a Compensation Event.

12. PROJECT CO EVENTS OF DEFAULT

12.1 Project Co Events of Default

For the purposes of this Agreement, "**Project Co Event of Default**" means any of the following events or circumstances:

- (a) the occurrence of a Project Co Material Breach that is not remedied in accordance with Section 12.3 (Project Co Material Breach Cure and Remedial Program) including in accordance with the program for remediation under that Section, or the occurrence of such Project Co Material Breach for which a program for remediation has not been produced by Project Co in accordance with Section 12.3 (Project Co Material Breach Cure and Remedial Program);
- (b) the occurrence of a Project Co Insolvency Event;
- (c) Project Co abandons the Project, other than pursuant to its right to suspend performance under Section 13.3 (Project Co's Options) or due to a Supervening Event;
- (d) the Substantial Completion Date does not occur on or before the Longstop Date;
- (e) at any time after 12 months prior to the Longstop Date it is finally determined pursuant to the Dispute Resolution Procedure that either or both of the SFB Expansion Substantial Completion Date and the New Tower Substantial Completion Date are not reasonably expected to occur on or before the Longstop Date;
- (f) Project Co breaches Section 16.1 (Limitations on Assignment of Project by Project Co) or a Change in Control occurs which is prohibited by Section 16.2 (Limitations on Change in Control);
- (g) if consent is required for a Refinancing under Section 5.3 (Consent Required for Refinancing), Project Co carries out such Refinancing without the Authority's consent; or
- (h) the accumulation of Delay Liquidated Damages in excess of the Delay LD Cap that would be payable by Project Co if not for such Delay LD Cap, unless Project Co agrees to increase the Delay LD Cap as reasonably requested by the Authority,

unless caused by non-compliance by the Authority with any provision of this Agreement or any document, instrument or agreement delivered to Project Co as required under this Agreement or any negligent act or omission, or any wilful misconduct, of the Authority or any Authority Person.

12.2 Notification

Project Co will notify the Authority of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Co Event of Default, in either case, promptly when Project Co Has Knowledge of its occurrence.

12.3 Project Co Material Breach Cure and Remedial Program

After the occurrence of a Project Co Material Breach and while it is subsisting, the Authority may serve a notice on Project Co specifying in reasonable detail the type and nature of the Project Co Material Breach and:

- (a) Project Co will remedy such Project Co Material Breach referred to in such notice (if it is continuing) within 20 Business Days of such notice; or
- (b) if either the Authority (as set out in its notice) or Project Co reasonably considers that a Project Co Material Breach cannot reasonably be remedied within 20 Business Days of such notice, Project Co will deliver to the Authority within 10 Business Days of such notice a reasonable program (set out, if appropriate, in stages) for remedying the Project Co Material Breach. The program will specify in reasonable detail the manner in, and the latest date by, which the Project Co Material Breach is proposed to be remedied.

If Project Co puts forward a program in accordance with Section 12.3(b), the Authority will have 10 Business Days from receipt of the program within which to notify Project Co that the Authority, acting reasonably, does not accept the program, failing which the Authority will be deemed to have accepted the program. If the Authority notifies Project Co that it does not accept the program as being reasonable, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such five Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Project Co Material Breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party for resolution in accordance with the Dispute Resolution Procedure.

12.4 Authority Termination Right

If:

- (a) a Project Co Material Breach is not remedied before the expiry of the period referred to in Section 12.3(a) (Project Co Material Breach Cure and Remedial Program) and no program has been put forward by Project Co under Section 12.3(b) (Project Co Material Breach Cure and Remedial Program);

- (b) Project Co puts forward a program pursuant to Section 12.3(b) (Project Co Material Breach Cure and Remedial Program) which has been accepted by the Authority (including after agreement under Section 12.3 (Project Co Material Breach Cure and Remedial Program) to amendments to the program) or has been determined to be reasonable pursuant to the Dispute Resolution Procedure, and Project Co fails to achieve any material element of the program or the end date for the program, as the case may be;
- (c) any program put forward by Project Co pursuant to Section 12.3(b) (Project Co Material Breach Cure and Remedial Program) is rejected by the Authority as not being reasonable, and, if such rejection is disputed by Project Co, the Dispute Resolution Procedure does not find against that rejection; or
- (d) any Project Co Event of Default other than a Project Co Material Breach occurs,

then the Authority may (if the Project Co Event of Default continues unwaived and unremedied), subject to the terms of the Lenders' Remedies Agreement, terminate this Agreement by notice to Project Co. The right of the Authority to terminate this Agreement under this Section 12.4 is in addition, and without prejudice, to any other right which the Authority may have in connection with Project Co's defaults hereunder.

For the purposes of Section 12.4(b), if Project Co's performance of the program is adversely affected by the occurrence of a Supervening Event or a breach by the Authority of its obligations under this Agreement, then, subject to Project Co complying with the mitigation and other requirements in this Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

12.5 The Authority's Costs

Project Co will reimburse the Authority for all reasonable costs incurred by the Authority in exercising any of its rights (including any relevant increased administrative expenses and actual legal expenses) under this Section 12 (Project Co Events of Default).

13. AUTHORITY EVENTS OF DEFAULT

13.1 Authority Events of Default

For the purposes of this Agreement, "**Authority Event of Default**" means any of the following events or circumstances:

- (a) a failure by the Authority to pay any amount due and owing to Project Co under this Agreement on the due date (which amount is not being disputed in good faith) and the Authority has not remedied such failure to pay within 10 Business Days' of notice from Project Co;

- (b) except as provided for in Section 13.1(a), a breach, or series of breaches, by the Authority of any term, covenant or undertaking to Project Co, or any representation or warranty made by the Authority to Project Co in this Agreement is incorrect when made, the consequence of which:
- (1) has an adverse effect on the performance of the Design or the Construction; or
 - (2) results in any provision of this Agreement being unenforceable against the Authority,
- and as a result thereof, Project Co is reasonably likely to be materially deprived of the benefit of this Agreement;
- (c) if any material part of the Facilities, the portion of the Lands on which the Facilities are situated, or any interest in Project Co is expropriated by any Governmental Authority, and as a result thereof, Project Co is reasonably likely to be materially deprived of the benefit of this Agreement;
- (d) if a Governmental Authority requires a sum of money to be set aside or otherwise paid pursuant to Section 48 of the *Hospital Act* (British Columbia), with the result that Project Co does not have sufficient funds to fulfill its obligations under Section 6.3 (Project Co's Obligations - Damage or Destruction) or 6.4 (Project Co's Obligations - Material Damage or Destruction) and the Authority does not pay a like sum to Project Co within five Business Days of demand therefor in order for Project Co to carry out such obligations;
- (e) if the Provincial Guarantee is or becomes, or is held to be, unenforceable, invalid, void or otherwise ceases to be in full force and effect; or
- (f) the Authority breaches Section 16.4 (Limitations on Assignment of Project by Authority).

13.2 Notification

The Authority will notify Project Co of the occurrence, and details, of any Authority Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to an Authority Event of Default, in either case, promptly on the Authority Having Knowledge of its occurrence.

13.3 Project Co's Options

After the occurrence of an Authority Event of Default and while an Authority Event of Default is continuing, Project Co may, at its option, exercise one or more of the following, as applicable:

- (a) in respect of the Design and the Construction prior to the Substantial Completion Date, suspend performance by it of its Design and Construction obligations under this Agreement until such time as the Authority has demonstrated to the reasonable satisfaction of Project Co that it will perform and is capable of performing its obligations under this Agreement and the Target CPPS Substantial Completion Date and/or the Target SFB Expansion Substantial Completion Date and/or the Target New Tower

Substantial Completion Date, the Longstop Date and the relevant dates for move-in as set out in the Facility Move-in Schedules will be extended by the time such suspension is in effect;

- (b) in the case of an Authority Event of Default under Section 13.1(a) (Authority Events of Default), suspend performance by it of its obligations under this Agreement until the Authority has remedied such Authority Event of Default and the Target CPPS Substantial Completion Date and/or the Target SFB Expansion Substantial Completion Date and/or the Target New Tower Substantial Completion Date, the Longstop Date and the relevant dates for move-in as set out in the Facility Move-in Schedules will be extended by the time such suspension is in effect and such additional time as may be reasonably required to return to normal operations following such suspension;
- (c) in the case of an Authority Event of Default under Sections 13.1(a), 13.1(b) or 13.1(c) (Authority Events of Default), serve notice on the Authority of the occurrence specifying details of such Authority Event of Default and if the relevant matter or circumstance has not been rectified or remedied by the Authority or otherwise within 20 Business Days of such notice (or in the case of an Authority Event of Default under Section 13.1(b) or 13.1(c) (Authority Events of Default), such longer period as is reasonably required for the Authority to rectify or remedy such Authority Event of Default as long as the Authority is diligently pursuing such rectification or remedy), Project Co may serve a further notice on the Authority terminating this Agreement with immediate effect; or
- (d) in the case of an Authority Event of Default under Section 13.1(d) or 13.1(f) (Authority Events of Default), terminate this Agreement by notice to the Authority.

13.4 Project Co's Costs

The Authority will reimburse Project Co for all reasonable costs incurred by Project Co in exercising any of its rights (including any relevant increased administrative expenses, interest expenses during Construction and actual legal and other expenses) under this Section 13 (Authority Events of Default).

14. PROCEDURE ON TERMINATION

14.1 Compensation on Termination

If this Agreement is terminated pursuant to its terms, the Authority will pay compensation to Project Co in accordance with Schedule 9 [Compensation on Termination].

14.2 Transfer to the Authority of Assets, Contracts, etc.

On or promptly after the Termination Date:

- (a) if prior to the Substantial Completion Date:
 - (1) in so far as any transfer will be necessary to fully and effectively transfer property to the Authority, Project Co will transfer to, and there will vest in, the Authority (or

any New Project Co as may be appointed by the Authority) free from all financial encumbrances:

- (A) such part of the Facilities as has been constructed on or has become affixed to the Lands; and
 - (B) all construction materials on-hand to be affixed to the Lands or otherwise used in the Facilities; and
- (2) if the Authority so elects:
- (A) the construction plant and equipment will remain available to the Authority or the New Project Co for the purposes of completing the Design and the Construction; and
 - (B) all other Project related plant and all materials on or near the Lands will remain available to the Authority or the New Project Co for the purposes of completing the Design and the Construction,
- subject to payment by the Authority of the Design-Builder's reasonable charges, and
- (b) if the Authority so elects, Project Co will cause the Design-Build Agreement to be novated or assigned to the Authority, provided that:
- (1) Project Co will not be obligated to assign to the Authority any of Project Co's rights to claim against the Design-Builder that arose under the Design-Build Agreement prior to the date of such novation or assignment; and
 - (2) if termination occurs under Section 13.3 (Project Co's Options), the consent of the Design-Builder will be required;
- (c) Project Co will, or will cause any Material Contract Party to, offer to sell to the Authority at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Material Contract Party and reasonably required by the Authority in connection with the Intended Uses of the Facilities;
- (d) Project Co will deliver to the Authority (to the extent not already delivered to the Authority):
- (1) all existing designs, plans and other documents produced in connection with the Facilities and in the control of Project Co; and
 - (2) one complete set of existing "as built drawings", BIM (Building Information Model), and specifications for each of the Energy Centre, the SFB Expansion and the New Tower, in compliance with the applicable requirements of Schedule 3 [Design and Construction Specifications];

subject to reasonable generally applicable third party licensing terms;

- (e) Project Co will use all reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Agreement and included in the Facilities but not previously assigned or licensed to the Authority are assigned, licensed or otherwise transferred to the Authority;
- (f) to the extent permitted by Law, Project Co will assign to the Authority (or any New Project Co, as may be appointed by the Authority) all Permits;
- (g) Project Co will deliver to the Authority all records required to be kept by Project Co hereunder (Project Co having the right to retain copies thereof) unless such documents are:
 - (1) required by Law to be retained by Project Co or the Design-Builder or a Sub-Contractor, in which case complete copies of such records will be delivered to the Authority; or
 - (2) privileged from production pending resolution of any outstanding Dispute, in which case such records will be delivered forthwith upon resolution of such Dispute, provided that any records that are necessary for the performance of the Design or the Construction will be delivered to the Authority no later than the Termination Payment Date; and
- (h) return to the Authority all Confidential Information of the Authority within the possession or control of Project Co or the Design-Builder or any Sub-Contractor.

Project Co will ensure that provision is made in all applicable contracts to ensure that the Authority will be in a position to exercise its rights, and Project Co will be in a position to comply with its obligations, under this Section 14.2 without additional payment or compensation to any Person.

14.3 Transitional Arrangements

Project Co will:

- (a) as soon as practicable following the Termination Date, remove from the Lands all property of Project Co or any Project Co Person that is not acquired by the Authority pursuant to Section 14.2 (Transfer to the Authority of Assets, Contracts, etc.) (or not belonging to the Authority), and if it has not done so within 60 days after any notice from the Authority requiring it to do so, the Authority may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of Project Co;
- (b) on the Termination Date, deliver to the Authority:
 - (1) all keys, access codes or other devices required to access or operate the Facilities in the control of Project Co; and

- (2) any Project Intellectual Property required to be delivered by Project Co pursuant to Section 14.2(e) (Transfer to the Authority of Assets, Contracts, etc.); and
- (c) as soon as practicable after the Termination Date, vacate, and cause the Project Co Persons to vacate, those parts of the Facilities and of the Lands over which Project Co has control and occupation and will leave such parts of the Lands and the Facilities in a safe, clean and orderly condition.

14.4 Continued Performance

Subject to Project Co's rights of suspension under Sections 13.3(a) and 13.3(b) (Project Co's Options) and subject to the provisions of this Section 14 (Procedure on Termination), the parties will continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination.

15. DISPUTE RESOLUTION

15.1 Procedure

Except as otherwise provided in this Agreement, any Dispute will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure set out in Schedule 13 [Dispute Resolution Procedure].

15.2 Undisputed Amounts

A party will pay any undisputed portion of any disputed amount to the other party in accordance with this Agreement, but any disputed portion or amount will not be payable until the Dispute is resolved as aforesaid.

16. ASSIGNMENT/CHANGE IN CONTROL

16.1 Limitations on Assignment of Project by Project Co

Project Co will not assign, transfer or otherwise dispose of any interest in this Agreement or the Design-Build Agreement, except:

- (a) as security, substantially in a form approved by the Authority, acting reasonably, prior to its grant for any loan made to Project Co under any Senior Financing Agreement and provided the Senior Lenders enter into the Lenders' Remedies Agreement;
- (b) in connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement; or
- (c) otherwise with the written consent of the Authority, which may be given or withheld in the Authority's discretion,

provided that in the case of an assignment, transfer or disposal permitted by Sections 16.1(b) or 16.1(c), the assignee or transferee assumes all the obligations of Project Co under this Agreement.

Notwithstanding any other provision of this Agreement, Project Co will not assign, transfer or otherwise dispose of any interest in this Agreement or a Material Contract to a Person who is a Restricted Person.

16.2 Limitations on Change in Control

No Change in Control of Project Co will be permitted (whether by Project Co or otherwise) to occur, except:

- (a) in connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement;
- (b) arising from any bona fide open market transaction in any shares or other securities of Project Co or of any Holding Company of Project Co effected on a recognized public stock exchange; or
- (c) otherwise with the written consent of the Authority, which may be given or withheld in the Authority's discretion.

Notwithstanding any other provision of this Agreement:

- (d) Project Co will not be, nor will it become at any time, a Restricted Person; and
- (e) except as a result of a transaction referred to in Section 16.2(b), a Person who is a Restricted Person will not acquire any ownership interest (whether directly or indirectly) in Project Co or in any Person that has control of Project Co.

16.3 Factors Authority May Consider

In determining whether to provide its consent under Section 16.1(c) (Limitations on Assignment of Project by Project Co) or 16.2(c) (Limitations on Change in Control), and without limiting the Authority's discretion thereunder, it will be reasonable for the Authority to refuse its consent if:

- (a) the proposed assignee or the new party in control of Project Co, as the case may be, or any of their Affiliates, is a Restricted Person;
- (b) the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of the Authority, not sufficiently creditworthy or having sufficient financial capacity taking into account the nature of the obligations under this Agreement;
- (c) the assignment or Change in Control could, in the reasonable opinion of the Authority, have a material adverse effect on the Authority or the Project; or

- (d) the proposed assignee or the new party in control of Project Co, as the case may be, is, in the reasonable opinion of the Authority, not reasonably capable of performing its obligations under this Agreement.

16.4 Limitations on Assignment of Project by Authority

The Authority will not assign, transfer or otherwise dispose of any interest in this Agreement, unless:

- (a) the Province of British Columbia confirms that the Provincial Guarantee will remain in full force and effect notwithstanding such action; and
- (b) the assignee assumes all the obligations of the Authority under this Agreement.

16.5 Costs of Request for Consent

If Project Co requests consent to an assignment, transfer or disposition pursuant to Section 16.1 (Limitations on Assignment of Project by Project Co) or to a Change in Control pursuant to Section 16.2 (Limitations on Change in Control), Project Co will pay the Authority's reasonable internal administrative and personnel costs and all reasonable out-of-pocket costs in connection with considering any such request. At the time of such request, Project Co will make a payment to the Authority in the amount of \$35,000 against its obligation under this Section 16.5. After the Authority renders its decision, the Authority will either refund any over payment or invoice Project Co for any additional amounts owing under this Section 16.5 and Project Co will promptly pay such amount to the Authority.

17. GENERAL

17.1 Confidentiality

- (a) Subject to Section 17.1(b), each party will hold in confidence any Confidential Information received from the other party, except that this Section 17.1 will not restrict:
 - (1) Project Co from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that Project Co may, subject to obtaining confidentiality restrictions similar to those set out in this Agreement:
 - (A) provide to the Senior Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and
 - (B) provide to the Design-Builder and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Project Co to perform (or to cause to be performed) its obligations under this Agreement,

and Project Co will remain fully liable for any breach of confidentiality by any Person to whom Project Co has disclosed or granted access to Confidential Information pursuant to this Section; and

- (2) the Authority from disclosing or granting access to such information to any provincial ministry, Infrastructure BC Inc. and any other Governmental Authority which requires the information in relation to the Redevelopment.
- (b) Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
- (1) which the party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
 - (2) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
 - (3) to the extent any Person is required to disclose such Confidential Information by Law, including a disclosure required under the *Freedom of Information and Protection of Privacy Act* (British Columbia);
 - (4) to the extent consistent with any Authority's policy concerning the Authority's Confidential Information, the details of which have been provided to Project Co in writing prior to the disclosure; or
 - (5) that the Authority may be entitled to receive from Project Co pursuant to this Agreement in respect of the Redevelopment in the event of, or following, termination of this Agreement.
- (c) Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of Section 17.1(a) and that the other party will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of Section 17.1(a), subject, in the case of a claim for any such remedy against the Authority, to the provisions of the *Crown Proceeding Act* (British Columbia).

17.2 Personal Information

Project Co will, and will require the Design-Builder and Sub-Contractors to, only collect, hold, process, use, store and disclose Personal Information:

- (a) with the prior consent of the Authority; or
- (b) to the extent necessary to perform Project Co's obligations under this Agreement and in circumstances where the Authority itself could collect, hold, process, use, store and disclose Personal Information if the Authority itself performed the Design and the Construction, and

in accordance with applicable Laws, including the *Freedom of Information and Protection of Privacy Act* (British Columbia) as if the provisions of such Laws applied directly to Project Co, the Design-Builder and Sub-Contractors.

Project Co acknowledges that it is a “service provider” as defined in the *Freedom of Information and Protection of Privacy Act* (British Columbia).

Project Co will allow the Authority on reasonable notice to inspect the measures of Project Co and the Design-Builder and Sub-Contractors to protect Personal Information.

The Authority may from time to time provide guidance to Project Co on the requirements of this Section 17.2, including the circumstances set out in Section 17.2(b). For greater certainty, the provisions of this Section 17.2 that refer to the *Freedom of Information and Protection of Privacy Act* (British Columbia) will apply to the Design-Builder and its Sub-Contractors only to the extent necessary to fulfil the Authority’s obligations under the *Freedom of Information and Protection of Privacy Act* (British Columbia).

17.3 Public Communications

Unless expressly provided in this Agreement or otherwise required by any Laws (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information or any matters relating thereto, without the consent of the other party (which will not be unreasonably withheld or delayed). The parties will comply with Schedule 16 [Communication Roles].

17.4 Law of Agreement

This Agreement will be deemed to be made pursuant to the laws of the Province of British Columbia and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.

17.5 Attornment

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

17.6 Entire Agreement, Waivers and Consents in Writing

This Agreement and the instruments and documents to be executed and delivered pursuant to it constitute the entire agreement between the parties, expressly superseding all prior agreements and communications (both oral and written) between any of the parties with respect to all matters contained herein or therein, and except as stated herein or the instruments and documents to be executed and delivered pursuant hereto, contains all the representations and warranties of the respective parties. In addition:

- (a) no waiver of any provision of this Agreement; and

(b) no consent required pursuant to the terms of this Agreement,

is binding or effective unless it is in writing and signed by the party providing such waiver or consent.

17.7 Notices

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

if to the Authority:

Fraser Health Authority

Administration
Burnaby Hospital
3935 Kincaid Street, Burnaby, BC V5G 2X6

Attention: Noor Esmail , Chief Project Officer & Executive Director
Email: noor.esmail@fraserhealth.ca

With a copy to:

Attention: Mandeep Edmonds , Deputy Chief Project Officer
Email: mandeep.edmonds@fraserhealth.ca

Attention: Kristalina Dinovsky-Kutev, Director, Design and Construction
Email: kristalina.dinovsky-kutev@fraserhealth.ca

if to Project Co:

EllisDon Infrastructure BHRP Inc.

2045 Oxford Street East
London, Ontario
N5V 2Z7

Attention: Finance Manager, Asset Management
E-mail: infrastructure@ellisdon.com

With a copy to:

EllisDon Corporation

1004 Middlegate Road, Suite 1000
Mississauga, Ontario L4Y 1M4

Attention: Andres Duran, Senior Vice President and General Counsel
E-mail: Andres.duran@ellisdon.com

Attention: Joey Comeau, Chief Operating Officer and Executive Vice-President, Capital
E-mail: Jcomeau@ellisdon.com

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
 - (1) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
 - (2) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

17.8 Further Assurances

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Agreement.

17.9 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it will not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Delivery of an executed counterpart of a signature page to this Agreement by electronic transmission will be deemed to be as effective as delivery of a manually executed copy and delivery of an original.

17.10 No Partnership, etc.

Nothing contained in this Agreement nor any action taken pursuant hereto or thereto will be deemed to constitute the Authority and Project Co a partnership, joint venture or any other similar such entity.

17.11 Survival

- (a) Notwithstanding any other provision of this Agreement, the provisions of Section 6.15 (Third Party Liability Insurance as an Uninsurable Risk), Section 8 (Supervening Events) (if and to the extent a Compensation Event relates to a claim made by a third party against Project Co after the Termination Date), Section 9 (Indemnities and Limits on Liabilities and Remedies), Section 14 (Procedure on Termination), Section 15 (Dispute Resolution), Section 17.1 (Confidentiality), Section 17.2 (Personal Information),

Schedule 9 [Compensation on Termination] and Schedule 13 [Dispute Resolution Procedure] will survive the expiry or any earlier termination of this Agreement.

- (b) Termination of this Agreement will be without prejudice to, and will not affect, the Performance Guarantee of Construction Guarantor, which will survive the termination of this Agreement, including termination on the Expiry Date, in respect of any and all of such surviving provisions of this Agreement.

[signature page follows]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

FRASER HEALTH AUTHORITY

Per: 
Name: Dr. Victoria Lee
Title: President and Chief Executive Officer

ELLISDON INFRASTRUCTURE BHRP INC.

Per: _____
Name: Joey Comeau
Title: Chief Operating Officer and Executive Vice-President, Capital

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

FRASER HEALTH AUTHORITY

Per: _____

Name: Dr. Victoria Lee

Title: President and Chief Executive Officer

ELLISDON INFRASTRUCTURE BHRP INC.

Per: _____

Name: Joëy Comeau

Title: Chief Operating Officer and Executive Vice-President, Capital

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Agreement:

“Additional Irrecoverable Tax” means GST or PST incurred by Project Co in respect of the supply of any property or service to the Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Design or the Construction to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST that Project Co would have recovered or been credited with prior to the applicable Change in Law;

“Additional Recoverable Tax” means GST or PST incurred by Project Co in respect of the supply of any property or service to the Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Design or the Construction to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such GST or PST that Project Co would not have recovered or been credited with prior to the applicable Change in Law;

“Affiliate” in respect of a Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person where **“control”** means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person;

“Agent” has the meaning set out in Schedule 8 [Payments];

“Agreement” means this agreement, including any recitals, schedules, appendices and attachments to this agreement, as amended or restated from time to time;

“Applicant” has the meaning set out in Section 8.1 (Supervening Events);

“Architect” means B+H Architects Inc., which firm has been engaged by the Design-Builder to undertake the Design;

“Asset Register” has the meaning set out in Section 7.3 (Asset Register) of Schedule 2 [Design and Construction Protocols];

“Authority” means Fraser Health Authority;

“Authority Event of Default” has the meaning set out in Section 13.1 (Authority Events of Default);

“Authority Indemnified Person” means:

- (a) any contractor or subcontractor (of any tier) of the Authority, excluding Project Co, the Design-Builder, and any Sub-Contractors;
- (b) any representative, agent or advisor (including legal and financial advisors) of the Authority or any Person referred to in paragraph (a), in each case acting in such capacity; and
- (c) any director, officer or employee of the Authority or of any Person referred to in paragraphs (a) or (b), in each case acting in such capacity;

“Authority Person” means:

- (a) any director, officer, employee or agent of the Authority;
- (b) any representative, advisor (including any legal and financial advisor), contractor or subcontractor (of any tier) of the Authority in any such Person’s capacity as a provider of services directly or indirectly to the Authority in connection with the Project, other than Project Co, the Design-Builder or any Sub-Contractors;
- (c) any invitee of the Authority or any of the Authority Persons referred to in paragraphs (a) or (b) who enters upon the Lands; or
- (d) any lessee or tenant of the Authority at the Facilities;

“Avoidable Costs”, when used in relation to an event or circumstance, means all costs and expenditures which:

- (a) are saved or avoided as a result of the event or circumstance or its effects; or
- (b) if Project Co acted reasonably and in accordance with this Agreement (including Section 2.5 (General Duty of Project Co to Mitigate)), would have been saved or avoided as a result of the event or circumstance or its effects;

“Beneficiary” has the meaning set out in Section 9.2 (Conduct of Third Person Claims);

“BH” all the buildings, including utilities, vehicle and pedestrian access points, forming part of Burnaby Hospital as at the Effective Date;

“BH Campus” means the area identified as such in Appendix 2H [Site Plan], which, for greater certainty, includes all of the land upon which BH is situated;

“BIM Database” has the meaning set out in Appendix 2B [BIM Requirements];

“BIM Requirements” means the requirements set out in Appendix 2B [BIM Requirements];

“BMS” means the Building Management System defined and described in Schedule 3 [Design and Construction Specifications];

“Building” has the meaning given in Section 4.9(a) of Schedule 2 [Design and Construction Protocols];

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in British Columbia;

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP;

“Category 1 Equipment” means the equipment described and listed as “Category 1” in the Equipment List in Appendix 2E [Clinical Equipment And Furniture];

“Category 2 Equipment” means the equipment described and listed as “Category 2” in the Equipment List in Appendix 2E [Clinical Equipment And Furniture];

“Category 3 Equipment” means the equipment described and listed as “Category 3” in the Equipment List in Appendix 2E [Clinical Equipment And Furniture];

“Category 4 Equipment” means the equipment described and listed as “Category 4” in the Equipment List in Appendix 2E [Clinical Equipment And Furniture];

“Category 5 Equipment” means the equipment described and listed as “Category 5” in the Equipment List in Appendix 2E [Clinical Equipment And Furniture];

“Category 6 Equipment” means the equipment described and listed as “Category 6” in the Equipment List in Appendix 2E [Clinical Equipment And Furniture];

“Certificate of CPPS Substantial Completion” has the meaning set out in Section 13.3(a)(1) (Application for Certificates of Substantial Completion) of Schedule 2 [Design and Construction Protocols];

“Certificate of CPPS Total Completion” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Certificate of New Tower Substantial Completion” has the meaning set out in Section 13.3(c)(1) (Application for Certificates of Substantial Completion) of Schedule 2 [Design and Construction Protocols];

“Certificate of New Tower Total Completion” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Certificate of SFB Expansion Substantial Completion” has the meaning set out in Section 13.3(b)(1) (Application for Certificates of Substantial Completion) of Schedule 2 [Design and Construction Protocols];

“Certificate of SFB Expansion Total Completion” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Certificate of Substantial Completion” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Change” has the meaning set out in Schedule 6 [Changes];

“Change Certificate” has the meaning set out in Schedule 6 [Changes];

“Change Directive” has the meaning set out in Schedule 6 [Changes];

“Change in Control” means with respect to a relevant Person:

- (a) any direct or indirect change by contract or otherwise (other than as set out in (b)) which results in a Person or group of Persons having the ability to direct or cause the direction of the management, actions or policies of the relevant Person; or
- (b) any:
 - (1) direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the relevant Person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization; or
 - (2) other direct or indirect change,

which results in a Person or group of Persons, other than the equity holders of the relevant Person immediately prior to the change, directly or indirectly:

- (3) controlling the composition of the majority of the board of directors of the relevant Person or of a general partner or manager of the relevant Person;
- (4) controlling the decisions made by or on behalf of the relevant Person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the relevant Person, a general partner of the relevant Person or a manager of the relevant Person or otherwise;
- (5) holding equity (either beneficially or otherwise) of the relevant Person with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of the relevant Person with more than one half of the voting rights; or

- (6) having the ability to direct or cause the direction of the management, actions or policies of the relevant Person;

“Change in Law” means the coming into effect in Canada after the Financial Submission Date of:

- (a) any new Law; or
 (b) any modification (including repeal) of any Law existing on such date,

which is binding on Project Co or the Authority, but excluding in each such case:

- (c) any lawful requirements of any Governmental Authority (unless resulting from a Change in Law);
 (d) any change in the interpretation of any legislation other than a judgment of a relevant court which changes binding precedent in British Columbia;
 (e) any new Law or modification arising from or in any way connected to or having substantially the same effect as any Law which as of the Financial Submission Date:
- (1) had been introduced as a Bill in the Legislative Assembly of British Columbia or the Parliament of Canada or in a draft statutory instrument published or issued by a Governmental Authority; or
 - (2) had been published in the Canada Gazette or in a draft bill as part of a Governmental Authority discussion or consultation paper;

“Change Mark-Up” has the meaning set out in Schedule 6 [Changes];

“Change Report” has the meaning set out in Schedule 6 [Changes];

“Change Report Costs” has the meaning set out in Schedule 6 [Changes];

“Charge” has the meaning set out in Schedule 7 [Lands];

“City” means the City of Burnaby;

“Clinical Services” means the direct and/or indirect provision of medical and healthcare services at the Facilities to or for the benefit of persons requesting or requiring such services by the Authority, Authority Persons, physicians, staff, or volunteers at the Facilities;

“Clinical Specifications” has the meaning set out in Schedule 3 [Design and Construction Specifications];

“CM Representative” means the representative of the Construction Manager appointed under the Construction Management Agreement;

“CM Work” means the construction and demolition work to be managed by the Construction Manager, as described in the Construction Management Agreement;

“Commissioning”:

- (a) solely for the purposes of the Equipment, has the meaning set out in Appendix 2E [Clinical Equipment and Furniture]; and
- (b) otherwise has the meaning set out in Schedule 3 [Design and Construction Specifications];

“Commissioning Authority” or **“CxA”** has the meaning set out in Section 12.1 of Schedule 2 [Design and Construction Protocols];

“Commissioning Plan” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Compensation Event” means any of the following events or circumstances if and to the extent that it interferes adversely with, or causes a failure of, the carrying out of the Design or the Construction or causes Direct Losses to Project Co or any Project Co Person:

- (a) breach by the Authority of any of its obligations under this Agreement;
- (b) breach of any representation or warranty by the Authority under this Agreement;
- (c) wilful misconduct of the Authority or an Authority Person;
- (d) a negligent act or omission of the Authority or an Authority Person;
- (e) the existence of Undisclosed Environmental Liabilities;
- (f) a Permit which is the obligation of the Authority to obtain or maintain is declared invalid or defective by a court of competent jurisdiction;
- (g) the existence as at the Effective Date of any encumbrance enforceable against or affecting the Lands or the Facilities, other than the Encumbrances;
- (h) the discovery of any human remains, relics or other articles or structures of historical, antiquarian or archaeological interest on or adjacent to the Lands;
- (i) a claim asserting infringement of aboriginal rights (including duty to consult) or aboriginal treaty rights or aboriginal title by any first nation(s);
- (j) a Protest Action;
- (k) lawful or unlawful strike, lockout, work-to-rule or other dispute by Public Sector Employees or by the employees of any contractor (other than Project Co) engaged by the Authority to provide services in the Facilities;

- (l) the actions referred to in Section 11.5 (Allocation of Costs for Authority Actions) as constituting a Compensation Event;
- (m) the event referred to in Section 8.4(e)(2) (Project Co's Entitlements Upon Occurrence of a Relief Event);
- (n) the event referred to in Section 8.5(d)(2) (Parties' Entitlements Upon Occurrence of a Force Majeure Event);
- (o) the events referred to in Section 6.13(a) and (c) (Inspection) of Schedule 2 [Design and Construction Protocols];
- (p) Project Co's compliance with a direction from the Authority under Section 3.3 (Interim Decision) of Schedule 13 [Dispute Resolution Procedure] when the matter in dispute is subsequently resolved, or settled, in Project Co's favour;
- (q) if part of the Facilities or part of the portion of the Lands on which the Facilities are situated or any interest of Project Co is expropriated by any Governmental Authority and such expropriation is not an Authority Event of Default as set out in Section 13.1(c) (Authority Events of Default);
- (r) any other event which is expressly stated in this Agreement to constitute a Compensation Event; or
- (s) the execution of works, other than usual or reasonably expected works, on the Site or in respect of the Facilities not forming part of this Agreement by the Authority or any person permitted to execute such works by the Authority or any Authority Person,

except to the extent that any such events arise or are contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

"Confidential Information" means Personal Information, and information of a party that the party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information;

"Construction" means everything (other than Design) required to achieve CPPS Substantial Completion, SFB Expansion Substantial Completion and New Tower Substantial Completion, including the construction of the Facilities, temporary works and the supply of all labour and materials, construction equipment, management, supervision and support of any kind or nature whatsoever required for the construction of the Facilities and the supply, installation, testing and commissioning of all systems and Equipment;

"Construction CGL Policy" has the meaning set out in Schedule 5 [Insurance Requirements];

“Construction Guarantor” means EllisDon Inc.;

“Construction Latent Defect” means any Defect that could not reasonably have been ascertained by a competent Person in accordance with Good Industry Practice during a visual, site or maintenance inspection of the work in respect of the Facilities at any time before the expiry of the applicable Warranty Period;

“Construction Management Agreement” means the agreement of even date between the Authority and the Construction Manager relating to renovation work and demolition to be carried out in the Hospital as part of the Redevelopment;

“Construction Manager” means EllisDon Corporation;

“Construction Payment” has the meaning set out in Schedule 8 [Payments];

“Construction Period” means the period commencing on the Effective Date and ending on the Substantial Completion Date;

“Construction Property Policy” has the meaning set out in Schedule 5 [Insurance Requirements];

“Contingent Funding Liabilities” means direct or indirect liabilities or contingent liabilities, if any, of any Shareholder in respect of financial obligations owed to Project Co or to any party under the Junior Debt or the Senior Lenders under the Senior Financing Agreements, such as, for example, the amount a Shareholder has agreed to subscribe for in Project Co, promissory notes, obligations to fund reserve accounts, guarantees, letters of credit in respect of deferred equity, subordinated debt or equity bridge loans;

“Contract Price” has the meaning set out in Schedule 8 [Payments];

“Contract Year” means each of:

- (a) the period from the Effective Date to the next March 31st;
- (b) each subsequent period of 12 calendar months commencing on April 1st; and
- (c) the period from the April 1st immediately prior to the Termination Date to and including the Termination Date;

“Core User Group” has the meaning set out in Appendix 2C [User Consultation and Review Procedure];

“Cost to Date” has the meaning set out in Schedule 8 [Payments];

“COVID-19 Change in Law” means a Change in Law which imposes, modifies or removes measures to minimize or mitigate the spread of, and human health effects from, the novel coronavirus COVID-19;

“COVID-19 Event” means an event, including a COVID-19 Change in Law, arising after the Financial Submission Date and caused by the COVID-19 Pandemic;

"COVID-19 Pandemic" means the novel coronavirus COVID-19 pandemic declared March 11, 2020 by the World Health Organization until such time as the World Health Organization designates or declares the COVID-19 post-pandemic phase;

"CPPS" means the campus perimeter pathway system;

"CPPS Substantial Completion" means that all of the following have been achieved in relation to the CPPS:

- (a) the Architect has certified that "substantial performance" of the CPPS, as defined in the *Builders' Lien Act* (British Columbia), has been achieved;
- (b) the CPPS is ready for use by the Authority or is being used by the Authority for its Intended Use;
- (c) all equipment and systems are in place, commissioned, have received required certifications, and are fully operational;
- (d) Project Co has delivered to the Authority:
 - (1) a complete Project Binder for the CPPS, provided that:
 - (A) the commissioning reports may be preliminary; and
 - (B) the inspection, certifications, guarantees and warranties, may exclude only the items of Construction that remain to be completed;
 - (2) an up to date set of the Reviewed Drawings and Specifications for the CPPS;
 - (3) all maintenance and operating tools, replacement parts or products as specified in Schedule 3 [Design and Construction Specifications];
 - (4) a statement reconciling all Changes and claims by Project Co under this Agreement with respect to the Design and the Construction to the date of the application for CPPS Substantial Completion; and
 - (5) copies of all required Permits;
- (e) the completed as-built drawings, the items required under section 9 of Appendix 2B [BIM Requirements], and the specifications for the CPPS have been provided to the Authority as required by Section 6.25(a)(5)(A) (Project Records) of Schedule 2 [Design and Construction Protocols];
- (f) an occupancy permit has been issued for the CPPS or the City has issued a temporary occupancy permit or other written permission that is sufficient for occupancy of the CPPS by the Authority for its Intended Uses;
- (g) Project Co has delivered to the Authority a report from the Commissioning Authority confirming completion of all commissioning activities scheduled in the Commissioning Plan to be completed before CPPS Substantial Completion;

- (h) Project Co has completed the training of Authority staff in respect of the CPPS as required by Section 12.2 (Equipment and Systems Operation and Training) of Schedule 2 [Design and Construction Protocols];
- (i) Project Co has completed all necessary demonstrations of: mechanical and electrical systems to the Compliance Team (as defined in Schedule 3 [Design and Construction Specifications]) as required by Section 7 of Schedule 3 [Design and Construction Specifications];
- (j) Project Co has complied with the requirements of Section 2.6.5.1(4)(h) of Schedule 3 [Design and Construction Specifications]; and
- (k) Project Co has complied with any other conditions set out in this Agreement with respect to achieving CPPS Substantial Completion;

"CPPS Substantial Completion Date" means the date when all criteria for CPPS Substantial Completion that have not been waived have been satisfied as certified by the Authority's Representative in accordance with Schedule 2 [Design and Construction Protocols];

"CPPS Total Completion" means the satisfactory full and final completion of all CPPS Deficiencies in accordance with the Design and the Construction obligations under this Agreement, as established by the Certificate of CPPS Total Completion;

"Credit Agreement" means the credit agreement dated as of the Effective Date between Project Co, The Bank of Nova Scotia and each of the other financial institutions and other entities from time-to-time parties thereto as lenders and hedge providers, and The Bank of Nova Scotia, as administrative agent;

"Debt" of any Person at any date means, without duplication:

- (a) all obligations of such Person for borrowed money;
- (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business;
- (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable, except leases arising in the ordinary course of business;
- (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property);
- (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other similar instrument;

- (g) all Debt (as otherwise defined in this definition) of others secured by a Charge on any asset of such Person, provided such Debt (as otherwise defined in this definition) is assumed by such Person; and
- (h) all Debt (as otherwise defined in this definition) of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guarantee;

“Deduction” has the meaning set out in Schedule 8 [Payments];

“Deemed Corporate Project Co” has the meaning set out in Schedule 9 [Compensation on Termination];

“Default Rate” on any day means per annum over the Prime Rate;

“Defect” means any defect, deficiency or fault, including omission, in the Facilities arising from a failure by Project Co to comply with its obligations under this Agreement;

“Deficiency” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Deficiency Holdback” has the meaning set out in Schedule 8 [Payments];

“Deficiency Holdback Letter of Credit” has the meaning set out in Schedule 8 [Payments];

“Delay LD Cap” has the meaning set out in Section 11.2 (Delay Liquidated Damages) of Schedule 2 [Design and Construction Protocols];

“Delay Liquidated Damages” has the meaning set out in Section 11.2 of Schedule 2 [Design and Construction Protocols];

“Design” means everything required for the design of the Facilities except for any design that is expressly excluded from Project Co’s responsibility under this Agreement;

“Design and Construction Protocols” means the provisions of Schedule 2 [Design and Construction Protocols];

“Design and Construction Specifications” mean the provisions of Schedule 3 [Design and Construction Specifications];

“Design-Build Agreement” means the design and construction agreement between Project Co and the Design-Builder, a certified copy of which has been delivered by Project Co to the Authority, as amended or replaced from time to time in accordance with this Agreement;

“Design-Builder” means EllisDon Corporation or any assignee or replacement permitted under this Agreement;

“Design-Builder Breakage Costs” means the amount payable by Project Co to the Design-Builder under the terms of the Design-Build Agreement to compensate the Design-Builder for its Direct Losses incurred

by the Design-Builder as a direct result of the termination of the Design-Build Agreement as a consequence of the termination of this Agreement but reduced (without duplication) to the extent that:

- (a) Project Co, the Design-Builder and any Sub-Contractors fail to take all reasonable steps to mitigate such amount;
- (b) such amount relates to any agreements or arrangements entered into by Project Co, the Design-Builder or the Sub-Contractors other than in the ordinary course of business and on commercial arm's length terms;
- (c) such amount is a Distribution;
- (d) Project Co is entitled (for default or otherwise) to terminate the Design-Build Agreement without payment or for reduced payment;
- (e) in the event of termination pursuant to Section 2.1(a) (Term and Termination), Section 6.6 (Authority Election Not to Reinstate), Section 6.7(d) (Insufficient Insurance), or Section 13.3 (Project Co's Options), such amount includes compensation for loss of future profits of the Design-Builder in excess of those profits the Design-Builder could reasonably have been expected to earn in the year immediately following the Termination Date; and
- (f) in the event of termination pursuant to Section 6.7(e) (Insufficient Insurance), Section 6.8 (Uncollectible Insurance Receivables), Section 6.14 (Consequences of Risks Becoming Uninsurable), Section 8.4 (Project Co's Entitlements Upon Occurrence of a Relief Event), or Section 8.5 (Parties' Entitlements Upon Occurrence of a Force Majeure Event), such amount includes compensation for loss of future profits of the Design-Builder.

"Design-Builder's Collateral Agreement" means the agreement to be entered into between the Authority, the Design-Builder, and Project Co in the form set out in Schedule 11 [Material Contract Party Collateral Agreement], as amended or replaced from time to time in accordance with this Agreement;

"Design Development Phase" means the phase of the Design process described in Section 5.3(a)(2) (Design Process) of Schedule 2 [Design and Construction Protocols];

"Design Professionals" means the Architect, the Architect's subconsultants and the design consultants engaged directly by the Design-Builder or Project Co, including engineers and technical experts, who provide services with respect to the Design;

"Development Changes" has the meaning set out in Schedule 6 [Changes];

"Development Change Record" has the meaning set out in Schedule 6 [Changes];

"Development Change Record Confirmation" has the meaning set out in Schedule 6 [Changes];

"Development Change Register" has the meaning set out in Schedule 6 [Changes];

“Direct Losses” means in respect of a condition, event or omission, without duplication, all damages, losses, liabilities, penalties, fines, assessments, claims (including by third parties), actions, costs (including increased Capital Expenditures), expenses (including the reasonable cost of legal or professional services), proceedings, demands and charges, whether arising under statute, contract or at common law, which result directly from such condition, event or omission:

- (a) net of related Insurance Proceeds and Insurance Receivables and any amount which the relevant party would have recovered (in respect of such condition, event or omission) if it had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement;
- (b) excluding any Indirect Losses, except to the extent included in a third party claim; and
- (c) in the case of Project Co, without limiting the foregoing:
 - (1) including the full amount of the related loss or reduction of any Construction Payments or the Substantial Completion Payment; and
 - (2) net of Avoidable Costs related to such condition, event or omission,

and in calculating any amount of any additional Capital Expenditure, labour or similar cost claimed by Project Co under this definition of “Direct Losses”, Project Co will be entitled to add to such amounts the mark-ups referred to in Section 2.11 (Mark-Up on Changes) of Schedule 6 [Changes];

“Disclosed Data” means any information, data and documents made available or issued to Project Co or the Design-BUILDER or any Sub-Contractor in connection with the Project by or on behalf of the Authority, including the Geotechnical Report and any information relating to the Lands or the requirements of any Governmental Authority, whether before or after the execution of this Agreement;

“Discriminatory Change in Tax Law” means a Change in Law which results in the imposition of Taxes or a change in Taxes which specifically apply to discriminate against:

- (a) the Project or health care-related projects whose design, construction and financing are procured on a basis similar to that of the Project and not to other projects;
- (b) Project Co, the Design-BUILDER, or Persons that have contracted on similar health care-related projects procured and contracted with the Authority or other statutory or public body on a basis similar to the Project and not to other Persons;
- (c) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar health care-related projects procured and contracted on a basis similar to the Project and not to other Persons; or
- (d) the provision of hospitals or healthcare premises;

“Dispute” means any disagreement, failure to agree or other dispute between the Authority and Project Co arising out of or in connection with this Agreement, including in respect of the interpretation, breach,

performance, validity or termination of this Agreement, whether in the law of contract or any other area of law;

“Dispute Notice” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Dispute Resolution Procedure” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Distribution” means, without duplication or double counting:

- (a) whether in cash or in kind, any:
 - (1) distribution to Shareholders or other distribution in respect of equity interests in Project Co;
 - (2) redemption or purchase of any equity interest in Project Co or reduction of share capital or any other reorganization or variation to share capital;
 - (3) payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);
 - (4) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof, or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business or not on commercially reasonable terms, including to any current or former Shareholder, or any current or former Affiliate of any current or former Shareholder;
 - (5) conferral of any other benefit which is not conferred and received in the ordinary course of business or is not conferred or received on commercially reasonable terms, including to any current or former Shareholder, or any current or former Affiliate of any current or former Shareholder; and
 - (6) other payment to any current or former Shareholder, any current or former Affiliate of any current or former Shareholder or Project Co howsoever arising and whether made pursuant to the terms of an agreement or otherwise or by way of gift or in respect of any equity interest in Project Co or other securities of or interests in Project Co if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; or
- (b) the early release of any reserves or any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated;

“Draft Reinstatement Plan” has the meaning set out in Section 6.4(a) (Project Co's Obligations – Material Damage or Destruction);

“Early Works Agreement” means the agreement dated June 9, 2021 between the Authority and the Design-Builder under which the Design-Builder undertook certain Design and Construction prior to the execution of this Agreement;

“Effective Date” means the date of this Agreement;

“Eligible Change in Law Event” means the occurrence of:

- (a) a Relevant Change in Law;
- (b) a Discriminatory Change in Tax Law;
- (c) an Input Tax Recoverability Change in Law;
- (d) a COVID-19 Change in Law; or
- (e) an Epidemic Change in Law;

“Emergency Department” means the functional component described in Section 2.7 of Appendix 3A [Clinical Specifications and Functional Space Requirements];

“Employee Information” has the meaning set out in Schedule 9 [Compensation on Termination];

“Employee Payments” means any liability that has been reasonably incurred by Project Co arising as a direct result of termination of this Agreement under collective agreements, employment agreements or under any other agreements with employees of Project Co, including severance (whether accrued or not), vacation pay and sick pay accrued, but excluding any Distribution;

“Encumbrances” has the meaning set out in Schedule 7 [Lands];

“Energy” has the meaning set out in Appendix 2D [Energy and Carbon Guarantees];

“Energy Centre” means the new energy centre to be constructed by Project Co as part of the Design and the Construction pursuant to this Agreement, including all utility connections, landscaping and other improvements connected to or related to such new energy centre;

“Energy Guarantee” has the meaning set out in Appendix 2D [Energy and Carbon Guarantees];

“Energy Guarantee LDs” has the meaning set out in Appendix 2D [Energy and Carbon Guarantees];

“Energy Holdback” has the meaning set out in Schedule 8 [Payments];

“Energy Holdback Letter of Credit” has the meaning set out in Schedule 8 [Payments];

“Energy Model” has the meaning set out in Appendix 2D [Energy and Carbon Guarantees];

“Energy Target” has the meaning set out in Appendix 2D [Energy and Carbon Guarantees];

“Environmental Laws” means all Laws relating to the protection of human health and all plant, animal, land, water and air resources that may be affected by the Project;

“Environmental Reports” means the reports listed in Section 2.6.6.6 of Schedule 3 [Design and Construction Specifications];

“Epidemic” means an epidemic or pandemic of infectious disease of humans, including an epidemic or pandemic declared by the World Health Organization or a "regional event" as defined in the Public Health Act (British Columbia) for which the Provincial Health Officer gives notice under Section 52 of that Act, but excluding the COVID-19 Pandemic;

"Epidemic Change in Law" means a Change in Law which imposes, modifies or removes measures to minimize or mitigate the spread of, and human health effects from, an infection disease that is the subject of an Epidemic;

"Epidemic Event" means an event, including an Epidemic Change in Law, arising after the Financial Submission Date and caused by an Epidemic;

“Equipment” has the meaning set out in Appendix 2E [Clinical Equipment and Furniture];

“Equipment Cash Allowance” has the meaning set out in Appendix 2E [Clinical Equipment and Furniture];

“Equipment Cash Allowance Account” has the meaning set out in Appendix 2E [Clinical Equipment and Furniture];

“Equipment Cash Allowance Account Security Agreement” means the security agreement in respect of the Equipment Cash Allowance Account dated as of the Effective Date between the Authority and Project Co, as amended or replaced from time to time in accordance with this Agreement.

“Equipment Data Sheets” has the meaning set out in Appendix 2E [Clinical Equipment and Furniture];

“Equipment List” has the meaning set out in Appendix 2E [Clinical Equipment and Furniture];

“Exempt Refinancing” means:

- (a) a change in taxation or change in accounting treatment pursuant to changes in Laws or GAAP or International Financial Reporting Standards;
- (b) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are solely in respect of:
 - (1) breach of representations, warranties, covenants or undertakings;

- (2) movement of monies between the Project Accounts (as defined in the Senior Financing Agreements) in accordance with the terms of the Senior Financing Agreements;
 - (3) late or non-provision of information or consents;
 - (4) amendments to the Design-Build Agreement;
 - (5) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);
 - (6) restrictions imposed by the Senior Lenders on the dates at which the financing provided by the Senior Lenders under the Senior Financing Agreements can be advanced to Project Co under the Senior Financing Agreements, and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Lenders to the Authority prior to being given;
 - (7) changes to milestones for drawdown set out in the Senior Financing Agreements and which are given as a result of any failure by Project Co to ensure that the Design and the Construction are carried out in accordance with the Project Schedule and which are notified in writing by Project Co or the Senior Lenders to the Authority prior to being given;
 - (8) failure by Project Co to obtain any consents from Governmental Authorities required by the Senior Financing Agreements; or
 - (9) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;
- (c) an amendment of an agreement approved by the Authority as part of any Change;
 - (d) a sale of Junior Debt or Shares in Project Co by Shareholders or, in the case of Junior Debt, Affiliates of Shareholders or securitization of the existing rights or interests attaching to Junior Debt or Shares in Project Co;
 - (e) a Qualifying Bank Transaction;
 - (f) a conversion of Shares into Junior Debt or of Junior Debt into Shares, provided that the total principal amount of all Junior Debt outstanding immediately following the conversion plus amounts paid to Project Co by way of subscription for Shares outstanding immediately following the conversion does not exceed the total amounts paid to Project Co by way of subscription for Shares outstanding immediately prior to the conversion plus the total principal amount of all Junior Debt outstanding immediately prior to the conversion; or

- (g) any secondary transaction in the bond market;

“Expiry Date” means the latest of:

- (a) the date set out in Section 14.1(c)(1) or 14.1(c)(2) (Warranty) of Schedule 2 in respect of Construction Latent Defects; or
- (b) the date of completion of making good all Defects, including Construction Latent Defects, to the full and final satisfaction of the Authority and in accordance with Section 14.1 (Warranty) of Schedule 2;

“Facilities” means, collectively, the Energy Centre, the SFB Expansion and the New Tower, and includes the CPPS, all utility connections, landscaping and other improvements that form part of the Design and the Construction under this Agreement, and **“Facility”** means any one of the Energy Centre, the SFB Expansion or the New Tower, as the context requires;

“Facility Move-in Schedules” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Facility Users” means the Authority, Authority Persons, physicians, staff, patients, visitors, students and volunteers who will be using or present at the SFB Expansion after the SFB Expansion Substantial Completion Date or at the New Tower after the New Tower Substantial Completion Date;

“Fair Market Value” means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale;

“Financial Model” means Project Co’s financial model for the Project, a copy of which has been delivered to the Authority in electronic format, as updated or amended from time to time in accordance with the terms of this Agreement;

“Financial Submission Date” means March 18, 2021;

“Force Majeure Event” means the occurrence after the Effective Date of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, radioactive, chemical or biological contamination, except to the extent that such contamination arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person;
- (c) earthquake or tidal wave;
- (d) flood, except to the extent that such flood arises or is contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or a Project Co Person; or
- (e) pressure waves caused by devices traveling at supersonic speeds,

which directly causes a party to be unable to comply with all or a material part of its obligations under this Agreement;

“**GAAP**” means generally accepted accounting principles in effect in Canada including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants;

“**Geotechnical Report**” means the report from Thurber Engineering Ltd. dated June 6, 2018;

“**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced Person engaged in a similar type of undertaking under the same or similar circumstances;

“**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project;

“**GST**” means the goods and services tax imposed pursuant to Section IX of the *Excise Tax Act* (Canada);

“**Has Knowledge**”, “**Have Knowledge**” or “**Having Knowledge**” means, under circumstances in which a reasonable individual would take cognizance of it:

- (a) for an individual, when information is acquired by the individual;
- (b) for a corporation, when information has come to the attention of:
 - (1) a director or officer of the corporation; or
 - (2) a senior employee of the corporation with responsibility for matters to which the information relates,
- (c) for a partnership other than a limited partnership, when any partner Has Knowledge under the other Sections of this definition or under this paragraph (c) or paragraph (d) for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates;
- (d) for a limited partnership, when any general partner Has Knowledge under the other Sections of this definition or under paragraph (c) or this paragraph (d) for any partner that is itself a partnership or when any member of a director-level or officer-level or similar position of the partnerships or a senior employee of the partnership with responsibility for matters to which the information relates; or
- (e) for the Authority, when information has come to the attention of:
 - (1) a director or officer of the Authority; or

- (2) a senior employee of the Authority with responsibility for matters to which the information relates;

“Hazardous Substance” means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Environmental Laws;

“Hedging Agreements” means the hedging agreements, comprising an ISDA Master Agreement and corresponding ISDA Schedule to Master Agreement dated as of the Effective Date, between Project Co and The Bank of Nova Scotia and the Interest Rate Swap Confirmation between Project Co and The Bank of Nova Scotia relating to such hedging agreement;

“Holding Company” means, with respect to a corporation, another corporation of which the first corporation is a “subsidiary” as defined in the Business Corporations Act (British Columbia) as at the date of this Agreement;

“Hospital” means BH;

“IMIT” means information management and information technology;

“Income Tax” means any tax imposed on the income of a Person by any Canadian (whether federal, provincial or otherwise) Governmental Authority;

“Indemnifier” has the meaning set out in Section 9.2 (Conduct of Third Person Claims) of this Agreement;

“Independent Certifier” has the meaning set out in Section 3.1 (Appointment) of Schedule 2 [Design and Construction Protocols];

“Independent Energy Consultant” has the meaning set out in Appendix 2D [Energy and Carbon Guarantees];

“Indirect Losses” means any loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity or any exemplary, punitive or special damages or any consequential or indirect loss or damages of any nature claimed, suffered or allegedly suffered by:

- (a) Project Co or any Project Co Person (other than a Person who is a Project Co Person solely by virtue of being an invitee of Project Co or any Project Co Person); or
- (a) the Authority or any Authority Person (other than a Person who is an Authority Person solely by virtue of being an invitee of the Authority or any of Authority Persons) or an Authority Indemnified Person;

and will be deemed not to include any loss of Construction Payments, the Substantial Completion Payment or any other amounts expressly payable by the Authority to Project Co under this Agreement;

“Initiating Party” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Input Tax Recoverability Change in Law” means a Change in Law, other than a Discriminatory Change in Tax Law, which results in Additional Irrecoverable Tax or Additional Recoverable Tax.

“Insurance Account” means the account described as such in the Credit Agreement;

“Insurance Proceeds” means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained under this Agreement other than any policy of insurance maintained by the Authority solely for the benefit of the Authority;

“Insurance Receivables” means the amount of any insurance proceeds which a Person is entitled to receive pursuant to policies of insurance required to be maintained under this Agreement other than any policy of insurance maintained by the Authority solely for the benefit of the Authority;

“Insuring Party” has the meaning set out in Schedule 5 [Insurance Requirements];

“Intellectual Property” means any or all of the following and all rights, arising out of or associated therewith:

- (a) national, international and foreign patents, utility models, mask works, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (b) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (c) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (d) industrial designs and any registrations and applications therefor throughout the world;
- (e) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trade-marks and service marks, trade-mark and service mark registrations and applications therefor throughout the world;
- (f) data bases and data collections and all rights therein throughout the world;
- (g) moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (h) any similar or equivalent rights to any of the foregoing anywhere in the world;

“Intended Uses” means the intended uses for each of the Energy Centre, the SFB Expansion and the New Tower as described in the Design and Construction Specifications;

“Junior Debt” means indebtedness issued by Project Co to any of its Shareholders or Affiliates of Shareholders which ranks subordinate in all respects to the Senior Debt, excluding:

- (a) all amounts not actually paid to Project Co by cash advance, rights entitling Project Co to a cash advance, or other consideration;
- (b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Project Co, other than to any Shareholder or any Affiliate of a Shareholder; and
- (c) capitalized interest, and interest on overdue interest;

“Key Individuals” has the meaning set out in Section 2.8 (Key Individuals);

“Lands” has the meaning set out in Schedule 7 [Lands];

“Laws” means all laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having the force of law from time to time, including, for greater certainty, those related to the issuance of Permits, and any building codes;

“LEED Certifier” means the Canada Green Building Council;

“LEED Gold Certification” means the award of a LEED Gold certificate from the LEED Certifier under the LEED Rating System;

“LEED Holdback” has the meaning set out in Schedule 8 [Payments];

“LEED Holdback Letter of Credit” has the meaning set out in Schedule 8 [Payments];

“LEED Rating System” means the LEED Certifier’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System LEED v4 Building Design and Construction: Healthcare (LEED v4 BD+C: HC);

“Lender Endorsements” has the meaning set out in Schedule 5 [Insurance Requirements];

“Lenders’ Remedies Agreement” means the agreement between the Authority, the Agent, and Project Co in the form set out in Schedule 10 [Lenders’ Remedies Agreement], as amended or replaced from time to time in accordance with this Agreement;

“Lenders’ Technical Advisor” has the meaning set out in Schedule 8 [Payments];

“Letter of Credit” has the meaning set out in Schedule 8 [Payments];

“Liability Payment” has the meaning set out in Section 9.3 (General Obligation to Pursue Third Person Recovery);

“Licence” has the meaning set out in Schedule 7 [Lands];

“Longstop Date” means October 30, 2025, as adjusted in accordance with this Agreement;

“Material Contract Party” means a party to a Material Contract, other than Project Co;

“Material Contract Party Collateral Agreement” means the agreement to be entered into between the Authority, a Material Contract Party and Project Co in the form set out in Schedule 11 [Material Contract Party Collateral Agreement], as amended or replaced from time to time in accordance with this Agreement;

“Material Contracts” means:

- (a) the Design-Build Agreement; and
- (b) any agreement for products, services or management to Project Co between Project Co and a current or former Affiliate of Project Co;

“Megawatt hour” or **“MWh”** has the meaning set out in Appendix 2D [Energy and Carbon Guarantees];

“Net Change Value” has the meaning set out in Schedule 6 [Changes];

“New Tower” or **“Phase 1A”** means the new in-patient and out-patient tower to be constructed by Project Co as part of the Design and the Construction pursuant to this Agreement, including all utility connections, landscaping and other improvements connected to or related to such new tower, and including any rooms that are to be located in the Nursing Tower;

“New Tower Substantial Completion” means that all of the following have been achieved in relation to the New Tower:

- (a) the Architect has certified that "substantial performance" of the New Tower and the Energy Centre, as defined in the *Builders' Lien Act* (British Columbia), has been achieved;
- (b) the New Tower and the Energy Centre are ready for use by the Authority or are being used by the Authority for their Intended Uses;
- (c) all equipment and systems are in place, commissioned, have received required certifications, and are fully operational;
- (d) Project Co has delivered to the Authority:
 - (1) a complete Project Binder for the New Tower and Energy Centre, provided that:
 - (A) the commissioning reports may be preliminary; and
 - (B) the inspection, certifications, guarantees and warranties, may exclude only the items of Construction that remain to be completed;
 - (2) an up to date set of the Reviewed Drawings and Specifications for the New Tower and the Energy Centre ;

- (3) all maintenance and operating tools, replacement parts or products as specified in Schedule 3 [Design and Construction Specifications];
 - (4) a statement reconciling all Changes and claims by Project Co under this Agreement with respect to the Design and the Construction to the date of the application for New Tower Substantial Completion;
 - (5) copies of all required Permits;
- (e) the nurse call system has been completed to the satisfaction of the Authority as required by Section 7.10.20 of Schedule 3 [Design and Construction Specifications];
 - (f) the completed as-built drawings, the items required under section 9 of Appendix 2B [BIM Requirements] and the specifications for the New Tower and the Energy Centre have been provided to the Authority as required by Section 6.25(a)(4)(A) (Project Records) of Schedule 2 [Design and Construction Protocols];
 - (g) an occupancy permit has been issued for the New Tower and the Energy Centre or the City has issued a temporary occupancy permit or other written permission that is sufficient for occupancy of the New Tower and the Energy Centre by the Authority for their Intended Uses;
 - (h) Project Co has delivered to the Authority the LEED project checklist and written opinion as required by and in accordance with Section 4.7 of Schedule 2 [Design and Construction Protocols];
 - (i) Project Co has delivered to the Authority a report from the Commissioning Authority confirming completion of all commissioning activities scheduled in the Commissioning Plan to be completed before New Tower Substantial Completion;
 - (j) Project Co has completed the training of Authority staff in respect of the New Tower and the Energy Centre as required by Section 12.2 (Equipment and Systems Operation and Training) of Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications];
 - (k) Project Co has completed all necessary demonstrations of: mechanical and electrical systems to the Compliance Team (as defined in Schedule 3 [Design and Construction Specifications]) as required by Section 7 of Schedule 3 [Design and Construction Specifications];
 - (l) Project Co has complied with the requirements of Section 2.6.5.1(4)(h) of Schedule 3 [Design and Construction Specifications]; and
 - (m) Project Co has complied with any other conditions set out in this Agreement with respect to achieving New Tower Substantial Completion;

"New Tower Substantial Completion Date" means the date when all criteria for New Tower Substantial Completion that have not been waived have been satisfied as certified by the Independent Certifier in accordance with Schedule 2 [Design and Construction Protocols];

"New Tower Total Completion" means the satisfactory full and final completion of all Deficiencies in the New Tower and the Energy Centre in accordance with the Design and the Construction obligations under this Agreement, as established by the Certificate of New Tower Total Completion;

"Nominal" means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecast inflation;

"Non-Default Warranty Holdback Amount" has the meaning set out in Schedule 9 [Compensation on Termination];

"Non-Insuring Party" has the meaning set out in Schedule 5 [Insurance Requirements];

"Notice of Intention to Arbitrate" has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

"Notice of Objection to Arbitration" has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

"Nursing Tower" means the building identified as such in Appendix 2H [Site Plan];

"Order of Magnitude Estimate" has the meaning set out in Schedule 6 [Changes];

"Paying Party" has the meaning set out in Section 9.3 (General Obligation to Pursue Third Person Recovery);

"Performance Guarantee of Construction Guarantor" means a performance guarantee given by the Construction Guarantor in the form set out in Schedule 15 [Performance Guarantee of Construction Guarantor];

"Permits" means all permissions, consents, approvals, certificates, permits, licences, statutory agreements, zoning and by-law amendments and variances, and authorizations required from any Governmental Authority, and all necessary consents and agreements from any third parties, needed to carry out the Project in accordance with this Agreement;

"Permitted Debt" means:

- (a) trade or other similar indebtedness incurred in the ordinary course of business;
- (b) Taxes and governmental charges, salaries, related employee payments and trade payables;
- (c) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Permit, the Design-Build Agreement or this Agreement; and

- (d) Debt incurred by way of Shareholder Loans,

but does not include any Senior Debt;

“Persistent Breach” means a breach or series of breaches by Project Co of any term, covenant or undertaking to the Authority which, due to the fact that such breach has:

- (a) continued for 60 days or more after notice thereof from the Authority to Project Co; or
 (b) occurred 3 or more times in the previous 12 months,

demonstrates either a persistent inability, or a persistent unwillingness, to comply with its obligations under this Agreement;

“Person” means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or Governmental Authority;

“Personal Information” means ‘personal information’ as defined in the *Freedom of Information and Protection of Privacy Act* (British Columbia), which is collected, acquired, obtained by Project Co or the Authority in relation to or in the course of providing the Design or the Construction under this Agreement, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual, or as otherwise defined in the *Freedom of Information and Protection of Privacy Act* (British Columbia);

“Preliminary Change Instruction” has the meaning set out in Schedule 6 [Changes];

“Preliminary Estimate” has the meaning set out in Schedule 6 [Changes];

“Prime Rate” means the annual rate of interest announced by Canadian Imperial Bank of Commerce (or its successor), or any other Canadian chartered bank agreed to by the parties, from time to time as its “prime” rate then in effect for determining interest rates on Canadian dollar commercial loans made by it in Canada;

“Principal Insured Risk” means a risk that would be insured against by policies for the insurance referred to in Section 2 (Construction-Related Insurance Requirements) of Schedule 5 [Insurance Requirements];

“Project” means the design, construction, financing, testing and commissioning of the Facilities and all other works and ancillary services in accordance with this Agreement;

“Project Binder” means the binder complying with the requirements of Section 6.25(k) of Schedule 2 [Design and Construction Protocols];

“Project Co Event of Default” has the meaning set out in Section 12.1 (Project Co Events of Default);

“Project Co Hazardous Substances” means those Hazardous Substances for which Project Co is responsible pursuant to Schedule 7 [Lands];

“Project Co Insolvency Event” means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of Project Co; or
- (b) any proceedings with respect to Project Co being commenced under the *Companies’ Creditors Arrangement Act* (Canada) and if such proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days; or
- (c) Project Co making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against Project Co under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction and, if proceedings are commenced against Project Co and are disputed by Project Co, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days; or
- (d) Project Co ceasing to carry on business;

“Project Co Material Breach” means:

- (a) a failure by Project Co to pay any amount due and owing to the Authority under this Agreement on the due date (which amount is not being disputed in good faith) and Project Co has not remedied such failure to pay within 10 Business Days following notice from the Authority;
- (b) a failure by Project Co to:
 - (1) maintain the policies of insurance required to be maintained by Project Co under this Agreement;
 - (2) maintain such policies on the terms required under this Agreement (including a failure to comply with its obligation under Schedule 5 [Insurance Requirements] to name the Authority as an insured party); or
 - (3) provide evidence to the Authority as required by the terms of this Agreement that such policies have been taken out, maintained, paid for and renewed in accordance with the terms of this Agreement;
- (c) a Persistent Breach;

- (d) except as provided for in paragraphs (a) through (c), a breach, or series of breaches, by Project Co of any agreement, covenant or undertaking made to the Authority, or any representation or warranty made by Project Co to the Authority in this Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made, the consequence of which is:
- (1) a risk to the safety of the public;
 - (2) a risk of material liability of the Authority to third Persons;
 - (3) an adverse effect on the performance of the Design or the Construction and as a result thereof that the Authority is reasonably likely to be materially deprived of the benefit of this Agreement; or
 - (4) any material provision of this Agreement being unenforceable against Project Co; or
- (e) a breach by Project Co of Section 5 (Financing of the Project), other than a breach described in Section 12.1(g) (Project Co Events of Default); or
- (f) any other fact or circumstance designated as a “Project Co Material Breach” under this Agreement, including those specified in Section 9.4 (Failure to Comply with WorkSafe BC Requirements) and Section 10.3 (Failure to Update Project Schedule) of Schedule 2 [Design and Construction Protocols];

“Project Co Person” means:

- (a) any director, officer, employee or agent of Project Co acting as such;
- (b) the Design-Builder, any Sub-Contractor and any representative, advisor (including any legal and financial advisor) or contractor of Project Co, in any such Person’s capacity as a provider of services, work or materials, directly or indirectly to Project Co in connection with the Project; or
- (c) any invitee of Project Co or any of the Project Co Persons referred to in paragraphs (a) or (b) who enters upon the Lands;

“Project Co Procured Equipment” has the meaning set out in Appendix 2E [Clinical Equipment and Furniture];

“Project Co’s Quality Consultant” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“Project Co’s Rights” has the meaning set out in Section 8.12 (Equivalent Project Relief);

“Project Intellectual Property” means the Intellectual Property which is created, brought into existence, acquired, licensed or used by Project Co, the Design-Builder, any Sub-Contractor or any other third party,

directly or indirectly, for the purposes of the Design or the Construction of the Facilities, or otherwise for the purposes of this Agreement, but does not include the Financial Model;

“**Project Schedule**” has the meaning set out in Schedule 2 [Design and Construction Protocols];

“**Proposal Extracts**” means the provisions of Appendix 2G [Proposal Extracts];

“**Proposal Response Costs**” has the meaning set out in Schedule 8 [Payments];

“**Protest Action**” means any civil disobedience, protest action, riot, civil commotion, blockade or embargo, including any action taken or threatened to be taken, by any Person or Persons protesting or demonstrating against:

- (a) the carrying out of any part of the Project (including the construction of the Facilities); or
- (b) the construction of public health care facilities in general, occurring after the Effective Date,

but excluding any lawful or unlawful strike, lockout, go-slow or labour or other industrial relations dispute or job action;

“**Provincial Guarantee**” means the guarantee dated as of the Effective Date, provided by the Province of British Columbia to Project Co guaranteeing payment by the Authority hereunder;

“**PST**” means the Tax imposed pursuant to the *Provincial Sales Tax Act* (British Columbia);

“**Public Sector Employees**” means Persons employed by an employer designated in the *Health Care Employers Regulation* under the *Public Sector Employees Act* (British Columbia);

“**Qualified Insurers**” means reputable insurers of good standing in Canada, the United States, the United Kingdom, Europe or Australia having a credit rating of (1) A- or better with AM BEST or (2) the equivalent thereof by any other recognized insurance rating agency;

“**Qualifying Bank Transaction**” means:

- (a) the disposition by a Senior Lender to a Qualifying Institution of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender to a Qualifying Institution of any rights of participation in respect of the Senior Financing Agreements; or
- (c) the disposition or grant by a Senior Lender to a Qualifying Institution of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of Project Co, whether by way of security or otherwise;

“**Qualifying Institution**” means any of the following, provided it is not a Restricted Person, and provided none of its Affiliates is a Restricted Person for any reason other than by reason of Section (d) of the definition of Restricted Person:

- (a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada);
- (b) a Canadian trust company, insurance company, investment company, pension fund or other institution which has or manages at least \$500 million in securities, including entities wholly owned by any of the foregoing;
- (c) a bank regulated by the Board of Governors of the Federal Reserve System of the United States, a U.S. bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that has or manages at least \$500 million in assets and would be a “qualified institutional buyer” under U.S. securities legislation, including entities wholly owned by any of the foregoing;
- (d) an institution which is recognised or permitted under the law of any member state of the European Economic Area (“EEA”) to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
- (e) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, the “**OECD**”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company or pension fund and which has or manages at least \$500 million in assets, including entities wholly owned by any such institution; or
- (f) any other institution consented to in writing by the Authority as a “Qualifying Institution”.

“**Qualifying Refinancing**” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

“**Receiving Party**” has the meaning set out in Section 9.3 (General Obligation to Pursue Third Person Recovery);

“**Redevelopment**” means the ongoing redevelopment of the Hospital of which the Design and the Construction under this Agreement forms a part;

“**Referee**” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“**Referee Agreement**” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“**Referee Notice**” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“**Refinancing**” means:

- (a) Project Co incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;
- (b) any transaction in which the Authority, with the consent or at the request of agreement of Project Co, grants rights to any Person under an agreement similar to the Lenders’

Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such Person, other than the Lenders' Remedies Agreement entered into on the Effective Date;

- (c) any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement;
- (d) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;
- (e) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
- (f) any other arrangement put in place by Project Co or another Person which has an effect which is similar to any of paragraphs (a) through (e) or which has the effect of limiting Project Co's ability to carry out any of the actions referred to in paragraphs (a) through (e);

"Refinancing Gain" means an amount equal to the greater of zero and $(A - B)$, where:

A = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing); and

B = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing);

"Reinstatement Plan" has the meaning set out in Section 6.4(c) (Project Co's Obligations – Material Damage or Destruction);

"Reinstatement Works" has the meaning set out in Section 6.4(a) (Project Co's Obligations – Material Damage or Destruction);

"Relevant Change in Law" means a Change in Law (other than a Discriminatory Change in Tax Law) which specifically applies to:

- (a) the Project or health care-related projects whose design, construction and financing are procured on basis similar to that of the Project and not to other projects;
- (b) Project Co, the Design-Builder, or Persons that have contracted on similar health care-related projects procured and contracted with the Authority or other statutory or public body on a basis similar to the Project and not to other Persons; or

- (c) Persons holding shares or other evidences of ownership in Persons whose principal business is contracting on other similar health care-related projects procured and contracted on a basis similar to the Project and not to other Persons; or
- (d) the provision of hospitals or health care premises,

and compliance with which would require a variation (as applicable) in the design, quality, scope, methodology or cost of the Design or the Construction;

“Relief Event” means any of the following events or circumstances if and to the extent it interferes adversely with, or causes a failure of, the carrying out of the Design or the Construction:

- (a) fire, explosion, lightning, storm (including snow storm), flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquake or any act of God similar to the foregoing, in each case to the extent it does not constitute a Force Majeure Event;
- (b) failure by any utility company, local authority or other like body to perform works or provide services required to be provided by them in a reasonably timely manner or any unreasonable interference with the Construction by any such body as a result of maintenance and other work;
- (c) lawful or unlawful strike, lockout, work-to-rule, job action or other labour dispute generally affecting the construction industry or a significant sector thereof;
- (d) any delay of more than three days in respect of any critical path matter in the Project Schedule caused by compliance by Project Co with an order or direction by police, fire officials, medical health officer or any comparable public authority having the legal authority to make such order or give such direction;
- (e) a Change in Law during the Construction Period;
- (f) unreasonable delay in the payment of any Insurance Receivables;
- (g) accidental loss or damage to the Facilities or any roads servicing the Site;
- (h) blockade or embargo to the extent it does not constitute a Force Majeure Event;
- (i) failure or shortage of fuel or transport;
- (j) a COVID-19 Event;
- (k) an Epidemic Event; and
- (l) any other event which is stated in this Agreement to constitute a Relief Event,

except to the extent that any such events arise or are contributed to, directly or indirectly, as a result of any wilful misconduct, negligent act or omission or non-compliance with the terms of this Agreement by Project Co or any Project Co Person;

“Representative” has the meaning set out in Section 2.1 (Appointment of Representatives) of Schedule 2 [Design and Construction Protocols];

“Request for Proposals” means the request for proposals in respect of the Project issued by the Authority on June 22, 2020, together with all amendments, supplements and addenda thereto;

“Responding Party” has the meaning set out in Schedule 13 [Dispute Resolution Procedure];

“Restricted Person” means any Person who (or any member of a group of Persons acting together, any one of which):

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
- (b) has as any part of its business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in the promotion, support or carrying out of terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence (other than a suspended sentence) for any criminal offence (other than minor traffic offences or misdemeanours) less than 5 years prior to the date at which the determination of whether the individual falls within this definition is being made;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to any claim of the Authority or the Province of British Columbia in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the Person falls within this definition is being made and which (in respect of any such pending claim, if it were to be successful) would, in the Authority's view, in either case, be reasonably likely to materially affect the ability of Project Co to perform its obligations under this Agreement;
- (f) has a material interest in the production of tobacco products;
- (g) has been convicted of an offence under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), or has been convicted of the commission of a money laundering offence or a terrorist activity financing offence under the *Criminal Code* (Canada); or
- (h) has an Affiliate that is a Restricted Person for any reason other than by reason of paragraph (d), provided that this paragraph (h) only applies if such Person Has Knowledge that the Affiliate is a Restricted Person other than by reason of paragraph (d);

“Reviewed Drawings and Specifications” has the meaning set out in Appendix 2C [User Consultation and Review Procedure];

“Senior Debt” means:

- (a) all amounts of principal and interest outstanding, including interest and default interest accrued, from Project Co to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by Project Co for any reason other than a failure by Project Co to pay any amount when due;
- (b) cost of early termination of interest rate or currency hedging arrangements and other breakage costs or make-whole amounts payable by Project Co to the Senior Lenders as a result of a prepayment under the Senior Financing Agreements; and
- (c) all other fees, costs and expenses for which Project Co is responsible under the Senior Financing Agreements;

“Senior Debt Interest Amount” means, for any period, the interest payable by Project Co to the Senior Lenders in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements;

“Senior Debt Termination Amount” has the meaning set out in Schedule 9 [Compensation on Termination];

“Senior Financing Agreements” means:

- (a) the Credit Agreement;
- (b) the Hedging Agreements; and
- (c) the Security Documents, as defined in and entered into pursuant to the Credit Agreement,

certified copies of each of which have been delivered by Project Co to the Authority, and as amended from time to time in accordance with the terms of this Agreement;

“Senior Lenders” means lenders to whom Senior Debt is owed;

“Services” has the meaning given in the Construction Management Agreement;

“SFB Expansion” or **“Phase 1B”** means the new expansion to the Support Facilities Building to be constructed by Project Co as part of the Design and the Construction pursuant to this Agreement, including all utility connections, landscaping and other improvements connected to or related to such expansion;

“SFB Expansion Substantial Completion” means that all of the following have been achieved in relation to the SFB Expansion:

- (a) the Architect has certified that "substantial performance" of the SFB Expansion, as defined in the *Builders' Lien Act* (British Columbia), has been achieved;
- (b) the SFB Expansion is ready for use by the Authority or is being used by the Authority for its Intended Use, including the use of fully completed Preparation/Recovery Bays and the Emergency Department Zone 2 in the Support Facilities Building that are being constructed as part of the CM Work;
- (c) all equipment and systems are in place, commissioned, have received required certifications, and are fully operational;
- (d) Project Co has delivered to the Authority:
 - (1) a complete Project Binder for the SFB Expansion, provided that:
 - (A) the commissioning reports may be preliminary; and
 - (B) the inspection, certifications, guarantees and warranties, may exclude only the items of Construction that remain to be completed;
 - (2) an up to date set of the Reviewed Drawings and Specifications for the SFB Expansion;
 - (3) all maintenance and operating tools, replacement parts or products as specified in Schedule 3 [Design and Construction Specifications];
 - (4) a statement reconciling all Changes and claims by Project Co under this Agreement with respect to the Design and the Construction to the date of the application for SFB Expansion Substantial Completion; and
 - (5) copies of all required Permits;
- (e) the completed as-built drawings, the items required under section 9 of Appendix 2B [BIM Requirements], and the specifications for the SFB Expansion have been provided to the Authority as required by Section 6.25(a)(3)(A) (Project Records) of Schedule 2 [Design and Construction Protocols];
- (f) an occupancy permit has been issued for the SFB Expansion or the City has issued a temporary occupancy permit or other written permission that is sufficient for occupancy of the SFB Expansion by the Authority for its Intended Uses;
- (g) Project Co has delivered to the Authority a report from the Commissioning Authority confirming completion of all commissioning activities scheduled in the Commissioning Plan to be completed before SFB Expansion Substantial Completion;
- (h) Project Co has completed the training of Authority staff in respect of the SFB Expansion as required by Section 12.2 (Equipment and Systems Operation and Training) of Schedule 2 [Design and Construction Protocols]; and

- (i) Project Co has completed all necessary demonstrations of: mechanical and electrical systems to the Compliance Team (as defined in Schedule 3 [Design and Construction Specifications]) as required by Section 7 of Schedule 3 [Design and Construction Specifications];
- (j) Project Co has complied with the requirements of Section 2.6.5.1(4)(h) of Schedule 3 [Design and Construction Specifications]; and
- (k) Project Co has complied with any other conditions set out in this Agreement with respect to achieving SFB Expansion Substantial Completion;

"SFB Expansion Substantial Completion Date" means the date when all criteria for SFB Expansion Substantial Completion that have not been waived have been satisfied as certified by the Independent Certifier in accordance with Schedule 2 [Design and Construction Protocols];

"SFB Expansion Total Completion" means the satisfactory full and final completion of all Deficiencies in the SFB Expansion in accordance with the Design and the Construction obligations under this Agreement, as established by the Certificate of SFB Expansion Total Completion;

"Site" means the areas identified as the site on Appendix 2H [Site Plan] and such other areas that Project Co may be permitted to access for purposes of Construction in accordance with a Work Plan pursuant to Section 6.11 (Connections and Integration to the Hospital) of Schedule 2 [Design and Construction Protocols]. The portions of the Site that Project Co has access to for purposes of Construction of the Energy Centre will cease to be part of the Site as of the New Tower Substantial Completion Date, the portions of the Site that Project Co has access to for purposes of Construction of the SFB Expansion will cease to be part of the Site as of the SFB Expansion Substantial Completion Date, and the portions of the Site that Project Co has access to for purposes of Construction of the New Tower will cease to be part of the Site as of the New Tower Substantial Completion Date;

"Shareholder Loans" means any funds contributed to Project Co by a Shareholder or an Affiliate of a Shareholder in relation to the Project;

"Shareholder" means EllisDon Capital P3 Investments Inc.;

"Shares" means shares or other equity interests of any class in the capital of Project Co;

"SPV Costs" has the meaning set out in Schedule 8 [Payments];

"Sub-Contract" means any contract entered into by the Design-Builder (except the Design-Build Agreement), or a sub-contractor of the Design-Builder of any tier, with one or more Persons in connection with the carrying out of Project Co's obligations under this Agreement, as amended or replaced from time to time;

"Sub-Contractor" means any Person that enters into a Sub-Contract;

"Submittal" has the meaning set out in Appendix 2C [User Consultation and Review Procedure];

“Submittal Schedule” has the meaning set out in Appendix 2C [User Consultation and Review Procedure];

“Substantial Completion Date” means the latest of the SFB Expansion Substantial Completion Date and the New Tower Substantial Completion Date;

“Substantial Completion Payment” has the meaning set out in Schedule 8 [Payments];

“Suitable Substitute Project Co” has the meaning set out in the Lenders’ Remedies Agreement;

“Supervening Event” means any of a Compensation Event, Relief Event, Force Majeure Event or Eligible Change in Law Event;

“Supervening Event Notice” has the meaning set out in Section 8.2(a) (Procedures Upon the Occurrence of a Supervening Event);

“Support Facilities Building” means the building identified as such in Appendix 2H [Site Plan];

“Target CPPS Substantial Completion Date” means the date, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Project Co estimates CPPS Substantial Completion will occur;

“Target New Tower Substantial Completion Date” means the date, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Project Co estimates New Tower Substantial Completion will occur;

“Target SFB Expansion Substantial Completion Date” means the date, as set out in the Project Schedule (as updated from time to time in accordance with Schedule 2 [Design and Construction Protocols]), that Project Co estimates SFB Expansion Substantial Completion will occur;

“Tax” or **“Taxes”** means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and occupation taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and charges) together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges;

“Term” has the meaning set out in Section 2.1 (Term and Termination);

“Termination Date” means the earlier of the Expiry Date or the date of earlier termination referred to in Section 2.1 (Term and Termination);

“Termination Payment” has the meaning set out in Schedule 9 [Compensation on Termination];

“Termination Payment Date” has the meaning set out in Schedule 9 [Compensation on Termination];

“Total Completion” means the later of New Tower Total Completion and SFB Expansion Total Completion;

“Tracked Asset” has the meaning set out in Appendix 2B [BIM Requirements];

“TruePDF” means a digitally created PDF document which is fully searchable and editable;

“Undisclosed Environmental Liabilities” means all Hazardous Substances located in, on, below or adjacent to the Lands, other than Project Co Hazardous Substances;

“Uninsurable” means, in relation to a risk:

- (a) insurance as required under this Agreement is not available in respect of the Project with Qualified Insurers; or
- (b) the insurance premium payable or the terms and conditions for insuring such risk at the levels and on the terms required by this Agreement are such that contractors, concessionaires, owners or others having a substantially similar interest in a project such as the Project in Canada are not generally insuring against such risk with Qualified Insurers;

“Uninsurable Risk” has the meaning set out in Section 6.14 (Consequences of Risks Becoming Uninsurable);

“User Consultation Groups” has the meaning set out in Section 5.3(a) (Design Process) of Schedule 2 [Design and Construction Protocols];

“Valuator” means a firm of chartered accountants as represented by a fully qualified member of the Canadian Institute of Chartered Business Valuators;

“Warranty Holdback” has the meaning set out in Schedule 8 [Payments];

“Warranty Holdback Letter of Credit” has the meaning set out in Schedule 8 [Payments];

“Warranty Period” means:

- (a) in respect of the SFB Expansion, the period commencing on the SFB Expansion Substantial Completion Date and ending on the date that is two years after the SFB Expansion Substantial Completion Date;
- (b) in respect of the New Tower and the Energy Centre, the period commencing on the New Tower Substantial Completion Date and ending on the date that is two years after the New Tower Substantial Completion Date; and
- (c) in respect of the CPPS, the period commencing on the CPPS Substantial Completion Date and ending on the date that is two years after the CPPS Substantial Completion Date,

provided that:

- (d) for any Deficiency, the Warranty Period shall commence on the date such Deficiency is corrected pursuant to Section 13.4 (Correction of Deficiencies, Total Completion) of Schedule 2; and
- (e) the Warranty Period shall be extended for one additional year for all work required of Project Co to correct any Defect completed in the second year of the Warranty Period pursuant to Section 14 (Warranties and Liability for Defects) of Schedule 2, such that the Warranty Period for any such item of remedial work shall extend for an additional year after such Defect is corrected;

“Work” has the meaning given in the Construction Management Agreement; and

“Work Plan” has the meaning set out in Section 6.11(c) (Connections and Integration to the Hospital) of Schedule 2 [Design and Construction Protocols].

2. INTERPRETATION

This Agreement will be interpreted according to the following provisions, except to the extent the context or the express provisions of this Agreement otherwise require:

- (a) the parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same;
- (b) the table of contents, headings and sub-headings, marginal notes and references to them in this Agreement are for convenience of reference only, do not constitute a part of this Agreement, and will not be taken into consideration in the interpretation or construction of, or affect the meaning of, this Agreement;
- (c) each reference to a Section, Schedule, Appendix or Attachment is a reference to a Section of, Schedule to, Appendix to a Schedule to, this Agreement, or Attachment to an Appendix, and each Appendix is uniquely designated by using the number of the Schedule to which the Appendix is attached followed by an alphabetical designator in sequence (for example, Appendix 2A [Independent Certifier Agreement] means the first Appendix (excluding any that may not be used) attached to Schedule 2 [Design and Construction Protocols]). A Schedule includes all of the Appendices attached to that Schedule. An Appendix includes all the Attachments attached to that Appendix;
- (d) each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, replaced, novated or assigned, and a reference to an “amendment” and similar terms

(including “amend” and “amended”) include a reference to supplement, alteration, substitute, variation, change and any other modification and similar terms;

- (e) each reference to a statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice, instruments or other subordinate legislation made under the relevant statute;
- (f) unless the context otherwise requires, each reference to the "main body" of this Agreement refers to the portion of this Agreement starting with the title page through to and including the execution page or pages of this Agreement;
- (g) each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be;
- (h) words importing the singular include the plural and vice versa;
- (i) words importing a particular gender include all genders;
- (j) each reference to a public organization is deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization;
- (k) unless the context otherwise requires, each reference to “parties” means the parties to this Agreement and each reference to a “party” means any one of the parties to this Agreement, provided however that a reference to a third party does not mean a party to this Agreement;
- (l) all monetary amounts are expressed in Canadian Dollars;
- (m) whenever this Agreement obliges a party (the “**Payor**”) to pay any amount to the other party (the “**Payee**”) in respect of any costs, expenses, fees, charges, liabilities, losses, claims or other sums incurred by the Payee:
 - (1) such obligation will be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis (including when the payment is made to an Affiliate of the Payee), so much of them as are proper and reasonable; and
 - (2) the Payee will, when requested by the Payor, provide supporting evidence of such costs, expenses, fees, charges, liabilities, losses, claims or other sums;
- (n) the Authority will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents

(including the Authority's Representative) who have responsibilities in connection with the Project;

- (o) without limiting the extent of its actual knowledge, Project Co will for all purposes of this Agreement be deemed to have such knowledge in respect of the Design and the Construction as is held (or ought reasonably to be held) by those employees or agents of Project Co, the Design-Builder or any Sub-Contractor, who have responsibilities in connection with the carrying out of the Design or the Construction to which the fact, matter or thing relates or is applicable;
- (p) each requirement for a thing or action to be "in accordance with" or "in compliance with" any standard, code or specification or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification or other requirement or stipulation;
- (q) the words "include", "includes" and "including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively;
- (r) when a party has "discretion", it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Agreement;
- (s) any consent contemplated to be given under this Agreement must be in writing;
- (t) general words are not given a restrictive meaning:
 - (1) if they are introduced by the word "other", by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (2) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (u) words or abbreviations which have well-known trade meanings are used in accordance with those meanings;
- (v) the expression "all reasonable efforts" and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party's obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person's own benefit, provided that the foregoing will not require the Authority to:

- (1) take any action which is contrary to the public interest, as determined by the Authority in its discretion; or
- (2) undertake any mitigation measure that might be available arising out of its status as a public body that would not normally be available to a private commercial party;
- (w) the expressions “by Project Co” and “by or through Project Co” and expressions of like import are synonymous and mean by Project Co or by anyone employed by or through Project Co, including Project Co and all contractors, sub-contractors and suppliers of any tier and their respective officers, employees, consultants and agents;
- (x) all accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP, consistently applied;
- (y) where this Agreement requires the calculation of something that is calculated in the Financial Model, but not including payments and Deductions, the calculation will be done in a manner consistent with the calculation methodology in the Financial Model;
- (z) if the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act will be extended to the next Business Day;
- (aa) each provision of this Agreement will be valid and enforceable to the fullest extent permitted by Law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect; and
- (bb) each release, waiver of liability and indemnity in this Agreement expressed to be given in favour of a party is and will be interpreted as having been given in favour of and may be enforced by that party and, in the case of the Authority, by the Authority Indemnified Persons, and, in the case of Project Co, by Project Co Persons.

3. PRIORITY OF AGREEMENTS AND SCHEDULES

In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Agreement, the provisions will prevail in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the provisions establishing the higher quality, manner or method of performing the Design or the Construction, using the more stringent standards, will prevail, with the intent that the provisions which produce the higher quality with the higher levels of safety, reliability, durability, performance and service will prevail;

- (b) the provisions of the main body of this Agreement will prevail over any of the Schedules hereto other than Schedule 11 [Material Contract Party Collateral Agreement] or Schedule 10 [Lenders' Remedies Agreement];
- (c) the provisions of the Lenders' Remedies Agreement will prevail over the Material Contract Party Collateral Agreement;
- (d) the provisions of this Agreement (other than the provisions of Appendix 2G [Proposal Extracts]) will prevail over the provisions of Appendix 2G [Proposal Extracts]; provided however that in determining whether an ambiguity, conflict or inconsistency exists between Appendix 2G [Proposal Extracts] and any other provisions in this Agreement, to the extent that Appendix 2G [Proposal Extracts] include additional requirements for higher standards of quality or performance or additional requirements for more extensive scope of design, work or services than otherwise required, no such ambiguity, conflict or inconsistency will be deemed to exist and Project Co's obligations hereunder will include compliance with all such additional requirements; and
- (e) if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Design or the Construction, the provision that applies to the specific part of the Design or the Construction will prevail for that specific part of the Design or the Construction.

4. FINANCIAL MODEL

Except where expressly referred to, the Financial Model and its contents will not be used to interpret, and will not affect the meaning of, this Agreement.

SCHEDULE 2
DESIGN AND CONSTRUCTION PROTOCOLS

APPENDIX 2A

INDEPENDENT CERTIFIER AGREEMENT

APPENDIX 2B
BIM REQUIREMENTS

APPENDIX 2C

USER CONSULTATION AND REVIEW PROCEDURE

APPENDIX 2D

ENERGY AND CARBON GUARANTEES

APPENDIX 2E

CLINICAL EQUIPMENT AND FURNITURE

APPENDIX 2F
INITIAL PROJECT SCHEDULE

APPENDIX 2G
PROPOSAL EXTRACTS

APPENDIX 2H

SITE PLAN

APPENDIX 2I

COMPLIANCE FAILURE EVENTS

APPENDIX 2J
CONSTRUCTION ITEMS

APPENDIX 2K

ASSET MANAGEMENT REQUIREMENTS

APPENDIX 2L

FOOD SERVICES EQUIPMENT

SCHEDULE 3
DESIGN AND CONSTRUCTION SPECIFICATIONS

SCHEDULE 4
[NOT USED]

SCHEDULE 5
INSURANCE REQUIREMENTS

APPENDIX 5A
LENDER ENDORSEMENTS

SCHEDULE 6
CHANGES

SCHEDULE 7
LANDS

APPENDIX 7A

DESCRIPTION OF LANDS AND ENCUMBRANCES

APPENDIX 7B
SENSITIVE USE AREA

SCHEDULE 8
PAYMENTS

SCHEDULE 9
COMPENSATION ON TERMINATION

SCHEDULE 10
LENDERS' REMEDIES AGREEMENT

SCHEDULE 11
MATERIAL CONTRACT PARTY COLLATERAL AGREEMENT

SCHEDULE 12

PROJECT CO'S OWNERSHIP INFORMATION

SCHEDULE 13
DISPUTE RESOLUTION PROCEDURE

APPENDIX 13A
REFEREE AGREEMENT

SCHEDULE 14
RECORDS AND REPORTS

SCHEDULE 15

PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

SCHEDULE 16
COMMUNICATION ROLES

SCHEDULE 17
KEY INDIVIDUALS

SCHEDULE 18
COMPLETION DOCUMENTS